

ILLICIT DISCHARGE ORDINANCE

BE IT ORDAINED BY THE FISCAL COURT OF WARREN COUNTY KENTUCKY
AS FOLLOWS:

WHEREAS, the Federal Clean Water Act, the Federal Environmental Protection Agency and the Kentucky Division of Water mandate the introduction and implementation of procedures for prevention of illicit discharges into the drainage systems and conveying waterways of the Commonwealth of Kentucky; and

WHEREAS, Phase II of EPA's stormwater program requires Warren County to meet the National Pollutant Discharge Elimination System (NPDES) requirements for nonagricultural runoffs; and

WHEREAS, it is in the interest of Warren County and promotes the health, safety and welfare of its citizens to prevent the pollution, impairment or destruction of its natural resources; and

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF WARREN COUNTY, COMMONWEALTH OF KENTUCKY:

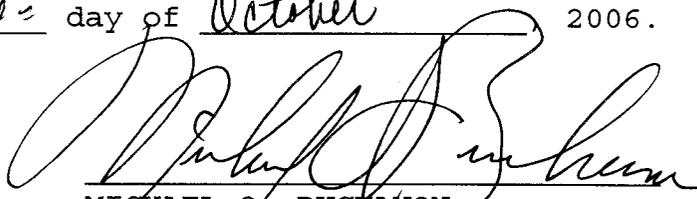
THAT the Warren County Illicit Discharge Ordinance, attached hereto as Exhibit "A" and incorporated herein as if set forth in full, is hereby adopted.

THAT all ordinances or parts of ordinances in conflict

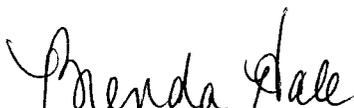
567-C

THAT, this Ordinance is adopted pursuant to KRS 67.077 in that it was published in summary form on the 18th day of September, 2006, and was introduced and read on the 15th day of September, 2006, and given final reading on the 6th day of October, 2006, and said Ordinance shall be in full force and effect upon signature, recordation, and publication in summary pursuant to KRS Chapter 424 and KRS 67.777, subsection 3.

APPROVED this 6th day of October 2006.


MICHAEL O. BUCHANON
WARREN COUNTY JUDGE EXECUTIVE

ATTESTED:


WARREN FISCAL COURT CLERK

PASSED BY VOTE OF 7 TO 0.

567-C-1

Hale, Brenda (WARCO)

From: Jack Wright [Jack.Wright@bgky.org]
Sent: Wednesday, September 13, 2006 9:32 AM
To: Hale, Brenda (WARCO)
Subject: FC_CED~1

Attachments: FC_CED~1_.doc; Ordinance- Illicit Discharges- FINAL 09-15-06.doc



FC_CED~1_.doc
(82 KB)



Ordinance- Illicit
Discharges-...

Brenda,

I added the 06-21WC to page 9 (and made the change for the differences in the penalties for the two different ordinances ~ also on page 9).

In addition a revised copy of the Illicit Discharge ordinance with the date changes incorporated is included.

Let me know if you have questions concerning the attached.

Thanks and Have a Great Day

Jack

Charles J. (Jack) Wright, PE
Office of Stormwater Management
Warren County Fiscal Court
1141 State Street 2nd Floor
Bowling Green, KY 42101
270 843 5360 ~ 270 781 9275 Fax

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Exhibit "A"

**WARREN COUNTY STORMWATER MANAGEMENT
Stormwater Ordinance**

Illicit Discharge (ID) Ordinance

I. DEFINITIONS:

"Authorized Enforcement Agency" shall mean the Warren County Office of Stormwater Management.

"Best Management Practice (BMP)" shall mean a measure that is implemented to protect water quality and reduce the potential for pollution. These could include: 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 receiving waters, any natural drainage crevice, karst feature, ditch, known subterranean water channel, closed systems or catch basins, conveyance or the MS4. 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.

"Blue Line Streams" shall mean streams that are represented on the most recent version of the United States Department of the Interior Geological Survey 1:24,000 USGS quadrangle maps.

"Channel" shall mean a natural or constructed/manmade watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is that water which is flowing within the limits of the defined channel.

