

# COPY

ORDINANCE NO. 10-1-1.3

## THE THIRD AMENDMENT TO THE MORGAN COUNTY STORMWATER MANAGEMENT ORDINANCE

**WHEREAS**, the Board of Commissioners of Morgan County, Indiana, ("Board of Commissioners") is the executive and legislative body of Morgan County, Indiana;

**WHEREAS**, the Morgan County Drainage Board ("Drainage Board") is established pursuant to I.C. 36-9-27 and its membership consists of the Board of Commissioners;

**WHEREAS**, pursuant to I.C. 36-1-3 the Board of Commissioners and Drainage Board passed and adopted the Morgan County Stormwater Management Ordinance on November 17, 2003; and,

**WHEREAS**, the Board of Commissioners and Drainage Board, desire to amend and modify Section 12.0, Illicit Discharge Detection and Elimination, of the Morgan County Stormwater Management Ordinance so that mining operations are no longer exempt from the provisions of the Ordinance.

**BE IT THEREFORE ORDAINED** by the Board of Commissioners of Morgan County Indiana, as follows:

1. The Morgan County Stormwater Control Ordinance, Section 12, "Illicit Discharge Detection and Elimination" shall be amended by deleting the following language indicated by ~~striktthrough text~~ and inserting the following language indicated by underline text, as follows:

## 1. APPLICABILITY AND EXEMPTIONS

This chapter shall apply to all discharges, including illegal dumping, entering the storm drain system under the control of Morgan County Surveyor's Office regardless of whether the discharge originates from developed or undeveloped lands, and regardless of whether the discharge is generated from an active construction site or a stabilized site. These discharges include flows from direct connections to the storm drain system, illegal dumping, and contaminated runoff.

Stormwater runoff from agricultural and timber harvesting, ~~and mining~~ activities is exempted from the requirements of this chapter unless determined to contain pollutants not associated with such activities or in excess of standard practices. Farm residences are *not* included in this exemption.

"Agricultural activities" shall mean tillage, planting, cultivation or harvesting operation for the production of agricultural or nursery vegetative crops; and includes the pasturing and confined feeding of livestock, except for livestock operations which are subject to the Indiana Confined Feeding Control Statute (I.C. 13-18-10). The term also includes pasture renovation and establishment, the construction of agricultural conservation practices, and the installation and maintenance of agricultural drainage tile. For the purposes of this Ordinance, the term does not include land disturbing activities for the construction of agricultural related facilities, such as:

- (a) barns;
- (b) building to house livestock;
- (c) roads associated with infrastructure;
- (d) agricultural waste lagoons and facilities;
- (e) lakes and ponds;
- (f) wetlands; and,
- (g) other infrastructure.

"Timber harvesting" shall mean the act or process of cutting or gathering trees, standing or felled, and logs. "Timber harvesting" shall include the act or process or cutting or gathering firewood, Christmas trees, fruit or ornamental trees.

Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for the subject discharge to the storm drain system, is also exempted from this chapter.

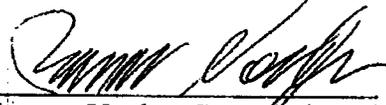
Finally, any construction project which has had its drainage plan approved by the Morgan County Surveyor's Office prior to the effective date of this ordinance shall be exempt from all requirements of this ordinance that are in excess of the requirements of ordinances in effect at the time of approval.

2. Other than as modified and amended above, the Morgan County Stormwater Control Ordinance shall remain in full force and effect.

3. This amendment shall be effective immediately upon passage.
4. This amendment shall be incorporated into and made a part of the Morgan County Stormwater Management Ordinance book maintained by the Morgan County Auditor, Morgan County Surveyor and the Morgan County Planning Department.

So Passed and Ordained this 4 day of March, 2008.

**MORGAN COUNTY BOARD OF  
COMMISSIONERS and the  
MORGAN COUNTY DRAINAGE  
BOARD**



Norman Voyles, Commissioner/  
Drainage Board Member

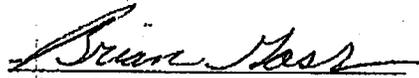
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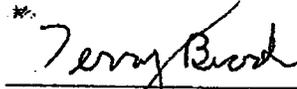
Brenda Adams,  
Morgan County Auditor



Jeff Quyle, Commissioner/  
Drainage Board Member



Brian Goss, Commissioner/  
Drainage Board Member



Terry Brock, Morgan County  
Surveyor

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## **1. APPLICABILITY AND EXEMPTIONS**

This chapter shall apply to all discharges, including illegal dumping, entering the storm drain system under the control of the Morgan County Surveyor's Office, regardless of whether the discharge originates from developed or undeveloped lands, and regardless of whether the discharge is generated from an active construction site or a stabilized site. These discharges include flows from direct connections to the storm drain system, illegal dumping, and contaminated runoff.

