

GENERAL ORDINANCE NO. 43 - 2005

AN AMENDMENT TO THE ORDINANCE ESTABLISHING A SCHEDULE OF RATES AND CHARGES TO BE COLLECTED BY THE CITY OF MARION, INDIANA, FROM USERS AND OWNERS OF PROPERTY SERVED BY THE STORM WATER UTILITY, OF SAID CITY, ADDING PROCEDURES REGARDING ILLICIT DISCHARGES AND REGULATIONS OF OPERATION, OTHER MATTERS CONNECTED THEREWITH AND AMENDING ORDINANCES IN CONFLICT HEREWITH

WHEREAS, the City of Marion, Indiana (the “City”) has heretofore constructed and has in operation a wastewater collection system and treatment plant for the purpose of collecting and treating sewage wastewater and conveying the same away from the premises where produced; and

WHEREAS, the City also collects and treats storm water through storm water and sanitary systems; and

WHEREAS; the City provides funding by the Storm Water Utility for the maintenance and operation of the storm water and sanitary systems; and

WHEREAS, the City has caused a financial study to be completed determining that storm water rates and charges needed to pay for the costs of collecting and treating such storm water; and

WHEREAS, the City intends to operate its municipal storm water utility under the provisions of IC 36-9-23, and the Common Council, under IC 36-9-23-3, hereby transfers to the Utility Service Board all powers and duties to supervise and control the storm water utility; and

WHEREAS, for purposes of setting rates and charges under IC 36-9-23-25, the Common Council of the City is authorized to consider the costs of collecting and treating storm water drainage as the definition of sewage works for purposes of such chapter includes the term storm sewers; and

WHEREAS, the financial study presented to and approved by the Utility Service Board of the City takes into account the impervious area of all properties within the City’s limits and estimates the amount of storm water collected by the storm water utility owned and operated by the City; and

WHEREAS, the Utility Service Board has recommended that the rates and charges of the storm water utility be enacted to incorporate the recommendations and findings of the financial study presented to the Utility Service Board; and

WHEREAS, the Common Council has adopted such rates and charges under General Ordinance No. 27-1994; and

WHEREAS, Requirements for a Storm Water Management Plan have been promulgated

under Federal Regulations, 64 FR 68722 and Indiana Administrative Code, 327 IAC 15 – 13; and

WHEREAS, The Utility Service Board has developed Rules and Regulations for the operation of the Storm Water Utility;

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MARION, INDIANA:

Definitions

The following words and phrases shall have the meanings set forth in this section unless otherwise specifically noted in this Ordinance.

“Base unit” shall mean an amount which equates runoff from all properties to that of the average amount from a single-family residential property, presently set at 2,521 square feet.

“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 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.

“Board” The Marion Utilities Service Board.

“City” shall mean the City of Marion acting by and through the Council.

“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. Currently these include construction projects resulting in land disturbance of 5 acres or more. Beginning in March 2003, NPDES Storm Water Phase II permits will be required for construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

“Council” shall mean the Common Council of the City of Marion, or any duly authorized officials acting on its behalf.

“Impervious area” shall mean the total hard surface are (asphalt, concrete, stone, etc.) that is contained on a lot or parcel, or within a development tract. Hard surface area shall include, but not be limited to, driveways, parking areas, sidewalks, other paved areas, and all areas under roof.

“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 Part B, Section 5 of this 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 the Board 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 the Board.

“Industrial Activity” Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

“Municipal Separate Storm Sewer System” or “MS4” means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, that is:

- (1) owned or operated by:
 - (a) The City of Marion
 - (b) Indiana Wesleyan University
- (2) Designed or used for collecting or conveying storm water;
- (3) Not a combined sewer; and
- (4) Not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

“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 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 and yard wastes; 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; and noxious or offensive matter of any kind.

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

“Qualified Retention Facility” shall mean an artificial basin, designed and approved under the requirements of the Board, and operated to reduce peak discharge from an area by use of temporary storage. At the discretion of the Board, existing retention/detention facilities may be considered.

“Replacement Costs” shall mean the expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of storm water collection facilities to maintain the capacity and performance for which such works were designed and contracted.