"Clean Water Act (CWA)" shall mean those Federal regulations (33 U.S.C – 1251 et seq. and any subsequent amendments thereto) that prohibit the discharge of pollutants to waters of the United States unless such discharge is in accordance with an approved National Pollutant Discharge Elimination System (NPDES) permit.

"Conveyance" shall include, but not be limited to, any of the following: Blue Line Streams, Channel, Critical Flood Area, Drainage Basin, Drainage Way, Drainage/Dry Well, Ephemeral Stream, Flood Plain, Karst Feature, Public Storm Drain, Storm Drainage System, Waterbody, Watercourse or Waterway.

"Critical Flood Area" shall mean a watershed that has a FEMA Zone "A," or "AE" within the site or a location of historical flooding of roads or structures.

"Ephemeral Stream" shall mean a stream or part of a stream that flows only in direct response to precipitation or snowmelt. Its channel is above the water table at all times.

“Flood Plain” shall mean the relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water, which has been or may be covered temporarily by floodwater. For purposes of this ordinance, the flood plain is defined as the area encompassed by a 100-year storm having a one percent chance of being equaled or exceeded in any given year.

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

“Illegal Discharge” shall mean any direct or indirect non-stormwater discharge to the MS4, or conveyance, except as exempted in paragraph II. e. hereinbelow.

“Illicit Connections” shall mean any of the following:

(a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 or conveyance. This includes, but is not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater and wash water to enter the MS4 or conveyance.

(b) Any connections to the MS4 or conveyance, regardless of whether said connection had been previously allowed, permitted or approved by the Warren County Office of Stormwater Management, or any drain or connection from a commercial or industrial land use to the MS4 or conveyance which has not been documented in plans, maps or equivalent records and approved by the authorized enforcement agency.

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

“Karst Feature” shall mean any cave, sinkhole, sinking stream, bluehole, crevice, spring, lost river, karst window or any other geologic feature associated with karst terrain.

“Kentucky Division of Water (KYDOW) General Permit (KGP)” shall mean an agreement between the regulating authority and the Permittee, which specifies conservation practices that shall be implemented in the construction of activities specified in the terms and conditions of the general permit.

“National Pollutant Discharge Elimination Systems (NPDES)” shall mean EPA’s program to control the discharge of pollutants to waters of the United States. NPDES is a part of the Federal CWA, which requires point and non-point source dischargers to obtain permits. These permits are referred to as NPDES permits.

“Non-Stormwater Discharge” shall mean any discharge to the MS4 or any conveyance that is not composed entirely of naturally occurring stormwater.

“Person” shall mean any individual, association, organization, partnership, firm, corporation or other entity recognized by law.

“Pollutant” shall mean anything that causes or contributes to a violation of applicable water quality standards. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil or other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations, sediment and detergents so that same may cause or contribute to pollution. Pollutants may also include, but are not limited to, 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” shall mean any building, lot, parcel of land, easement or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Public Storm Drain” shall mean the drain system provided by and maintained by Warren County, that is designed to help convey naturally occurring stormwater runoff; it also provides inlets for water to travel to holding areas attempting to remove excessive water from streets and other areas.

“Storm Drainage System” shall mean drainage 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, drain wells, karst feature or other conveyance.

“Stormwater” shall mean any surface flow, runoff, ponding or drainage from any form of precipitation.

“Stormwater Pollution Prevention Plan (SWPPP)” shall mean a plan required by stormwater regulations or permits that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants. This is synonymous with the term “BMP Plan” used in the KYDOW General Permit.

“Wastewater” shall mean any water or other liquid, other than naturally occurring stormwater, discharged from a premises.

“Watercourse” shall mean any body of water or conveyance including, but not limited to, lakes, ponds, rivers, creeks, streams, karst features, drainage basins or bodies of water delineated by Warren County.

“Waterway” shall mean a channel that directs surface runoff to a watercourse or conveyance.

“Watershed” shall mean the land area from which surface runoff drains into a stream channel, system of stream channels or karst feature.