Stormwater runoff from agricultural, timber harvesting, and mining activities is exempted from the requirements of this chapter unless determined to contain pollutants not associated with such activities or in excess of standard practices. Farm residences are *not* included in this exemption.

Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for the subject discharge to the storm drain system, is also exempted from this chapter.

Finally, any construction project which has had its drainage plan approved by the Morgan County Surveyor's Office prior to the effective date of this ordinance shall be exempt from all requirements of this ordinance that are in excess of the requirements of ordinances in effect at the time of approval.

## **2. PROHIBITED DISCHARGES AND CONNECTIONS**

No person shall discharge to a waterbody, directly or indirectly, any substance other than stormwater or an exempted discharge. Any person discharging stormwater shall effectively prevent pollutants from also being discharged with the stormwater, through the use of best management practices (BMPs).

The Morgan County Surveyor's Office is authorized to require dischargers to implement pollution prevention measures, utilizing BMPs, necessary to prevent or reduce the discharge of pollutants into the Morgan County Surveyor's Office's stormwater drainage system.

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ILLCIT DISCHARGE DETECTION AND ELIMINATION**

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**3. EXEMPTED DISCHARGES AND CONNECTIONS**

The following categories of non-stormwater discharges or flows are exempted from the requirements of this chapter:

- A. Water line flushing;
- B. Landscape irrigation;
- C. Diverted stream flows;
- D. Rising ground waters;
- E. Uncontaminated groundwater infiltration;
- F. Uncontaminated pumped ground water;
- G. Discharges from potable water sources;
- H. Foundation drains;
- I. Air conditioning condensation;
- J. Irrigation water;
- K. Springs;
- L. Water from crawl space pumps;
- M. Footing drains;
- N. Residential and commercial lawn watering;
- O. Individual residential car washing;
- P. Flows from riparian habitats and wetlands;
- Q. Dechlorinated swimming pool discharges;
- R. Street wash water;
- S. Discharges from firefighting activities;
- T. Naturally introduced detritus (e.g. leaves and twigs).

**4. STORAGE OF HAZARDOUS OR TOXIC MATERIAL**

Storage or stockpiling of hazardous or toxic material within any drainage way, or in its associated floodway or floodplain, is strictly prohibited. Storage or stockpiling of hazardous or toxic material on active construction sites must include adequate protection and/or containment so as to prevent any such materials from entering any temporary or permanent stormwater conveyance or drainage way.

**5. PRIVATE PROPERTY MAINTENANCE DUTIES**

Every person owning property through which a drainage way passes, or such person's lessee, shall keep and maintain that part of the drainage way located within their property boundaries, free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee

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shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

### 6. SPILL REPORTING

Any discharger who accidentally discharges into a water body any substance other than stormwater or an exempted discharge shall immediately inform the Morgan County Emergency Management Agency concerning the discharge. A written report concerning the discharge shall be filed with the Morgan County Surveyor's Office, by the discharger(s), within five (5) days. The written report shall specify:

- A. The composition of the discharge and the cause thereof;
- B. The exact date, time, and estimated volume of the discharge;
- C. All measures taken to clean up the accidental discharge, and all measures proposed to be taken to prevent any recurrence;
- D. The name and telephone number of the person making the report, and the name of a person who may be contacted for additional information on the matter.

A properly reported accidental discharge shall be an affirmative defense to a civil infraction proceeding brought under this section against a discharger for such discharge. It shall not, however, be a defense to a legal action brought to obtain an injunction, to obtain recovery of costs or to obtain other relief because of or arising out of the discharge. A discharge shall be considered properly reported only if the discharger complies with all the requirements of this section.

### 7. INSPECTIONS AND MONITORING

#### A. Storm Drainage System

The Morgan County Surveyor's Office will periodically inspect the portion of the storm drainage system under the Morgan County Surveyor's Office's control, in an effort to detect and eliminate illicit connections and discharges into the system. This inspection will include a screening of discharges from outfalls connected to the system in order to determine if prohibited flows are being conveyed into the storm drainage system. It could also include spot testing of waters contained in the storm drainage system itself to detect the introduction of pollutants into the system by means other than a defined outfall, such as dumping or contaminated sheet runoff.

#### B. Potential Polluters

If, as a result of the storm drainage system inspection, a discharger is suspected of an illicit discharge, the Morgan County Surveyor's Office may inspect and/or obtain stormwater samples from stormwater runoff facilities of the subject discharger, to determine compliance with the requirements of this section. Upon request, the discharger shall

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allow the Morgan County Surveyor's Office's properly identified representative to enter upon the premises of the discharger at all hours necessary for the purposes of such inspection or sampling. The Morgan County Surveyor's Office shall provide the discharger reasonable advance notice of such inspection and/or sampling. The Morgan County Surveyor's Office or its properly identified representative may place on the discharger's property the equipment or devices used for such sampling or inspection. Identified illicit connections or discharges shall be subject to enforcement action as described in Chapter 8 of this section.

