

**CITY OF WINCHESTER, KENTUCKY
ORDINANCE NO. 9-2011**

SUMMARY

**AN ORDINANCE ESTABLISHING THE ILLICIT DISCHARGE
AND CONNECTION REQUIREMENTS FOR
THE CITY OF WINCHESTER, KENTUCKY**

The entire ordinance is available for public review at the City Clerk's office at City Hall.

I hereby certify that the foregoing is an accurate summary of the contents of the above-entitled Ordinance.

/s/ William A. Dykeman

William A. Dykeman
City Attorney

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**AN ORDINANCE ESTABLISHING THE ILLICIT DISCHARGE
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WHEREAS, the City of Winchester now operates under the requirements of the Kentucky Pollutant Discharge Elimination System (KPDES), and

WHEREAS, the City of Winchester has a stormwater permit which provides authorization to discharge under the KPDES general permit for small municipal separate storm sewer systems, and

WHEREAS, one of the six (6) minimum control measures required is Illicit Discharge Detection and Elimination, and

WHEREAS, the City of Winchester is required to effectively prohibit non-stormwater discharges from entering the municipal separate storm sewer system (MS4), and

WHEREAS, the City of Winchester must be compliant with the MS4 stormwater permit and finds it necessary to enact an ordinance to regulate non-stormwater discharges to the storm drain system to the maximum extent practical.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF WINCHESTER, KENTUCKY AS FOLLOWS:

Section 1. Authority

This Ordinance is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky cities and counties in Kentucky Revised Statutes (KRS), Chapter 67 and 100.

This Ordinance is adopted pursuant to the powers granted and limitations by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

Section 2. Purpose and Intent

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Winchester, Kentucky 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 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 from stormwater discharges to the MS4 system by any user;
- 2) To prohibit Illicit Connections and Discharges to the MS4 system; and

- 3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other applicable ordinance, rule, or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

Section 3. Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

- 1 **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 material storage.
- 2 **BMP Manual:** 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.
- 3 **City of Winchester:** The municipal agency designated to enforce this ordinance. Agencies with enforcement may include public works, engineering technician, code enforcement, or Winchester Municipal Utility.
- 4 **Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- 5 **Construction Activity:** Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more or less than one (1) acre if part of a common plan of development that is greater than one (1) acre. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.
- 6 **Hazardous Materials:** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- 7 **Illegal Discharge:** Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 5.2 of this ordinance.
- 8 **illicit Connections:** An illicit connection is defined as either of the following:
 - i. 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-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or.
- ii. 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 City of Winchester Public Works Department or other authorized enforcement agency.
- 9 Industrial Activity:** Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
- 10 National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit:** A permit issued by EPA (or by the Commonwealth of Kentucky 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.
- 11 Non-Stormwater Discharge:** Any discharge to the storm drain system that is not composed entirely of stormwater.
- 12 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.
- 13 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, or 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.
- 14 Premises:** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- 15 Storm Drainage System:** Publicly-owned 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.
- 16 Stormwater:** Any surface flow, runoff, or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- 17 Stormwater Pollution Prevention Plan (SWPPP):** is a site-specific document required for submission of the KPDES Notice of Intent (NOI) and this Ordinance. The SWPPP is utilized during construction and for post-construction conditions to identify potential sources of pollution, describe practices to reduce pollutants in stormwater discharges, and identify implementation procedures to maintain compliance with the current general permit.

18 Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Section 4. General Provisions

4.1. Applicability

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Winchester or other authorized enforcement agency.

4.2. Responsibility for Administration

The City of Winchester shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the City of Winchester rests in the authority of the Winchester City Manager to persons in the employment of the City.

4.3. Severability

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, paragraph, or portion of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the other provisions or application of this Ordinance.

4.4. 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, firm, or other entity will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants and do not relieve this person, firm, or other entity from complying with any local, state, or federal regulation that address illicit discharges or any other pollutant discharges. If these minimum standards prove inadequate, it is the ultimate responsibility of the person, firm, or other entity to provide additional measures to prevent illicit discharge or other pollutant discharges.

Section 5. Discharges

5.1. Prohibition of Illegal Discharges:

No person shall discharge or cause to be discharged into the stormwater 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.

5.2. Illegal Discharge Exemptions:

The commencement, conduct, or continuance of any illegal discharge to the stormwater 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 (NOTE: Swimming pool water may be discharged only if dechlorinated – below 0.1 milligrams per liter (mg/L), which can typically be achieved though discontinuing chlorination for a minimum period of 48

hours), fire fighting activities, and any other water source not containing pollutants.

- 2) Discharges specified in writing by the City of Winchester as being necessary to protect public health and safety.
- 3) Dye testing is an allowable discharge, but requires a written notification to the City of Winchester prior to the time of the test.
- 4) The prohibition shall not apply to any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency (EPA), 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 stormwater system.

5.3. Prohibition of Illicit Connections:

- 1) The construction, use, maintenance or continued existence of illicit connections to the stormwater 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.

