

FILED

OCT 24 2017

CITY CLERK

GENERAL ORDINANCE NO. 10, 2017

**AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8. CONSTRUCTION SITE AND POST-CONSTRUCTION SITE STORM WATER CONTROL.**

WHEREAS, the City of Terre Haute is a designated MS4 entity and is required by 327 IAC 15-13 (Rule 13) and a general NPDES permit to establish storm water quality measures to protect the public health, existing water uses, and aquatic biota; and,

WHEREAS, the Common Council finds it necessary to amend the *Code* from time to time to facilitate compliance with state and federal regulations to maintain Terre Haute's quality of water.

IT IS HEREBY ORDAINED by the Common Council of the City of Terre Haute as follows:

Section 1. *Terre Haute City Code*, Chapter 9, Article 8 is hereby amended with the addition of the underlined text and deletion of the stricken text as follows:

**Sec. 9-160 Purpose/Intent.**

a. Site Construction Control. The purpose of this Article is to establish requirements for storm water discharges from construction activities of one (1) acre or more so that the public health, existing water uses, and aquatic biota are protected. This Article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Article are:

1. To regulate construction activities disturbing more than one (1) acre of land as governed by 327 IAC 15-5; and

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 ~~Land Disturbance~~Building Permit from the City.

...

**Sec. 9-161 Definitions.**

The following definitions shall apply in the interpretation and enforcement of this Article. Additional definitions for terms contained within this Article are provided at Sec. 9-131.

a. **Authorized Enforcement Agency.** The City of Terre Haute, Indiana Wastewater Treatment Superintendent (MS4 Operator) his employees or designees.

b. **Best Management Practices (BMPs).** Structural or nonstructural practices, or a combination of practices, designed to act as effective, practicable means of minimizing the

impacts of development and human activities on water quality. Traditional structural BMPs, including extended detention dry ponds, wet pond, infiltration measures, sand filtration systems, etc., are now common elements of most new development projects. Structural BMPs rely heavily on gravitational settling and/or the infiltration of soluble nutrients through a porous medium for pollutant removal. Nonstructural BMPs, which may be used independently or in conjunction with structural BMPs rang from programs that increase public awareness to prevent pollution, to the implementation of control-oriented techniques (such as bioretention and stormwater wetlands) that utilize vegetation to enhance pollutant removal and restore the infiltrative capacity of the landscape.

**bc. Construction Plan.** A representation of a project site and all activities associated with the project including a Storm Water Pollution Prevention Plan. The plan includes the location of the project site, buildings and other infrastructure, grading activities, schedules for implementation, and other pertinent information related to the project site. A Storm Water Pollution Prevention Plan is a part of the Construction Plan.

**ed. Construction Site Access.** A stabilized stone surface at all points of ingress or egress to a project site for the purpose of capturing and detaining sediment carried by tires of vehicles or other equipment entering or exiting the project site.

**de. Contractor and or Subcontractor.** An individual or company hired by the project site or individual lot owner, their agent, or the individual lot operator to perform services in the project site.

**ef. Developer.** Any person financially responsible for construction activity; or an owner of property who sells or leases, or offers for sale or lease any lots in a subdivision.

**fg. Erosion.** Detachment and movement of soil, sediment, or rock fragments by water, wind, ice, or gravity.

**gh. Erosion Control.** Any measure that prevents erosion.

**hi. Grading.** The cutting and filling of the land surface to a desired slope or elevation.

**j. Hotspot.** An area where the land use or activities are considered to generate runoff with concentrations of pollutants in excess of those typically found in storm water.

**ik. Impervious Surface.** Surfaces, such as pavement and rooftops, that prevent the infiltration of storm water into the soil.

**jl. Indiana Storm Water 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 storm water management practices.

**m. Infiltration Measure.** Practices that capture and temporarily store the design storm volume before allowing it to infiltrate into the soil. These practices include infiltration trenches, infiltration basins, dry wells, and underground infiltration practices.

**kn. Land Disturbance or Land Disturbing Activity.** Any man-made change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting, and grading.

