

ORDINANCE NO. 05-4154

**AN ORDINANCE AMENDING TITLE 14 ENTITLED "UNIFIED DEVELOPMENT CODE," CHAPTER 3, "CITY UTILITIES," ARTICLE G, "STORMWATER COLLECTION, DISCHARGE AND RUNOFF," TO CREATE AN ILLICIT DISCHARGE AND CONNECTION STORMWATER ORDINANCE.**

WHEREAS, the City of Iowa City, since its incorporation, has constructed a stormwater infrastructure with point source and non-point source discharges into the Iowa River and the six major creeks; and

WHEREAS, the City stormwater infrastructure carries stormwater runoff either directly or indirectly from properties within the City to the Iowa River; and

WHEREAS, the Iowa River, the major creeks, and the City's stormwater infrastructure are available for stormwater and ground water discharges; and

WHEREAS, the City incurs costs to monitor, maintain, replace, and improve its stormwater infrastructure; and

WHEREAS, the City is now required to have a national pollutant discharge elimination system (NPDES) permit to operate and maintain its stormwater infrastructure and to otherwise protect the waters of the Iowa River and the six major creeks; and

WHEREAS, federal law and the City's NPDES permit require that the City adopt an Illicit Discharge Prohibition Ordinance that prohibits anything other than stormwater, allowable non-stormwater and pollutants for which an NPDES permit has been issued and when the discharge is in compliance with the permit from entering the City's stormwater system; and

WHEREAS, the City now desires an Illicit Discharge Prohibition Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA CITY, IOWA:

SECTION I. That Title 14, Chapter 3, City Utilities, Article G of the Code of Ordinances of the City of Iowa City, Iowa is hereby amended by adding the following Section 14-3G-11, entitled "Illicit Discharge and Connection Stormwater Ordinance":

**14-3G-11 ILLICIT DISCHARGE AND CONNECTION STORMWATER ORDINANCE**

A. Purpose and Intent.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Iowa City and the state of Iowa through the regulation of non-stormwater 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 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 the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

B. Definitions.

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

Authorized Enforcement Agency: employees or designees of the director of the Iowa City Public

Works Department.

**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 equal to or greater than the threshold established by NPDES permit. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

**Discharge:** The release of water and any elements, compounds and particles contained within or upon, from property owned or controlled by a person.

**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-stormwater discharge to the storm drainage system, except as exempted 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 drainage system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks that are located under roof with walls and not subject to stormwater runoff, 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 drainage system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency or NPDES permit.

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

**National Pollutant Discharge Elimination System (NPDES) Stormwater 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-Stormwater Discharge:** Any discharge to the storm drainage system that is not composed entirely of stormwater or groundwater.

**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.

**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, 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.

**Storm Drainage System:** Publicly-owned or maintained facilities by which stormwater 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.

Stormwater: 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 (SWPP): 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: means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Watercourse: A natural overland route through which water passes, including drainage courses, streams, creeks, and rivers.

#### C. Applicability.

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

#### D. Responsibility and Administration.

The authorized enforcement agency 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 by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

#### E. 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.

#### F. 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.

#### G. Discharge Prohibitions.

##### Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drainage system or watercourses 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 stormwater.

The commencement, conduct or continuance of any illegal discharge to the storm drainage 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, concrete truck washout, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, exterior

building washwaters when no detergent or other surfactants are used, pavement washwaters where no spills or leaks of toxic or hazardous materials have occurred and when no detergents or other surfactants are used, 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-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency or Iowa Department of Natural Resources, 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 drainage system.
5. Discharges from University of Iowa property or facilities covered by the University of Iowa's NPDES permit.

#### Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.
2. 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.
3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

#### H. Suspension of MS4 Access.

##### Suspension due to Illicit Discharges in Emergency Situations

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.

##### 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. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

#### I. Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES Iowa Department of Natural Resources stormwater 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.

