

ORDINANCE 2007 - 07

**ORDINANCE REGULATING CONSTRUCTION ACTIVITY EROSION
AND SEDIMENT CONTROL**

WHEREAS, the purpose of this ordinance is to establish requirements within the County of LaPorte 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. The ordinance will promote the public welfare by guiding, regulating and controlling the design, construction, inspection, use and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth in the County of LaPorte; and,

WHEREAS, during the construction process, soil is vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair/maintenance of sewers and ditches and the dredging of lakes and streams. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat; and,

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 et seQ. and Indiana State Regulation 327 IAC 15-13, Stormwater Run-off Associated with Municipal Separate Storm Sewer System Conveyances (Rule 13), designates the City of Michigan City, Indiana as a Municipal Separate Storm Sewer System (MS4). As a designated MS4, the County of LaPorte is required to implement, manage and enforce a program to reduce or eliminate pollutants in stormwater runoff from construction activities that result in land disturbance equal to or greater than one acre and control of stormwater discharges from construction activity disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more; and,

WHEREAS, Indiana Administrative Code 327 IAC 15-5, Stormwater Run-off Associated with Construction Activity (Rule 5), establishes specific minimum requirements for control of stormwater run-off associated with construction activity. The requirements of Rule 5 shall be met except as specifically noted herein.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of LaPorte County, Indiana, that:

SECTION 1: Short Title.

This ordinance shall be known as the "MS4 Construction Activity Erosion and Sediment Control Program and as amended through Chapter 8, Article 7, Section 125B of the LaPorte County Code."

SECTION 2: Purpose.

The purpose of this ordinance is to meet the requirements of IDEM Rule 327 IAC 15-13 (Rule 13).

SECTION 3: Definitions.

The definitions that apply throughout this Ordinance are as contained in Section 4 of 327 IAC 15-5 and as follows:

- A. "County" means the County of LaPorte, Indiana.
- B. "MS4 Advisory Committee" means those appointed representatives of the municipal and county entities who administer the MS4 Program under the permit issued by IDEM.
- C. "MS4 Coordinator" means a designated representative of the County responsible for assisting in the implementation and management of the Stormwater Quality Management Program for the County.
- D. "Rule 5" and "Rule 13" mean 327 IAC 15-5 and 327 IAC 15-13, respectively. The Indiana Department of Environmental Management (IDEM) has the authority to administer the Erosion Control Program under Rule 5. When IDEM approves the transfer of the Erosion Control Program to MS4 entities, such authority will be by Rule 13 in the MS4 areas only. Rule 5 will continue to apply to non-MS4 areas of the state. The issuance of an authorization letter by IDEM will determine which rule will have precedence or apply.

SECTION 4: Applicability of General Permit Rules.

The applicability of the General Permit Rules is as defined in 327 IAC 15-5-2 and 15-53.

SECTION 5: Notice of Intent Letter.

The Notice of Intent Letter (NOI) submittal requirements and construction plan submittal requirements shall be as described in Sections 5 and 6 of 327 IAC 15-5-5. The NOI shall be submitted to the MS4 Coordinator, the Indiana Department of Environmental Management, and any other entity as required by 327 IAC 15-5-5.

SECTION 6: Construction Plan Requirements.

The Erosion and Sediment Control Plan (ESCP) requirements shall be as described in Section 6.5 of 327 IAC 15-5.

SECTION 7: Stormwater Quality Control Requirements.

Stormwater quality control measures included in the plan must achieve the minimum project site requirements specified in Sections 7 and 7.5 of 327 IAC 15-5.

SECTION 8: Site Development Permit.

- A. No construction project site owner (Permittee) shall be granted a Site Development Permit for a project site where the proposed land disturbance is one (1) acre or more without the approval of the ESCP by the MS4 Coordinator.
- B. The ESCP shall be submitted by the construction project site owner in triplicate to the MS4 Coordinator.