II. REGULATION:

- a. Purpose: The purpose of this ordinance is to provide for the health, safety and general welfare of the citizens of Warren County, Kentucky, through the regulation of non-stormwater nonagricultural discharges into the storm drainage system to the maximum extent practicable as required by state and federal law. This ordinance establishes methods for controlling the introduction of pollutants or hazardous materials into the municipal separate storm sewer system (MS4) or any conveyance in order to comply with requirements of Warren County’s National Pollutant Discharge Elimination System (NPDES) Phase II permit. The subject and purpose of this ordinance is interrelated with the Warren County Stormwater Erosion Prevention and Sediment Control (EPSC) Ordinance, and the enforcement of these ordinances shall be in concert. The objectives of this ordinance are:
 1. To prohibit the introduction of any foreign matter, whether liquid or solid, other than normal surface or naturally occurring stormwater into the MS4 or any conveyance.
 2. To prohibit illicit connections and discharges to the MS4 or any conveyance.
 3. To establish legal authority to carry out all inspections, surveillance and monitoring procedures necessary to ensure compliance with this Section.
- b. Applicability. This ordinance shall apply to all discharges entering the MS4, or any conveyance, generated on any developed and/or undeveloped lands unless explicitly exempted by the authorized enforcement agency.
- c. Responsibility for Administration. The Warren County Office of Stormwater Management shall administer, implement and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Warren County Office of Stormwater Management may be delegated in writing by the Director of the Office of Stormwater Management or any other authorized person(s) to persons or entities acting in the beneficial interest of, or in the employ of, Warren County.
- d. 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 or unauthorized discharge of pollutants or hazardous materials.

- e. Discharge prohibitions/exceptions. Other than naturally-occurring stormwater, no person shall discharge, or cause to be discharged into the MS4 or any conveyance, any materials, including but not limited to, pollutants or hazardous materials or waters containing any pollutants or hazardous materials that cause or contribute to a violation of applicable water quality standards. Allowable discharges that create or have the potential to create unsafe conditions on County roads or other public rights-of-way are prohibited. The commencement, conduct or continuance of any illegal discharge to the MS4 or any conveyance is prohibited except that the following discharges are exempt from discharge prohibitions established by this Section, if such discharges do not violate applicable water quality standards:
1. Water line flushing or water from other potable sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, uncontaminated ground water infiltration, foundation or footing drains, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or natural wetland flows, swimming pools (if discharged to the ground, not to a roadway or directly to any part of the MS4 or any conveyance), fire fighting activities, street wash water and any activity related to normal performance of municipal operations such as street sweeping. Dewatering of existing ponds requires a permit from the Kentucky Division of Water.
 2. Discharges specified in writing by the Warren County Office of Stormwater Management as being necessary to protect public health and safety.
 3. Scientific research and sewer infrastructure use of fluorescent dye is an allowable discharge.
 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 USEPA or the KDOW, provided that the permit holder 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 MS4 or any conveyance.
- f. Prohibition of Illicit Connections. The construction, use, maintenance or continued existence of illicit connections to the MS4 or any conveyance is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage or any other pollutant or hazardous materials to the MS4 or any conveyance or allows such a connection to continue.

- g. Suspension of MS4 access due to illicit discharges in emergency situations. The Warren County Office of Stormwater Management 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, to the health or welfare of persons, to the MS4, or to waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Warren County Office of Stormwater Management may take such steps as deemed necessary to remedy the situation.
- h. Suspension of MS4 access due to the detection of illicit discharge. Any person discharging to the MS4 or any conveyance in violation of this Section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Warren County Office of Stormwater Management shall require the violator to disconnect access to the MS4 at their cost or take corrective action to eliminate the source of the illicit discharge. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this ordinance without the prior approval of the Warren County Office of Stormwater Management.
- i. Industrial or construction activity discharges. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with the permit may be required in a form acceptable to the Warren County Office of Stormwater Management prior to the allowing of discharges to the MS4 or any conveyance. However, should an illicit discharge be detected from such activities, the Warren County Office of Stormwater Management shall have the authority to regulate the site per the provisions of this ordinance.
- j. Monitoring of discharges. This ordinance applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.
 - 1. The Warren County Office of Stormwater Management 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 Warren County Office of Stormwater Management.
 - 2. Facility operators shall allow the Warren County Office of Stormwater Management 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.