1. Notice of Intent (NOI) Submittal. The operator of a facility, including construction sites, required to have an NPDES permit to discharge stormwater associated with such activity, shall submit a copy of the Notice of Intent (NOI) to the authorized enforcement agency at the same time the operator submits the original (NOI) to the Iowa Department of Natural Resources (IDNR) and EPA as applicable. The copy of the Notice of Intent may be delivered to the authorized enforcement agency either in person or by mailing to:

NOI to Discharge Stormwater  
City Hall - Engineering Division  
410 E. Washington St.  
Iowa City, IA 52240

2. Notice of Intent (NOI) Offense. A person commits an offense if the person operates a facility that is discharging stormwater with industrial or construction activity without having submitted a copy of the Notice of Intent to do so to the authorized enforcement agency.

#### J. Compliance Monitoring.

##### 1. Applicability.

This section applies to all facilities that have stormwater discharges associated with industrial or construction activity.

##### 2. Access to Facilities.

(a) The authorized enforcement agency 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 representatives of the authorized enforcement agency.

(b) Facility operators shall allow the authorized enforcement agency 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 stormwater, and the performance of any additional duties as defined by state and federal law.

(c) The authorized enforcement agency 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 stormwater discharge.

(d) The authorized enforcement agency 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.

(e) 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 authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(f) Unreasonable delays in allowing the authorized enforcement agency access to a permitted facility is a violation of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access

to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

(g) If the authorized enforcement agency has been refused access to any part of the premises from which stormwater 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 agency may seek issuance of a search warrant from any court of competent jurisdiction.

#### K. Use of Best Management Practices

Authorized enforcement agency will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drainage 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 drainage system or watercourses through the use of these structural and non-structural BMPs. Further, any owner, operator, tenant, or 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 stormwater 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.

#### L. 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.

#### M. 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 stormwater, the storm drainage 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.

#### N. Enforcement

Whenever the authorized enforcement agency 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, analyses, 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 stormwater pollution or contamination hazards and the restoration of any affected property; and
5. The implementation of source control or treatment BMPs.

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.

O. 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 for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

P. 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 public nuisance, and may be summarily abated or restored in accordance with applicable law, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Q. Violations and Penalties.

Violation of this Illicit Discharge and Connection Stormwater Ordinance shall be punishable as a municipal infraction or environmental infraction as provided for in subsection 1-4-2D of the city code.

R. Remedies Not Exclusive.

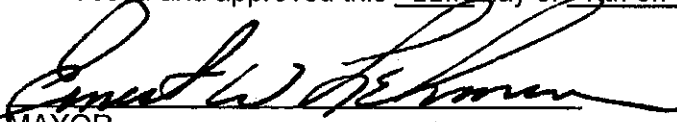
The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

SECTION II. REPEALER. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION III. SEVERABILITY. If any section, provision or part of the Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION IV. EFFECTIVE DATE. This Ordinance shall be in effect after its final passage, approval and publication.

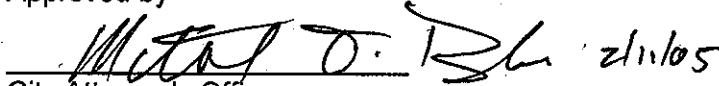
Passed and approved this 22nd day of March, 2005.



MAYOR

ATTEST: Marian K. Kari  
CITY CLERK

Approved by



City Attorney's Office



It was moved by Wilburn and seconded by Bailey that the Ordinance as read be adopted, and upon roll call there were:

AYES: NAYS: ABSENT:

<u>X</u>	_____	_____ Bailey
<u>X</u>	_____	_____ Champion
<u>X</u>	_____	_____ Elliott
<u>X</u>	_____	_____ Lehman
<u>X</u>	_____	_____ O'Donnell
<u>X</u>	_____	_____ Vanderhoef
<u>X</u>	_____	_____ Wilburn

First Consideration 3/1/05

Vote for passage: AYES: Champion, Elliott, Lehman, O'Donnell, Vanderhoef, Wilburn, Bailey. NAYS: None. ABSENT: None.

Second Consideration \_\_\_\_\_

Vote for passage:

Date published 3/30/05

ed by Wilburn, seconded by Vanderhoef, that the rule rrequiring ordinances to be considered and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, the second consideration and vote be waived and the ordinance be voted upon for final passage at this time. AYES: Champion, Elliott, Lehman, O' Donnell, Vanderhoef, Wilburn, Bailey. NAYS: None. ABSENT: None.