**lo. Measurable Storm Event.** A precipitation event that results in a total measured precipitation accumulation equal to or greater than, one-half inch (0.5") of rainfall.

**mp. Project Site.** The entire area on which construction activity is to be performed.

**nq. Project Site Owner.** A person required to submit the NOI and NOT letters to the Authorized Enforcement Agency and IDEM and is required to comply with the provisions of this Article, including either of the following:

1. A developer; or
2. A person who has financial and operational control of construction activities and project plans and specifications, including the ability to make modifications to those plans and specifications.

**or. Sediment.** Solid material (both mineral and organic) that is in suspension, is being transported, or has been moved from its place of origin by air, water, gravity, or ice and has come to rest on the earth's surface.

**ps. Sediment Control.** Measures that prevent sediment from leaving a project site.

**qt. 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.

**ru. Subdivision.** Any land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale.

**sv. Technical Review and Comment Form.** A form issued by the Authorized Enforcement Agency stating that the Storm Water Pollution Prevention Plan (SWPPP) is adequate or stating revisions needed in the SWPPP.

**uw. Trained Individual.** An individual who is trained and experienced in the principles of storm water quality, including erosion and sediment control as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make judgments regarding storm water control or treatment and monitoring.

**x. Waters of the United States.** A term used in federal regulations that defines all water bodies regulated as waters of the U.S. It includes:

1. All water which may be susceptible to use in interstate or foreign commerce;
2. All interstate waters, including interstate wetlands;
3. All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds; the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters;
4. All impoundments of waters otherwise defined as waters of the U.S.;
5. Tributaries of waters identified in this section;
6. The territorial seas;
7. Wetlands adjacent to waters.

**Sec. 9-162 Applicability.**

a. This Article covers any new development or re-development construction site resulting in the disturbance of one (1) acre or more of total land area; and other types of development specified in Sec. 9-172 regardless of the disturbed area. Persons must meet the general permit rule applicability requirements under 327 IAC 15-2-3. This Article also applies to disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) or more acres of land within the corporate limits of the City.

...

**Sec. 9-165 Responsibility of Construction Site Owner.**

- a. The project site owner has the following responsibilities:
  1. Ensure that, prior to the initiation of any land disturbing activities, a sufficient Construction Plan is completed and submitted to the Authorized Enforcement Agency and approved by the Authorized Enforcement Agency as discussed in Sec. 9-166 of this Article.
  2. Complete and submit to the Authorized Enforcement Agency and the Indiana Department of Environmental Management (IDEM) a sufficient Notice of Intent (NOI) letter and notification from Authorized Enforcement Agency indicating the Construction Plans are sufficient to comply with the requirements of 327 IAC 15-5-5.
  3. Make application for a ~~Land Disturbance~~ Building Permit and any other permits required by the City in accordance with procedures established by the City.
  4. Ensure compliance with this Article during:

- (a) the construction activity; and
- (b) 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 Article and the approved Construction Plan.

6. Provide the Authorized Enforcement Agency and IDEM with a sufficient Notice of Termination (NOT) letter, in compliance with the requirements of 327 IAC 15-5-8.

b. 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.

c. For an individual lot where land disturbance is expected to be one (1) acre or more and the lot lies within a project site permitted under this rule, the individual lot owner shall:

1. Ensure that, prior to the commencement of any land disturbing activity, a sufficient Construction Plan is completed and submitted to and approved by the Authorized Enforcement Agency;

2. Complete his or her own Notice of Intent (NOI) letter and submit it to the Authorized Enforcement Agency and IDEM;

3. Apply for a ~~Land Disturbance~~ Building Permit and any other permits required by the City in accordance with the procedures established by the City.

d. For an individual lot where the land disturbance is less than one (1) acre and the lot lies within a project site permitted under this rule, submittal of a Notice of Intent (NOI) letter and Construction Plan shall not be required. 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 City;

2. Comply with the provisions set forth in Sec. 9-168 of this Article; and

3. Apply for a ~~Land Disturbance~~ Building Permit and any other permits required by the City in accordance with the procedures established by the City.

