

Construction Site & Post Construction Site Stormwater Control Ordinance

ORDINANCE NO. 2010 - 013 A

An ordinance requiring Stormwater Pollution Prevention Plans, which includes erosion and sediment control measures and materials handling procedures, to be submitted as part of the construction plans and specifications in order for there to be issued a grading permit for construction sites disturbing one acre or more of land in Delaware County. This ordinance also requires the development of Post-Construction stormwater control measures, for new development and redevelopment, to be submitted and approved as part of the construction plans and specifications.

- Whereas,** Delaware County, Indiana (the County) has constructed and has in operation a stormwater collection system for the purpose of collecting stormwater within its jurisdiction; and
- Whereas,** new requirements for stormwater quality affect the County directly resulting from the United State Environmental Protection Agency (EPA) regulation entitled “National Pollutant Discharge Elimination System (NPDES) – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges” (Federal Register, Volume 64, Number 235, pages 68722 – 68852) on December 8, 1999 as required by section 402(p) of the Clean Water Act (CWA); and
- Whereas,** the program is administered by the Indiana Department of Environmental Management with the adoption of 327 IAC 15-5 for Storm Water Run-off Associated with Construction Activity, and 327 IAC 15-13 for Storm Water Run-Off Associated with Municipal Separate Storm Sewer System (MS4) Conveyances; and
- Whereas,** 327 IAC 15-13-15 (b) requires the County to pass an ordinance, or other local regulatory mechanism, establishing a construction program that controls polluted run-off from construction activities with a land disturbance greater than or equal to one acre, or disturbances of less than one acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land; and
- Whereas,** the required ordinance, or other local regulatory mechanism, must contain at a minimum the requirements of 327 IAC 15-5, except for state permitting process references, and submittal deadlines of construction plans; and
- Whereas,** the required ordinance, or other regulatory mechanism must contain, at a minimum, the post-construction requirements of 327 IAC 15-5-6.5(a)(8); and

Whereas, the creation of a new stormwater management program could help address stormwater management problems; and

Whereas, the County operates its stormwater system under the provisions of IC 8-1.5-5-1; Now therefore be it hereby ordained by the County Commissioners of Delaware County, Indiana, that the municipal code be amended as follows:

Now Therefore be it Ordained by the Commissioners of Delaware County, Indiana that:

SECTION 1. PURPOSE/INTENT.

A. Site Construction Control

The purpose of this ordinance relative to Post-Construction Control is to establish requirements for stormwater discharges from construction activities of one acre or more so as to protect the public health, existing water uses, and aquatic biota. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate construction activities disturbing more than one acre of land as governed by 327 IAC 15-5.
- (2) To require construction site operators to develop and implement a Construction Plan including a Storm Water Pollution Prevention Plan in order to receive a grading permit from the County.

B. Post-Construction Control

The purpose of this ordinance relative to Post-Construction Control is to implement planning procedures that promote and improve water quality. The planning procedures will include, at a minimum, the post-construction requirements of 327 IAC 5-5-6.5(a)(8). The County may require the use of any storage, infiltration, filtering, and/or vegetative practices to reduce the impact of pollutants on stormwater runoff. Where appropriate, and to the extent of the MS4 operator's authority, the planning procedures may also include the following:

- (1) Buffer strip and riparian zone preservation.
- (2) Filter strip creation.
- (3) Minimization of land disturbance and surface imperviousness.
- (4) Minimization of directly connected impervious areas.
- (5) Maximization of open space.

- (6) Directing the community's growth away from sensitive areas and towards areas that can support growth without compromising water quality.

SECTION 2. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: employees or designees of the County Commissioners of Delaware County, Indiana.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity: Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more, as defined in 327 IAC 15-5. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in County Ordinance Number ____ entitled Stormwater Illicit Discharge and Connection Ordinance.

Illicit Connections: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Indiana Stormwater Quality Manual: A reference manual developed by the State of Indiana that provides guidance on planning principals, as well as criteria for specific structural and non-structural stormwater management practices.

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 327 IAC 15-6.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.

Person: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any other kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan: A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or receiving waters to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

SECTION 3. APPLICABILITY.

