

AN ORDINANCE PROHIBITING POLLUTION, ILLICIT CONNECTION AND DISCHARGE INTO THE STORMWATER COLLECTION FACILITIES OF THE CITY OF ANGOLA, INDIANA, AND PROVIDING PENALTIES FOR THE VIOLATION WHEREOF

Be it hereby ORDAINED by the Common Council of the City of Angola, Steuben County, Indiana:

Section 1. PURPOSE AND INTENT

(A) The purpose of this ordinance is to provide for the health, safety, and general welfare of the public through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the City of Angola Municipal Separate Storm Sewer System (MS4) and the City of Angola MS4 Conveyances 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 the contribution of pollutants to the Municipal Separate Storm Sewer System (MS4) and MS4 Conveyances by storm water discharges by any user.
- (2) To prohibit Illicit Connections and Discharges to the Municipal Separate Storm Sewer System (MS4) and MS4 Conveyances.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

Section 2. DEFINITIONS

(A) For the purposes of this ordinance, the following shall mean:

- (1) Authorized Enforcement Agency. City of Angola Board of Public Works and Safety.
- (2) Authorized Enforcement Agent. The MS4 Operator, the Wastewater Superintendent, the Street Commissioner, their designees, and other City of Angola employees operating under authority of the City of Angola Board of Public Works and Safety.
- (3) Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water receiving waters, or storm water 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.
- (4) Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (5) Construction Activity. Activity from construction projects, land disturbance, or land altering projects. Such activities include but are not limited to clearing and grubbing, grading, excavating, demolition, erection, framing, concrete work, paving, and landscaping.
- (6) 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.
- (7) Hearing Authority. The person designated by the Mayor to serve as the administrative body to conduct administrative proceedings.
- (8) Illegal Discharge. An illicit or indirect non-storm water discharge to the storm drains system, except as exempted in Section 7 of this ordinance.

- (9) Illicit Connections. An illicit connection is defined as either of the following:
- (a) 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,
 - (b) 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.
- (10) Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
- (11) 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.
- (12) Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.
- (13) Person. Means 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.
- (14) Pollutant. Anything that 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; yard wastes, including grass, brush, leaves, and limbs; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same 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; soil and sediments; and noxious or offensive matter of any kind.
- (15) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (16) 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, swales, ditches, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- (17) Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (18) Storm Water 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 storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.
- (19) Wastewater. Means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 3. APPLICABILITY

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agent.

Section 4. RESPONSIBILITY FOR ADMINISTRATION

The authorized enforcement agents shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agents may be delegated in writing by the City of Angola Board of Public Works and Safety 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 be no contamination, pollution, nor unauthorized discharge of pollutants.

Section 7. DISCHARGE PROHIBITIONS

- (A) Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the City of Angola municipal storm drain system or conveyances, any materials, including but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
- (1) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools, (if dechlorinated – typically less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.
 - (2) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
 - (3) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
 - (4) The prohibition shall not apply to any non-storm water 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 any discharge to the storm drain system.

- (B) Prohibition of Illicit Connections. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Section 8. SUSPENSION OF MS4 ACCESS

- (A) Suspension due to Illicit Discharges in Emergency Situation. The authorized enforcement agency may, without prior notice, suspend MS4 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 MS4 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 MS4 or waters of the United States, or to minimize danger to persons.
- (B) Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.
- (C) A person violates this ordinance if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.

Section 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the authorized enforcement agency prior to the allowing of discharges to the MS4.

Section 10. MONITORING OF DISCHARGES

- (A) This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
- (B) Access to facilities.
 - (1) The authorized enforcement agent shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to agents of the authorized enforcement agency.
 - (2) Facility operators shall allow the authorized enforcement agent ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
 - (3) The authorized enforcement agent shall have the right to set up on any permitted facility, such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

- (4) The authorized enforcement agent has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the facility operator at the written or oral request of the authorized enforcement agent and shall not be replaced. The costs of clearing such access shall be borne by the facility operator.
- (6) Unreasonable delays in allowing the authorized enforcement agent access to a permitted facility are a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agent reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
- (7) If the authorized enforcement agent has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agent may seek issuance of a search warrant from any court of competent jurisdiction.

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

The Board of Public Works and Safety will adopt requirements identifying Best Management Practices 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 U.S. The owner or operator of a commercial or industrial establishment 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 said 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 storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Section 12. WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property 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 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.

Section 13. NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has

information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 14. ENFORCEMENT; NOTICE OF VIOLATION

- (A) Whenever the authorized enforcement agent finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
- (1) The performance of monitoring, analyzing, and reporting;
 - (2) The elimination of illicit connections or discharges;
 - (3) That violating discharges, practices, or operations shall cease and desist;
 - (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
 - (5) Payment of a fine to cover administrative and remediation costs; and
 - (6) The implementation of source control or treatment BMPs.
- (B) 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 shall be charged to the violator.

Section 15. APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency to the Hearing Authority in care of the Office of the Mayor, 210 N. Public Square, Angola, Indiana 46703. An order becomes a final order if an appeal is not timely or properly made. The appeal must be in writing and must state with reasonable clarity the basis for an appeal. The appeal must be received within seven (7) business days from the date of the Notice of Violation. Upon receipt of an appeal a hearing before the Hearing Authority and to be conducted by the Hearing Authority will be scheduled and the person filing said appeal will be notified of the time, place and date of said hearing. At said hearing the person filing the appeal may appear in person or by an attorney; may present evidence; may cross-examine witnesses; and may present argument. At the conclusion of any hearing the Hearing Authority may make findings and take action to: (1) Affirm the order of compliance in the Notice of Violation; (2) Rescind the order of compliance in the Notice of Violation; or (3) Modify the order of compliance in the Notice of Violation, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order only in a manner what makes its terms less stringent. The record of the findings made and action taken by the Hearing Authority shall be available to the public upon request.

Section 16. ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the order of compliance in the Notice of Violation, or, in the event of an appeal, as affirmed, or modified by the Hearing Authority, within ten (10) days of the date of the Notice of Violation or the decision of the Hearing Authority, respectively, then representatives of the

Board of Public Works and Safety may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the government agency or designated agent or contractor to enter upon the premises for the purposes set forth above. At its option, the Board of Public Works and Safety may seek to have its decision enforced by the Steuben Circuit or Superior Courts.

Section 17. COST OF ABATEMENT OF THE VIOLATION

Violations of this Ordinance are subject to civil fines and penalties as prescribed by the provisions of the Indiana Code and the Angola Code of Ordinances.

Section 18. 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 is 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 expenses, and/or civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Section 19. 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 Board of Public Works and Safety to seek cumulative remedies.

Section 20. SEVERABILITY PROVISIONS

If any section, subsection, sentence, clause, phrase or portion of this Ordinance be held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

Section 21. REPEALER

All ordinances or parts thereof in conflict with the provisions of the Ordinance are hereby repealed.

Section 22. FULL FORCE AND EFFECT

This Ordinance shall be in full force and effect the date of passage by the Common Council, adoption by the Mayor, and publication as required by law.

Passed and adopted by the Common Council of the City of Angola, Indiana, and by me approved this 20th day of September 2004.

Richard M. Hickman Mayor

Attest:

Debra A. Twitchell, IAMC/CMC/CPFA
Clerk-Treasurer

Presented by me to the Mayor of the City of Angola, Indiana this 20th day of September 2004.

Debra A. Twitchell, IAMC/CMC/CPFA
Clerk-Treasurer

This ordinance approved and signed by me this 20th day of September 2004.

Richard M. Hickman, Mayor
City of Angola, Indiana