“Shall” is mandatory; “May” is permissive.

“Sewage Works” shall have the meaning as defined in IC 36-9-1-8.

“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.

“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.

“Storm Water Utility”, Storm Water Works”, Storm Water Facilities” or like terms where used in this Ordinance shall mean all constructed pipes, mains, facilities, structures and natural water courses under the control of the City used for collecting and conducting storm water through and from drainage areas to the point of final outlet, including, but not limited to, any and all of the following: mains, pipes, lift stations, inlets, conduits and pertinent features, creeks, channels, catch basins, ditches, streams, culverts, retention or detention basins and pumping stations; and excluding there from any part of the system of drains and water courses under the jurisdiction of the Grant County Drainage Board.

“User Class” shall mean the division of storm water properties between residential, non-residential, **and users without direct or indirect stormwater discharges to the city system.**

“User Fees” are dedicated charges paid by Users and are based on the estimated amount of water that leaves their property.

“Users” shall mean the owners or tenants of properties within the City limits containing impervious areas that add runoff or sewage to the storm water or sanitary systems.

Residential User Class – shall include

- (i) a lot or parcel improved with a structure used primarily as a single family or two family residence, or
- (ii) a lot or parcel improved with a structure used primarily for residential purposes having less than 5,000 square feet of impervious area, each of which discharge storm water, directly or indirectly, into the storm water or sanitary systems of the City.

Non-Residential User Class – shall include properties that do not meet the definition of Residential User Class and that discharge storm water, directly or indirectly, into the storm water or sanitary systems of the city.

Users Without Direct or Indirect Discharge Class – shall include all other properties that do not meet the definition of Residential or Nonresidential User Classes, are within City limits, and that do not discharge stormwater directly or indirectly into the stormwater or sanitary systems of the city. This user shall pay cost allocated for the operation and maintenance of the systems serving city streets and right-of-ways

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

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.

PART A

Rates and Charges

Section 1 User Class

Every User shall be charged for the services provided. These charges are established for each User Class, as defined, in order that the storm water utility shall recover, from each User and User Class, revenue which is proportional to its measurement of impervious area.

The various classes of Users of the storm water collection system for purposes of this Ordinance shall be as follows:

- Class 1. Residential
- Class 2. Non-Residential
- Class 3. Users Without Direct or Indirect Discharge

Section 2 User Fees

For the use of and the service rendered by said storm water utility, User Fees shall be collected from the Users. Such User Fees shall be in an amount determinable as follows:

- (a) User Fees:

Per Month

- 1. Residential Class \$5.00
- 2. Non-Residential Class \$5.00 x (number of Base Units, determined by the Impervious area)
- 3. User Without Direct/Indirect Discharge \$5.00 x (number of Base Units, determined by the Impervious area) x 0.23

(b) In **any** User Class where tenants reside in structures which provide multiple residences, the monthly bill for that structure shall be divided by the number of water meters serving that structure and paid by the tenant responsible for paying the water bill for that meter. The foregoing shall not apply if the owner of such structure pays the User Fees.

(c) For the service rendered to the City of Marion, said City shall be subject to the same User Fees herein above provided. Impervious area located within a public dedicated or public owned right-of-way shall not be subject to a User Fee.

Section 3 Base Units and Appeal Procedures

(a) The amount of impervious area subject to the User Fees shall be determined by the Board. The Board may make proper allowances in determining the Base Units allocable to a User and may round the total amount of impervious area to always result in Base Units expressed as a whole figure.

(b) Appeal Procedure: If, in the opinion of any User, the amount of Base Units attributable to such User is inaccurate, the User shall have the right to contest said calculation in the following manner.

(i) The User shall obtain and complete a petition to appeal the amount of Base Units, which shall be returned to the Director of Utilities with a copy of a survey or other verifiable documentation supporting the User's claim?

(ii) Upon review of the User's claim, the Director of Utilities shall render a written determination that either the original calculation should be affirmed or the User should be assigned a new figure of Base Units. The Director of Utilities' determination is subject to review by the Board.