This ordinance covers any new development or re-development construction site resulting in the disturbance of one acre or more of total land area. Persons must meet the general permit rule applicability requirements under 327 IAC 15-2-6. This ordinance also applies to disturbances of less than one acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land within the corporate limits of the County.

All terms, conditions, definitions, and other measures defined in 327 IAC 15-5 shall apply except for state permitting process references and submittal deadlines of construction plans.

This ordinance does not apply to persons who obtain an individual NPDES permit under 327 IAC 15-2-6.

This ordinance does not apply to the Indiana Department of Transportation when it conducts its business within the County corporate limit under its NPDES permit pursuant to 327 IAC 15.

This ordinance does not apply to the following types of activities:

1. Agricultural land disturbing activities.
2. Forest harvesting activities.

This ordinance does not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

1. Landfills that have been issued a certification of closure under 329 IAC 10.
2. Coal mining activities permitted under IC 14-34.
3. Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the Indiana Department of Environmental Management under 329 IAC 10 that contains equivalent stormwater requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The County shall administer, implement, and enforce the provisions of this ordinance. Any powers granted, or duties imposed, upon the authorized enforcement agency, may be delegated in writing to persons or entities acting in the beneficial interest of or in the employ of the agency.

SECTION 5. SEVERABILITY.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. ULTIMATE RESPONSIBILITY.

The standards set forth herein, and promulgated pursuant to this ordinance, are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will not be violations of NPDES permits.

SECTION 7. RESPONSIBILITY OF CONSTRUCTION SITE OWNER.

The project site owner has the following responsibilities:

1. Ensure that a sufficient construction plan is completed and submitted in accordance with procedures established by the County.
2. Complete a sufficient notice of intent letter submitted to the County with a copy sent to the Indiana Department of Environmental Management.
3. Make application for a grading permit in accordance with procedures established by the County.
4. Ensure compliance with this ordinance during construction activity and the implementation of the construction plan.
5. Ensure that all persons engaging in construction activities, on a permitted project site, comply with the applicable requirements of this rule and the approved construction plan.
6. Notify the County with a sufficient notice of termination letter and send a copy to the Indiana Department of Environmental Management.
7. Pay the cost of any required Special Engineering Review, if Stormwater Pollution Prevention Plan (SWPPP) requires professional engineering review.

For off-site construction activities that provide services (for example, road extensions, sewer, water, and other utilities) to a permitted project site, these off-site activity areas must be considered a part of the permitted project site when the activity is under the control of the project site owner.

For an individual lot where land disturbance is expected to be one acre or more, and the lot lies within a project site permitted under this rule, the individual lot owner shall:

- A. Ensure that a sufficient construction plan is completed and submitted in accordance with procedures established by the County.
- B. Complete a notice of intent letter and submit it to the County.
- C. Apply for a building permit in accordance with the procedures established by the County.

For an individual lot where the land disturbance is less than one acre and the lot lies within a project site permitted under this rule, the individual lot operator shall:

1. Comply with the provisions and requirements of the plan developed by the project site owner in accordance with the procedures established by the County.
2. Comply with the provisions set forth in Section 11 of this ordinance.
3. Apply for a building permit in accordance with the procedures established by the County.
(NOTE: There is no need to submit a notice of intent letter under the above subsection)

SECTION 8. GENERAL REQUIREMENTS FOR STORMWATER QUALITY CONTROL.

All storm water quality measures and erosion and sediment controls necessary to comply with this ordinance must be implemented in accordance with the construction plan and sufficient to satisfy the following conditions.

A project site owner shall meet the following minimum requirements:

1. Sediment-laden water which otherwise would flow from the project site shall be treated by erosion and sediment control measures appropriate to minimize sedimentation.
2. Appropriate measures shall be implemented to minimize or eliminate wastes or unused building materials, including garbage, debris, cleaning wastes, wastewater, concrete truck washout, and other substances from being carried from a project site by run-off or wind. Identification of areas where concrete truck washout is permissible must be clearly posted at appropriate areas of the site. Wastes and unused building materials shall be managed and disposed of in accordance with all applicable statutes and regulations.
3. A stable construction site access shall be provided for all traffic ingress and egress to the project site.
4. Public or private roadways shall be kept cleared of accumulated sediment that is a result of run-off or tracking. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment shall be redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.
5. Storm water run-off leaving a project site must be discharged in a manner that is consistent with applicable state or federal law.
6. The project site owner shall post a notice near the main entrance of the project site. For linear project sites, such as a pipeline or highway, the notice must be placed in a publicly accessible location near the project field office. The notice must be maintained in a legible condition and contain the following information:
 - a. The completed NOI letter and the NPDES permit number, where applicable.
 - b. Name, company name, telephone number, e-mail address (if available), and address of the project site owner or a local contact person.
 - c. Location of the construction plan if the project site does not have an on-site location to store the plan.
7. This permit, and posting of the notice under subdivision (6), does not provide the public with any right to trespass on a project site for any reason, nor does it require that the project site owner allow members of the public access to the project site.
8. The storm water pollution prevention plan shall serve as a guideline for storm water quality, but should not be interpreted as the only requirements for implementation of storm water quality measures for a project site. The project site owner is responsible for implementing, in accordance with this rule, all measures necessary to adequately prevent polluted storm water

run-off.

9. The project site owner shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors, and the contractors that have primary oversight on individual building lots, of the terms and conditions of this rule and the conditions and standards of the storm water pollution prevention plan, and the schedule for proposed implementation.
10. Phasing of construction activities shall be used, where possible, to minimize disturbance of large areas.
11. Appropriate measures shall be planned and installed as part of an erosion and sediment control system.
12. All storm water quality measures must be designed and installed under the guidance of a trained individual.
13. Collected run-off, leaving a project site, must be either discharged directly into a well-defined and stable receiving channel or diffused and released to adjacent property without causing an erosion or pollutant problem to the adjacent property owner.
14. Drainage channels and swales must be designed and adequately protected so that their final gradients and resultant velocities will not cause erosion in the receiving channel or at the outlet.
15. Natural features, including wetlands and sinkholes, shall be protected from pollutants associated with storm water run-off.
16. Unvegetated areas that are scheduled, or likely to be left inactive for fifteen (15) days or more, must be temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Alternative measures to site stabilization are acceptable if the project site owner, or their representative, can demonstrate they have implemented erosion and sediment control measures adequate to prevent sediment discharge. Vegetated areas, with a density of less than seventy percent (70%), shall be restabilized using appropriate methods to minimize the erosion potential.
17. During the period of construction activities, all storm water quality measures necessary to meet the requirements of this rule shall be maintained in working order.
18. A self-monitoring program that includes the following must be implemented:
 - A. A trained individual shall perform a written evaluation of the project site at a minimum of one time per week and by the end of the next business day following each 0.5 inch of rain.
 - B. The evaluation must address the maintenance of existing storm water quality measures to ensure they are functioning properly and identify additional measures necessary to remain in compliance with all applicable laws and ordinances.
 - C. Written evaluation reports must include the name of the individual performing the evaluation, the date of the evaluation, problems identified at the project site, and details of corrective actions recommended and completed.
 - D. All evaluation reports for the project site must be made available to the inspecting authority within forty-eight (48) hours of a request.
19. Proper storage and handling of materials, such as fuels or hazardous wastes, and spill prevention and clean-up measures, shall be implemented to minimize the potential for

pollutants to contaminate surface or ground water or degrade soil quality.

20. Final stabilization of a project site is achieved when:

A. All land disturbing activities have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed; and

B. Construction projects on land used for agricultural purposes are returned to its preconstruction agricultural use and disturbed areas, not previously used for agricultural production, such as filter strips and areas that are not being returned to their preconstruction agricultural use, meet the final stabilization requirements in clause (A).

SECTION 9. GENERAL REQUIREMENTS FOR INDIVIDUAL BUILDING LOTS WITHIN A PERMITTED PROJECT.

All storm water quality measures, including erosion and sediment control, necessary to comply with this ordinance must be implemented in accordance with the plan and sufficient to satisfy the following conditions.

Provisions for erosion and sediment control on individual building lots regulated under the original permit of a project site owner must include the following requirements:

1. The individual lot operator, whether owning the property or acting as the agent of the property owner, shall be responsible for erosion and sediment control requirements associated with activities on individual lots.
2. Installation and maintenance of a stable construction site access for ingress and egress.
3. Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbance.
4. Sediment discharge and tracking from each lot must be minimized throughout the land disturbing activities on the lot until permanent stabilization has been achieved.
5. Clean-up of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that is in compliance with all applicable laws and ordinances.
6. Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization.
7. For individual residential lots, final stabilization meeting the criteria in section 8(20) of this rule will be achieved when the individual lot operator completes final stabilization or has installed appropriate erosion and sediment control measures for an individual lot prior to occupation of the home by the homeowner and has informed the homeowner of the requirement for, and benefits of, final stabilization.