#### **Sec. 9-166 Construction Plan Submittal, Review and Approval.**

a. A complete Storm Water Pollution Prevention Plan and erosion and sediment control plan shall be submitted to the Authorized Enforcement Agency for approval. At the time of submittal, the date and time will be recorded.

b. The sufficiency of the Construction Plan shall be based upon Rule 5 regulations and, the design criteria described in the current City of Terre Haute ~~Construction~~ Standards and

Specifications, and the design criteria described in the current Indiana Storm Water Quality Manual, as revised and amended from time to time.

c. Each applicant shall bear the name(s) and address(es) of the owner or developer of the project site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm.

d. Each application shall include a statement that any land clearing, construction or development involving the movement of earth shall be in accordance with the Storm Water Pollution Prevention Plan. The Authorized Enforcement Agency will review each application for a Rule 5 permit to determine its conformance with the provisions of this regulation and Rule 5. Within twenty-eight (28) days after receiving an application, the Authorized Enforcement Agency shall, in writing:

1. Approve the erosion and sediment control plan and SWPPP subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the Technical Review and Comment Form stating that the "Plan is Adequate";

2. Provide a Technical Review and Comment Form stating that the "Plan is Deficient" and indicating the reason(s) and procedure for submitting a revised application and/or submission.

e. The Technical Review and Comment Form from the Authorized Enforcement Agency stating that the "Plan is Adequate" and a ~~Land Disturbance~~Building Permit shall be obtained prior to the initiation of any land disturbing activities.

f. Failure of the Authorized Enforcement Agency to act on an original or revised application within twenty-eight (28) days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by written agreement between the applicant and the Authorized Enforcement Agency.

g. After receiving a Technical Review and Comment Form stating that the "Plan is Adequate", if revisions to the Construction Plan require a change in measures appropriate to control the quality or quantity of storm water runoff, then revised plans must be submitted to the Authorized Enforcement Agency and receive the approval of the Authorized Enforcement Agency prior to implementation of the modified plan.

h. The applicant shall apply for and receive a ~~Land Disturbance~~Building Permit from the Authorized Enforcement Agency and file a performance bond, letter of credit or other improvement surety in an amount deemed sufficient by the City. The surety shall, at a minimum, cover all costs of improvements, the repair of improvements, landscaping maintenance and inspection costs.

i. After receiving a Technical Review and Comment Form stating that the "Plan is Adequate" from the Authorized Enforcement Agency, and the ~~Land Disturbance~~Building Permit as well as any other permits required by the City, and at least forty-eight (48) hours prior to the

start of construction, the following shall be submitted to the Authorized Enforcement Agency and IDEM:

1. Notice of Intent (NOI) Form;
2. A copy of the Technical Review and Comment Form stating that the "Plan is Adequate"; and
3. Proof of Publication as required by 327 IAC 15-5-5(9).

j. The project site owner must submit a Notice of Termination (NOT) letter to IDEM and transmit a copy of the NOT letter to the Authorized Enforcement Agency when all land disturbing activities have been completed, the entire project site has been stabilized and all temporary erosion and sediment control measures have been removed.

k. Upon receipt of the NOT, the Authorized Enforcement Agency shall make a final inspection of the site. Upon satisfaction that all conditions have been addressed the project site owner shall submit a written Surety Release Request to the City.

#### **Sec. 9-167 General Requirements for Storm Water Quality Control.**

All storm water quality measures and erosion and sediment controls necessary to comply with this Article must be implemented in accordance with the Construction Plan and be sufficient to satisfy the following requirements:

a. Sediment-laden water which otherwise would flow from the project site shall be treated by erosion and sediment control measures appropriate to minimize sedimentation.

b. 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.

c. A stable construction site access shall be provided at all points of construction traffic ingress and egress to the project site.

d. 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 consistent with all applicable statutes and regulations.

e. Storm water run-off leaving a project site must be discharged in a manner that is consistent with applicable state or federal law.

f. 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.