(iii) If the User receives a new figure for Base Units which is lower than the original amount assigned to such User, the User shall be credited accordingly for any overpayment made from the date the original Base Unit calculation was implemented; provided, however, that such credit shall not exceed the overpayment for a period which extends beyond the immediately preceding twelve (12) calendar months. Said credit shall apply to future service provided to the User until the overpayment has been fully satisfied. If the User's petition is denied, said opinion shall be forwarded to the User by certified mail, return receipt requested. The User shall then have seven (7) days from date of receipt to

request reconsideration by the Board. The User shall submit a copy of the original petition and supporting documents to the Board and any additional facts concerning the dispute. The Director of Utilities shall submit a copy of the determination denying the User's claim, along with any supporting documents.

Thereafter, the Board shall designate a hearing officer who shall conduct, as soon as practicable, an informal hearing to determine and resolve the dispute based upon the documentation submitted and oral testimony of the User. The hearing officer shall render a written decision at the close of the hearing or within thirty (30) days thereafter. The determination by such hearing officer shall constitute the final administrative determination and shall be binding on both parties. The hearing shall be electronically recorded. A transcript of the hearing shall be provided at a cost of \$1.00 per page.

(iv) A party or person aggrieved by the final administrative determination shall have the right to a judicial review of such determination in accordance with the provisions of the Indiana Administrative Adjudication Act.

(v) Dispute or appeal of the amount of Base Units attributable to a User shall not be a valid reason for non-payment of the User Fees.

Section 4 Billing Procedures

Such rates and charges shall be prepared, billed and collected by the City in the manner provided by law and ordinance.

(a) The User Fees for all Users shall be prepared and billed monthly.

(b) The User Fees may be billed to the tenant or tenants occupying the Properties served, unless otherwise requested in writing by the owner, but such billing shall in no way relieve the owner from the liability in the event payment is not made as herein required. The owners of properties served, which are occupied by a tenant or tenants, shall have the right to examine the collection records of the City for the purpose of determining whether bills have been paid by such tenant or tenants, provided that such examination shall be made at the office at which said records are kept and during the hours that such office is open for business.

(c) As is provided by statute, all rates and charges not paid when due are hereby declared to be delinquent and a penalty of ten percent (10%) of the amount of the rates or charges shall thereupon attach thereto. The time at which such rates or charges shall be paid is now

fixed at seventeen (17) days after the date of mailing of the bill.

Section 5 Credit for Qualified Retention Basin

For any User that has a Qualified Retention Facility on the property being charged pursuant to this Ordinance, such User is entitled to a credit to be determined by the Board. Procedures used to calculate the credit and the factor for determining the impact of increased runoff volume shall be prescribed and set by the Board.

Calculation of discharge from developed sites and storm water detention/retention basins, as well as storm water runoff volumes from developed and undeveloped sites shall use methodology which is in accordance with acceptable engineering practice. Peak discharge, hydrograph, flood routing, and runoff volume procedures used by the Soil Conservation Service, the Corps of Engineers, and the Bureau of Reclamation, among others, are considered acceptable.

Any credit given to a User shall reduce the amount of Base Units attributable to such User, but no credit may reduce the initial Base Units by more than fifty percent. Before such credit is granted, the User must establish that its facility meets the definition of a Qualified Retention Facility. In addition, such credits shall be subject to an annual review by the Board to determine continuing compliance with the provisions of this Ordinance.

Section 6 Depreciation Fund

A Depreciation Fund shall be continued for the purpose of meeting special or unforeseen emergencies in connection with the operation of the sewage works, or for the payment of the costs of constructing extensions, improvements, betterments or additions to the sewage works. A subaccount of said Depreciation Fund entitled "Capital Account" may only be used for the construction, remodeling, repair and extension of storm sewers; relief sewers and drains in aid of the sanitary system or storm water system; and the payment of the City's part of the costs of any public sewer or drainage project that lies partly or wholly within the City and aids or is connected to the sewage works system or storm water system of the City.

Section 7 Bond Reserve

In accordance with IC 36-9-23-25(b)(2) and IC 36-9-23-21, the Common Council has determined that a portion of the User Fees collected under the terms of this Ordinance may be used to establish a reserve for revenue bonds to be issued by the City.