5.4. 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 said permit may be required in a form acceptable to the City of Winchester prior to the allowing of discharges to the MS4.

5.5. Suspension of MS4 access

1) Suspension Due to Illicit Discharges in Emergency Situations:

The City of Winchester 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; to the health or welfare of persons; to the MS4; or Waters of the United States. If the violator fails to comply with the suspension order issued in an emergency, the City of Winchester 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.

2) Suspension Due to the Detection of Illicit Discharge:

Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access suspended if such suspension would abate or reduce an illicit discharge. The City of Winchester will notify the violator of the proposed suspension of its MS4 access. The violator may petition the City of Winchester for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises suspended pursuant to this Section, without the prior approval of the City of Winchester.

5.6. Monitoring of Discharges:

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

- 1) The City of Winchester 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 City of Winchester.
- 2) Facility operators shall allow the City of Winchester ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- 3) Upon notifying the owner or owner's representative, the City of Winchester shall have the right to immediate access to the property to set up on any permitted facility such devices as are necessary in the opinion of the City of Winchester to conduct monitoring and/or sampling of the facility's stormwater discharge and/or suspected illicit discharge.
- 4) The City of Winchester 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 per manufacturer's specifications 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 City of Winchester and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- 6) Unreasonable delays in allowing the City of Winchester to a permitted facility, as described in item 3 of this Section, is a violation of any applicable 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 the City of Winchester reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
- 7) If the City of Winchester 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, or to protect the overall public health, safety, and welfare of the community or environment, then the City of Winchester may seek issuance of a search warrant from any court of competent jurisdiction.

Section 6. BMP Requirements

The EPA has identified Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the stormwater 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 stormwater system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs are available at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/>.

Section 7. Maintenance

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, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 8. 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 stormwater 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 call 911 to notify emergency response agencies of the occurrence. In the event of a release of non-hazardous materials, said person shall notify the City of Winchester in person or by phone (859-744-7019) no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Winchester (32 Wall Street) within three (3) 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 contain the spill, clear the pollutants from the MS4, and prevent its recurrence. Such records shall be retained on-site for at least three years and be made available to the City of Winchester upon request.

Section 9. Enforcement

9.1. Notice of Violation:

1. The City of Winchester shall be responsible for the enforcement of this Ordinance. Duly authorized representatives have the authority to issue Notices of Violation (NOV), citations and levy fines as described below whenever the City of Winchester finds that a person or entity has violated a prohibition or failed to meet a requirement of this Ordinance.
2. NOVs are the first level of enforcement and do not include a penalty, or fine. Only one NOV will be issued for an offense before citations are utilized. An offense of the same nature as a previous offense, even if previously corrected under a NOV, will constitute a second offense to be enforced through a citation.
3. Citations shall include a penalty, or fine, for each occurrence and payable to the City of Winchester prior to release.
 - a. First Citation = \$250.00 fine.
 - b. Second Citation = \$500.00 fine and Notice of Intent letter.
4. For the purpose of this ordinance, the ultimate party responsible for assuring compliance with the conditions set forth is the property owner.
5. If abatement of a violation and/or restoration of affected property is (are) required, the NOV 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 the City of Winchester, or a contractor and the expense thereof shall be charged to the violator. An NOV 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.

9.2. Cost of Abatement of the Violation:

Within twenty (20) business days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest with the City to the Administrative Hearing Board objecting to the amount of the assessment within five (5) business days of the date of the notice of the cost of abatement. If the amount due is not paid within a timely manner as determined by the decision of the Administrative Hearing Board or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the City of Winchester by reason of such violation. The liability shall be paid in not more than 12 equal monthly payments. Interest at the rate of 8% percent per annum (or prime rate plus 2%, whichever is greater) shall be assessed on the balance beginning on the 30th calendar day following notification of abatement of violation.

9.3. 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 City of Winchester 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.

9.4. Compensatory Action:

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Winchester may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

9.5. Violations Deemed a Public Nuisance:

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

9.6. Criminal Prosecution:

In addition to other enforcement action as stated herein, any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to monetary or other criminal penalties as established by the authorized enforcement agency.

The City of Winchester may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

Section 10. 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 City of Winchester to seek cumulative remedies.

Section 11. Adoption of Ordinance

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

All portions of this Ordinance amending the Code designate words and figures, which are deleted by including such words and figures stricken with dashed lines through the center. Words and figures added by the amendment are underlined with solid lines. The codifier is instructed to omit the words and figures deleted and the solid underlining when codifying this Ordinance.

Section 11. Effective Date

This Ordinance shall become effective May 1, 2011.

Introduced and given first reading at a meeting of the Board of Commissioners of the City of Winchester, Kentucky held on April 19, 2011 and finally adopted, after second reading at a meeting of the said Board held on May 2, 2011.

/s/ Edallen York Burtner
Edallen York Burtner, Mayor

ATTEST:

/s/ Marilyn Rowe
Marilyn Rowe, City Clerk

Reviewed by William A. Dykeman, City Attorney: May 1, 2011