**C. New Development and Re-Development**

Following approval of final stormwater plans by the Morgan County Surveyor's Office, new development and re-development sites shall be inspected by the Morgan County Surveyor's Office's properly identified representative. This inspection will be to insure all on-site stormwater conveyances and connections to the storm drainage system are in compliance with this chapter.

**8. ENFORCEMENT**

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**A. COMPLIANCE WITH THIS SECTION**

In addition to the requirements of this section, compliance with the requirements set forth in the local Zoning Ordinances is also necessary. Compliance with all applicable ordinances of Morgan County Surveyor's Office as well as with applicable State of Indiana statutes and regulations shall also be required. Unless otherwise stated, all other specifications referred to in this section shall be the most recent edition available.

Violations of the requirements of this section are subject to the penalties listed below.

**B. PENALTIES FOR VIOLATIONS**

Any person found in violation of any provision of this section shall be responsible for a civil infraction and subject to a fine of not less than \$500 for a first offense, and not less than \$1,000 for a subsequent offense, plus costs, damages, expenses, reasonable attorney fees, and costs as may be imposed in the discretion of the court. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law.

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An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this section.

Any person who aids or abets a person in a violation of this section shall be subject to the penalties provided in this section.

For purposes of this section, "subsequent offense" means a violation of the provisions of this section committed by the same person within 12 months of a previous violation of the same provision of this section for which said person admitted responsibility or was adjudicated to be responsible.

**C. STOP WORK ORDER**

In addition to the penalties listed above, if construction activities are conducted contrary to the provisions of this section or approved final stormwater management plans, the Morgan County Surveyor's Office may order the work stopped by notice in writing served on any person engaged in the doing or causing of such work to be done, and any such persons shall forthwith stop such work until authorized by the Morgan County Surveyor's Office to proceed with the work. The Morgan County Surveyor's Office may also undertake or cause to be undertaken, any necessary or advisable protective measures to prevent violations of this section or to avoid or reduce the effects of noncompliance herewith. The cost of any such protective measures shall be the responsibility of the owner of the property upon which the work is being done and the responsibility of any person carrying out or participating in the work.

Any person who neglects or fails to comply with a stop work order shall be found to be in violation of this section and subject to a fine of not less than \$1,000 and such person shall also pay all court costs, reasonable attorney fees, and such costs as may be imposed at the discretion of the court.

**D. FAILURE TO COMPLY OR COMPLETE**

In addition to any other remedies, should any person fail to comply with the provisions of this section, the Morgan County Surveyor's Office may, after the giving of reasonable notice and opportunity for compliance, have the necessary work done, and the owner shall be obligated to promptly reimburse the Morgan County Surveyor's Office for all costs of such work.

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### **E. SUSPENSION OF ACCESS TO THE STORM DRAIN SYSTEM**

#### **1. Suspension due to Emergency Situations**

The Morgan County Surveyor's Office may, without prior notice, suspend storm drain system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drain system or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the storm drain system or Waters of the United States, or to minimize danger to persons.

#### **2. Suspension due to the Detection of Illicit Discharge**

Any person discharging to the storm drain system in violation of this section may have their storm drain system access terminated if such termination would abate or reduce an illicit discharge. The Morgan County Surveyor's Office will notify a violator of the proposed termination of its MS4 access. The violator may petition the Morgan County Surveyor's Office for a reconsideration and hearing.

### **F. CORRECTIVE ACTION**

Nothing herein contained shall prevent the Morgan County Surveyor's Office from taking such other lawful action as may be necessary to prevent or remedy any violation. All costs connected therewith shall accrue to the person or persons responsible. Costs include, but are not limited to, repairs to the storm drain system made necessary by the violation, as well as those penalties levied by the EPA or IDEM for violation of the Morgan County Surveyor's Office's NPDES permit, reasonable attorney fees, and other costs and expenses.

### **G. APPEALS**

Any person to whom any provision of this section has been applied may appeal in writing, not later than 30 days after the action or decision being appealed from, to the Morgan County Drainage Board the action or decision whereby any such provision was so applied. Such appeal shall identify the matter being appealed, and the basis for the appeal. The Morgan County Drainage Board shall consider the appeal and make a decision whereby it affirms, rejects or modifies the action being appealed. In considering any such appeal, the Morgan County Drainage Board may consider the recommendations of the Morgan County Surveyor's Office and the comments of other persons having knowledge of the matter. In considering any such appeal, the Morgan County Drainage Board may grant a variance from the terms of this section to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

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1. The application of the section provisions being appealed will present or cause practical difficulties for a development or development site; provided, however, that practical difficulties shall not include the need for the developer to incur additional reasonable expenses in order to comply with the section; and
  2. The granting of the relief requested will not prevent the goals and purposes of this section, nor result in less effective management of stormwater runoff.

**H. ORDINANCE PROVISIONS**

Nothing in this section shall be construed to limit or waive the application of any of the provisions of Sec. 11 of this Ordinance.