PART B

Illicit Discharges and Connections

Section 1 Purpose

The purpose of this Part is to provide for the health, safety, and general welfare of the citizens of the City of Marion, Indiana 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 Part 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 are:

- A. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user
- B. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance

Section 2 Applicability

This Part shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Board.

Section 3 Authorized Agent

The Board shall be the authorized agent for the city to insure that the provisions of this city code section are carried out.

Section 4 Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this Part are minimum standards; therefore this Part does not intend nor imply that compliance by any person will insure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Section 5 Discharge Prohibitions

(A) Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system 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 wet-land flows, swimming pools (if dechlorinated), fire fighting activities, and any other water source not containing pollutants.
- (2) Discharges specified in writing by Indiana Department of Environmental Management as being necessary to protect public health and safety.
- (3) Dye testing is an allowable discharge, but requires a verbal notification to the Board or its authorized agent 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. No person shall construct, use, maintain or continue the existence of illicit connections to the storm drain system. 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 considered to be in violation of this Part if the person connects a line conveying wastewater to the MS4, or allows such a connection to continue.

Section 6 Industrial or Construction Activities Discharge

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 Board prior to the allowing of discharges to the MS4.

Section 7 Monitoring of Discharges

(A) Applicability

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(B) Access to Facilities

(1) The Board or its authorized 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 that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Board or its authorized agent.

(2) Facility operators shall allow the Board or its authorized agent the 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 an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The Board or its authorized agent shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Board or its authorized agent to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The Board or its authorized 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 stormwater 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 operator at the written or oral

request of the Board or its authorized agent shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the access to a permitted facility are a violation 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 Board or its authorized agent reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

(7) If the Board or its authorized 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 Board or its authorized agent may seek issuance of a search warrant from any court of competent jurisdiction.

Section 8 Requirement to Prevent, Control, and Reduce Storm Water Pollutants by Choice of Best Management Practices

The Board will adopt requirements identifying Best Management Practices for any activity, operation, or facility that 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 through the use of 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 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 compliant 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 9 Notification of Spills

In addition to the requirements of 327 IAC 2-6.1, 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 waters of the State of Indiana, 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. In the event of a release of non-hazardous materials, said person shall notify the Board or its authorized agent 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 Board or its authorized agent in 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 10 Enforcement

(A) *Notification of violation.* If the Board finds that any discharger has engaged in conduct which justifies suspension of service, the Board shall serve the discharger with a written notice, either personally or by certified or registered U.S. mail, stating the nature of the alleged violation. Within ten days following receipt of the notice, the discharger shall respond personally or in writing to the Board, advising of its position concerning the allegations. Thereafter, the parties shall meet to determine the seriousness of the allegations and, if necessary, establish a plan for the satisfactory correction of any violations.

(B) *Show cause hearing.* If a violation of this city code section or of applicable storm water management regulations occurs and is not corrected by timely compliance, the Board may order any discharger to show cause before them and state why the proposed suspension of service should not be taken. A written notice shall be served on the discharger by personal service, or by certified or registered U.S. mail, specifying the time and place of a hearing to be held by the Board. The hearing shall consider the violation, the proposed enforcement action, the reasons why the enforcement action should be taken, and directing the discharger to show cause before the Board as to why the proposed enforcement action should not be taken. The notice of the hearing shall be served no less

than ten days before the hearing. Service may be made on any agent, officer, or authorized representative of a discharger. The proceedings at the hearing shall be considered by the Board and appropriate orders with respect to the alleged improper activities of the discharger shall be issued.

(C) If a violation of this city code section or of applicable storm water management regulations occurs by other government entities, the Board shall serve the government entity with a written notice, either personally or by certified or registered U.S. mail, stating the nature of the alleged violation and shall direct the government entity to correct the violation.

(D) *Annual publication of violators.* A list of all dischargers which were found to be in significant noncompliance shall be published annually by the Board in the largest daily newspaper in the municipality in which the Board is located.

Section 11 Issuance of Cease and Desist Orders

When the Board or its authorized agent finds that a discharge has taken place, in violation of prohibitions or limitations of this code section, the Board may issue an order to cease and desist and direct that those persons not complying with those prohibitions, limits, requirements or provisions to:

- (1) Comply forthwith;
- (2) Comply in accordance with a time schedule set forth by the Board; or
- (3) Take appropriate remedial or preventive action in the event of a threatened violation.