1. A copy of the completed NOI letter and the NPDES permit number, where applicable.
2. A copy of the ~~Land Disturbance~~ Building Permit issued by the City.
3. Name, company name, telephone number, e-mail address (if available), and address of the project site owner or a local contact person.
4. Location of the Construction Plan if the project site does not have an on-site location to store the plan.

...

**Sec. 9-171 Construction Site Inspection.**

a. A self-monitoring program by the project site owner is required during construction of any project regulated by this Article. A trained individual employed or retained by the project site owner shall prepare and maintain a written evaluation of the project site by the end of the next business day following each measurable storm event and at a minimum of one (1) time per week.

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 statutes and rules.

c. Written evaluation reports must include the following:

1. the name of the individual performing the evaluation;
2. the date of the evaluation;
3. problems identified at the project site; and
4. details of corrective actions recommended and completed.

c. All evaluation reports for the project site must be made available to the Authorized Enforcement Agency, IDEM, or the United States Environmental Protection Agency within forty-eight (48) hours of a request.

d. All persons engaging in construction activities on a project site must comply with the Storm Water Pollution Prevention Plan, this Article, Rule 5, and the City of Terre Haute ~~Construction Standards and Specifications.~~



e. The Authorized Enforcement Agency will perform inspections and provide recommendations to evaluate the installation, implementation, and maintenance of control measures and management practices at any project site involved in construction activities. Construction project sites will be prioritized based on the nature and extent of the construction activity, topography, and the characteristics of soils and receiving water quality.

f. If after a recommendation is provided to the project site owner, corrective action is not taken, the Authorized Enforcement Agency will pursue enforcement pursuant to Sec. 9-173175.

### **Sec. 9-172 Post-Construction Controls for New Development or Redevelopment.**

a. On areas that undergo new development or redevelopment, site construction resulting in disturbance of (1) acre or more total land area, the project site owner must submit to the Terre Haute Department of Engineering, a Storm Water Pollution Prevention Plan (SWPPP) that would show placement of appropriate post construction BMP(s) from a pre-approved list of BMPs specified in the Terre Haute Standards and Specifications. The SWPPP submittal shall include an Operation and Maintenance Manual for all post construction BMP(s) included in the project and a notarized Maintenance Agreement, consistent with the sample agreement provided in the Terre Haute Standards and Specifications, providing for the long-term maintenance of those BMPs, both of which shall be recorded with the deed for the property on which the project is located. The noted BMPs must be designed, constructed, and maintained according to the guidelines provided or referenced in the City of Terre Haute Standards and Specifications to provide an 80% removal rate of Total Suspended Solids (TSS) at the 50-125 micron range. Practices other than those specified in the pre-approved list may be utilized. However, the burden of proof, as to whether the performance and ease of maintenance of such practices will be according to the guidelines provided in the Terre Haute Standards and Specification, would be placed with the applicant. Details regarding the procedures and criteria for consideration of acceptance of such BMPs are provided in the Terre Haute Standards and Specifications. The Terre Haute Department of Engineering 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).

~~On areas that undergo new development or redevelopment, site construction resulting in disturbance of one (1) acre or more total land area, post construction control measures in the form of structural and/or non-structural best management practices are required. Post-construction storm water pollutant loading will be addressed through the Six (6) Minimum Control Measures, as provided in the MS4 Program, so that preconstruction loadings will not be exceeded. Post construction storm water Best Management Practices (BMPs) shall follow Indiana's Storm Water Quality Manual as a guidance document. It is the goal of the Authorized Enforcement Agency to 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). Additionally, all post construction storm water Best Management Practices, structural and/or nonstructural, shall be operated and maintained by the property owner in the manner approved by the City or its agents.~~

b. Any development or redevelopment, regardless of disturbed area, discharging to infiltration measures shall be required to install pretreatment BMPs in accordance with the Terre Haute Standards and Specifications.

c. Hot spot developments which produce higher levels of pollutants and/or present a higher potential risk for spills, leaks, or illicit discharges regardless of the disturbed area may be required to install pretreatment BMPs at the discretion of the Authorized Enforcement Agency

d. Gasoline outlets and refueling areas must install appropriate practices to reduce lead, copper, zinc, and other hydrocarbons in stormwater runoff. These requirements will apply to all new facilities and existing facilities that replace their tanks.