SECTION 10. MONITORING OF DISCHARGES.

The County shall have the authority to monitor discharges from construction sites covered under this ordinance as described in County Ordinance Number ___ entitled Stormwater Illicit Discharge and Connection Ordinance.

SECTION 11. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The County will establish requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of a construction site shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at the responsible person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 12. POST-CONSTRUCTION CONTROLS FOR NEW DEVELOPMENT OR REDEVELOPMENT.

On areas that undergo new development or redevelopment, site construction resulting in disturbance of one acre or more total land area, post-construction control measures in the form of structural and/or non-structural best management practices are required. Specifically, post-construction storm water pollutant loading cannot exceed pre-construction pollutant loading. Post-construction storm water best management practices (BMPs) shall follow Indiana's Storm Water Quality Manual as a guidance document. The County shall have full technical and administrative approval authority on the application and design of all post-construction BMPs, conditions, definitions, and submittal requirements of construction plans and specifications and related documents as defined in 327 IAC 15-5-6.5(a)(8).

SECTION 13. ENFORCEMENT.

Enforcement of this ordinance shall be subject to the severity of the infraction and the construction site operator's efforts to comply. The County shall reserve the right to interpret enforcement on a case by case basis. Tiered enforcement will be practiced at the County's discretion. The tiered enforcement may include:

1. Verbal warning to the construction site operator to make corrections.
Initial verbal warning, min. 24 hours to correct, Re-inspection free
2. Written warning to the construction site operator to make corrections within a specified period of time. The period of time shall take into account issues such as the severity of the problem, pending weather, seasonal conditions, and the level of effort necessary to correct the problem.

3. Warning of Non-Compliance with directions to the construction site operator that site conditions require immediate action.
Written Pending Stop Work Order, min. 48 hours to correct, Re-inspection fee of \$50.00
4. Stop Work Order
5. Fine/Penalties will be based on list attached as exhibit A.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof, including court costs and attorney fees, shall be charged to the violator.

SECTION 14. BOND

A bond will be required initially, or for any site that has been issued a Stop Work Order. A one year maintenance bond, or other acceptable guarantee in the amount of 25% of the cost of the storm water drainage system is required.

SECTION 15. INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated, or continues to violate, the provisions of this ordinance, the authorized enforcement agency may petition any court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities which would create further violations. Such enforcement may also include compelling the person to perform abatement or remediation of the violation. Costs, including attorney fees, for injunctive relief may be assessed against the violator.

SECTION 16. COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 17. VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance may be deemed a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. Costs, including attorney fees, for injunctive relief may be assessed against the violator.


SECTION 18. REMEDIES NOT EXCLUSIVE.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

SECTION 19. ADOPTION OF ORDINANCE.

This ordinance shall be in full force and effect (Today) days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

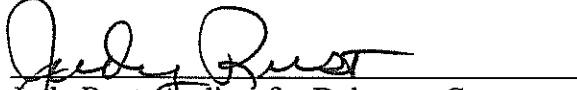
DATED this 5 day of April, 2010.


Donald Dunnuck, Delaware County Commissioner


Larry Bledsoe, Delaware County Commissioner


Todd Donati, Delaware County Commissioner

ATTEST:


Judy Rust, Auditor for Delaware County

ADDENDUM

EXHIBIT A

DELAWARE COUNTY

Initial Verbal Warning	Min. 24 Hours to Correct	Re-Inspection Fee
Written Pending Stop Work Order	Min. 48 Hours to Correct	Re-Inspection Fee \$50
Stop Work Order	\$200 Fine + Additional \$50	Re-Inspection Fee (\$300 total)

Failure to Comply, \$1,000 Per Day Until Corrected

(Note: this option includes flexibility on compliance time. Specific time limits are not realistic, given the complexity of some violations, and dependence on weather conditions to complete.)