Section 12 Submission of Schedule

If the Board finds that a discharge has been taking place, in violation of prohibitions or limitations prescribed in this code section, or storm water pollution prevention requirements, or the provisions of a storm water discharge authorization, the Board may require the user to submit for approval, with those modifications it deems necessary, a detailed time schedule of specific actions which the user shall take in order to prevent or correct a violation of requirements.

Section 13 Appeals

(A) Any user affected by any decision, action or determination, including cease and desist orders, made by the Board or its authorized agent, interpreting or implementing the provisions of this section or in any authorization issued herein, may file with the Board or its authorized agent a written

request for reconsideration within ten days of the decision, action or determination, setting forth in detail the facts supporting the user's request for reconsideration.

(B) If the ruling made by the Board is unsatisfactory to the person requesting reconsideration, he or she may, within ten days after notification of Board action, file a written appeal to the Board. The written appeal shall be heard by the Board within 30 days from the date of filing. The Board shall make a final ruling on the appeal within ten days after the close of the meeting. The Board's or its authorized agent's decision, action or determination shall remain in effect during that period of reconsideration.

ABATEMENT

Section 14 Public Nuisance

Discharges of pollutants in any manner in violation of this code section or of any order issued by the Board as authorized by this code section, is hereby declared a public nuisance and shall be corrected or abated as directed by the Board. Any person creating a public nuisance is guilty of an ordinance violation.

Section 15 Legal Action

If any person discharges sewage, industrial wastes or other wastes into a city's municipal separate storm sewer system (MS4) contrary to this code section, ordinance, federal or state pretreatment requirements, or any order of the city, the city or Board Attorney may commence an action for appropriate legal relief, equitable relief or both in the applicable court.

Section 16 Damage to Facilities

When a discharge of wastes causes an obstruction, damage, or any other impairment to Board facilities, the Board may assess a charge against the user for the work required to clean or repair the facility, and add that charge to the user's charges and fees.

Section 17 Civil Criminal Penalties

(A) Any user which has violated a prohibition or continues to violate this Ordinance, or failed to

meet a requirement of this Ordinance shall be liable to the Board for a minimum civil penalty of \$1,000 per violation per day.

(B) The Board may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by Board facilities.

(C) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

(D) Filing a suit for civil penalties shall not be a prerequisite for taking any other action against a user.

Section 18 Falsifying Information

Any person who knowingly makes any false statement of representation, record, report, plan or other documents filed with the Board or who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required under this section shall be subject to the penalties set forth in Section 19 of this Part.

Section 19 Termination of Service

(A) Suspension due to Illicit Discharges in Emergency Situations. The Board may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that 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 Board may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State of Indiana, 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 Board or its authorized agent will notify a violator of the proposed termination of its MS4 access. The violator may petition the Board for a reconsideration and hearing.

(C) A person commits an offense if the person reinstates an access to a MS4 terminated pursuant to this Section, without the prior approval of the Board.

PART C

Section 1 Rules and Regulations

The rules and regulations under which storm water systems shall be operated are incorporated by reference under this code section. Two (2) copies of these rules and regulations shall be filed in the Office of the City Clerk and are available for inspection in accordance with Indiana Code 36-1-5. Another copy shall be filed for the convenience of the public in the general office of the Utility.

PART D

Section 1 Conflicting Ordinances

All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that the existing schedule of storm water rates and charges shall remain in full force and effect until the schedule of rates and charges fixed by this Ordinance are changed by the Common Council of the City of Marion.

Section 2 Effective Date

This Ordinance shall be in full force and effect from and after its passage.

PASSED AND ADOPTED by the Common Council of the City of Marion, Indiana, this 3rd day of January, 2006.

Presiding Officer

ATTEST:

City Clerk

PRESENTED by me to the Mayor of the City of Marion, Indiana, this 4th day of January, 2006.

City Clerk

APPROVED by me as Mayor of the City of Marion, Indiana, this _____ day of _____, 2004.

Mayor, City of Marion, Indiana