#### **Sec. 9-173 Post Construction Storm Water Quality Submittals**

a. All planned post construction BMPs shall be indicated on the submitted plans with design calculations included. The calculation methods as well as the type, sizing, and placement of all BMPs shall meet the design criteria, standards, and specifications outlined in the Indiana Stormwater Quality Manual and/or the City of Terre Haute Standards and Specifications.

b. Written operational and maintenance plans shall be submitted for all planned structural post construction BMPs to ensure long-term maintenance and functionality.

#### **Sec. 9-174 Post Construction Site Inspection and Maintenance.**

a. All post construction BMPs shall be inspected and maintained in good condition by the owner, in accordance with the Terre Haute Standards and Specifications, the Indiana Storm Water Quality Manual, and/or the post construction operations and maintenance manual to provide the intended storm water quality benefits. Following construction completion, maintenance of BMPs shall be the long-term responsibility of the facility's owner.

b. Post construction BMPs shall not be altered, revised, or replaced except in accordance with the approved plans, or in accordance with approved amendments or revisions to the plans.

b. The Authorized Enforcement Agency have the authority to perform long-term, post construction inspection of all public or privately owned BMPs. The inspections will follow the operation and maintenance procedures included in the Terre Haute Standards and Specifications, the Indiana Stormwater Quality Manual, or the operation and maintenance plan submitted with the approved plans for each specific BMP. The inspection will cover physical conditions, available water quality storage capacity, and operational condition of key facility elements. Noted deficiencies and recommended corrective action will be notified by the Authorized Enforcement Agency and will be required to take all necessary measures to correct such deficiencies. If the owner fails to correct the deficiencies within the allowed time period, as specified in the notification letter, the Authorized Enforcement Agency will pursue enforcement actions.

**Sec. 9-173175 Enforcement.**

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

1. Verbal warning to the construction site operator to make corrections.
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.

1. Stop Work Order.
5. Revocation of ~~Land Disturbance~~ Building Permit.

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.

**Sec. 9-174176 Injunctive Relief.**

...

**Sec. 9-175177 Compensatory Action.**

...

**Sec. 9-176178 Civil Penalty.**

...

**Sec. 9-177179 Violations Deemed a Public Nuisance.**

...

**Sec. 9-178180 Remedies Not Exclusive.**

...

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

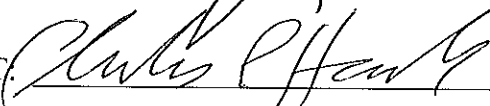
Section 3. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Section 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of Terre Haute, Indiana and approval of the Mayor and publication as required by law.

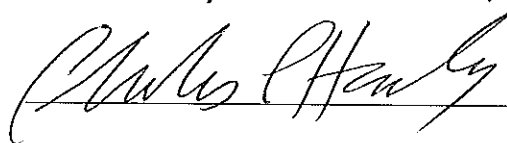
Introduced by:  Karrum Nasser, Councilman

Passed in open Council this 9<sup>th</sup> day of November, 2017.


 Karrum Nasser, President

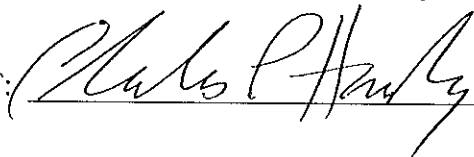
ATTEST:  Charles P. Hanley, City Clerk

Presented by me to the Mayor this 13<sup>th</sup> day of November, 2017.

 Charles P. Hanley, City Clerk

Approved by me, the Mayor, this 13<sup>th</sup> day of NOVEMBER, 2017.

 Duke A. Bennett, Mayor

ATTEST:  Charles P. Hanley, City Clerk