3. The Warren County Office of Stormwater Management shall have the right to install 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 discharge.
 4. The Warren County Office of Stormwater Management shall have 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 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 Warren County Office of Stormwater Management. The costs of clearing such access shall be borne by the operator.
 6. Any interference with allowing the Warren County Office of Stormwater Management access to a permitted facility is a violation of a stormwater discharge permit and 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 a representative(s) of the Warren County Office of Stormwater Management reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
 7. If the Warren County Office of Stormwater Management has been refused access to any part of the premises from which stormwater is discharged and 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 to protect the overall public health, safety and welfare of the community, the Warren County Office of Stormwater Management may seek all appropriate remedies from any court of competent jurisdiction, including the issuance of a search warrant.
- k. Requirement to prevent, control and reduce stormwater pollutants by the use of BMPs. The Warren County Office of Stormwater Management shall review and approve BMPs for any activity, operation or facility that may cause or contribute to pollution, discharge of hazardous materials or has the potential to contaminate naturally occurring stormwater or waters of the United States. 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 MS4 or any conveyance through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise which is, or may be, the source of an illicit discharge may be

required to implement, at such person's expense, additional structural and/or nonstructural BMPs to prevent the further discharge of pollutants or hazardous materials to the MS4 or any conveyance. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) 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 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 or hazardous materials discharging into naturally occurring stormwater, the MS4 or any conveyance, such 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, such person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, such person shall notify the authorized enforcement agency in person or by phone, facsimile or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Warren County Office of Stormwater Management 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.

III. ENFORCEMENT.

- a. Cost of abatement of a violation. Any person causing a violation of this ordinance which requires Warren County to expend public funds for the response to the violation, its abatement or the cleanup or removal of any prohibited discharges, pollutants or hazardous materials shall be liable to Warren County for all recoverable costs incurred by Warren County for such response, cleanup and removal, including but not limited to, personnel costs of the Sheriff Department, Fire Department, and other responding County departments, replacement costs of supplies and equipment contaminated as a result of the discharge, proper disposal of contaminated materials, cleanup, evacuation and administrative and other expenses, including legal expenses, incurred in recovering such costs. Any such

illegal discharges shall be considered a public health hazard and Warren County shall have a lien against the property for its recoverable costs.

- b. Civil penalty proceedings shall be initiated by the issuance of a notice of violation or a citation by a Warren County Stormwater Management official. The notice of violation or citation shall be delivered to the violator at his last known address as it appears from the current property tax assessment roll. Such notice of violation or citation shall be deemed properly served if given by certified mail, return receipt requested, by personal delivery or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Service by certified mail shall be presumed to have been served on the third day following mailing.
- c. Upon receipt of a notice of violation or citation, the violator shall take immediate steps to remedy or abate the violation. Additionally, the violator shall respond to the citation with seven (7) days by either paying the civil fine, or requesting in writing a hearing before the Code Enforcement Board to contest the citation. If the violator responds by paying the civil fine, the violator shall still take immediate remedial steps, if the discharge is not already resolved, and payment of recoverable costs. The Code Enforcement Board may consider remedial efforts made by the violator and other circumstances in determining whether a penalty is appropriate. If the violator fails to act to abate the discharge or request a hearing within the designated time, the code official is authorized to issue another citation and to remedy the violation. Nothing herein shall prohibit the Office of Stormwater Management or other County agency from responding to abate and cleanup the discharge when deemed necessary and appropriate by that agency.

IV. PENALTIES.

If a citation for a violation of this ordinance is not contested by the person charged with the violation, the maximum penalties shall apply; however, the Board may waive any or all of a penalty of an uncontested violation, if in its discretion, the Board determines that such waiver will promote compliance with this ordinance. The penalties listed are for each day a violation continues, beginning on the first day after the ending date of the corrective period. A second offense is an offense that occurs within five (5) years of the prior offense. All other violations are those, which occur within five (5) years of two (2) or more prior offenses:

| <u>1st Offense</u> | <u>2nd Offense</u> | <u>All Others</u> |
|-------------------------------|-------------------------------|-------------------|
| \$500.00 | \$1000.00 | \$2000.00 |