- C. The MS4 Coordinator shall provide a copy of the ESCP to the La Porte County Soil and Water Conservation District (SWCD) for their comments and recommendations. All comments received from the local SWCD shall be made available to the applicant during the review and approval process.
- D. Each ESCP submittal shall include the name, address and phone number of the Owner or Developer of the site and any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm. It shall also include a statement by the Owner or Developer of the site that any land clearing, construction, or development involving the movement of earth by any party on the project site shall be in accordance with the approved ESCP.
- E. The Site Development Permit is granted by the MS4 Coordinator for a period of five (5) years. Other provisions for duration of coverage shall be as described in Section 12 of 327 IAC 15~5.

SECTION 9: Site Development Permit Fee.

All ESCP's shall be accompanied by a \$100 filing fee.

SECTION 10: Inspection.

- A. The MS4 Coordinator shall make inspections as required and either shall approve that portion of the work completed or shall notify the Permittee that the work fails to comply with the approved ESCP.
- B. To initiate inspections, the Permittee shall notify the MS4 Coordinator in writing, at least two working days before the following: start of construction, completion of site clearing, close of construction season, and commencement of work when the site has been dormant for at least fifteen calendar days and completion of final landscaping.
- C. The Permittee shall make regular inspections of all control measures in accordance with 327 IAC 15~5-7. The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional correctional measures.

SECTION 11: Project Termination.

The procedures for termination of construction activities shall be as described in Section 8 of 327 IAC 15-5.

SECTION 12: Enforcement.

- A. The County shall have the authority to enforce this ordinance. All persons engaging in construction activities on a project site must comply with the approved ESCP for the project site and with the requirements, provisions and regulations of this ordinance. Any person causing or contributing to a violation of any requirement, provision, or regulation of this ordinance may be subject to enforcement and penalty under the terms of this ordinance. If the violation is of such a nature to materially adversely affect the public health, existing water uses and aquatic biota of the County, the County may suspend or revoke the Site Development Permit and place an immediate "Stop Work Order" at the site.

- B. Each action causing a violation will constitute a separate and single violation. Each day that a violation exists constitutes a separate violation, and is subject to penalty or prosecution as a separate violation.
- C. Any person performing land disturbing activities prior to submitting an ESCP for approval by the City and properly notifying IDEM shall be subject to enforcement and penalty as described in Section 10 of 327 IAC 15-5.

SECTION 13: Penalty Procedures.

- A. The County will employ the following procedures with regard to assigning penalties to enforce the requirements, provisions and regulations of this ordinance:
 - 1) First Violation - means the initial determination of a violation or group of violations at a project site. Upon ascertaining and documenting the occurrence of a first violation at a project site, the County will make a corrective recommendation to the owner/developer responsible for correcting the violation, together with a notice that the correction must be accomplished within ten (10) working days after the issuance of the notice to prevent the citation of a second violation with regard to the same condition or conditions that caused the first violation.
 - 2) Second Violation - means the determination that after ten (10) working days past the notification of a first violation, the condition or conditions constituting the first violation remain uncorrected or otherwise not compliant with the requirements, provisions or regulations of this ordinance. Upon ascertaining and documenting the occurrence of a second violation at a project site, the County will again issue a non-compliance citation to the owner/developer along with a notice that the correction must be accomplished with five (5) calendar days from the date of the citation to prevent the citation of a third violation regarding the same condition. The civil penalty for the citation of a second violation will be no less than One Hundred Dollars (\$100.00) and no more than Two Hundred and Fifty Dollars (\$250.00). If the penalty is not paid within thirty (30) days, the citation may be enforced in Court by any remedy allowed by Law and an action may be maintained to recover the costs of corrective measures employed by the County and the reasonable costs of legal services, if the owner/developer does not make a good faith effort to correct the violation, in addition to the fine or penalty referred to above.
 - 3) Third Violation - means the determination that after five (5) working days past the notification of a second violation, the condition or conditions constituting the second violation remain uncorrected or otherwise noncompliant with the requirements, provisions, or regulations of this ordinance. Upon ascertaining and documenting the occurrence of a third violation at a project site, the County will issue another non-compliance citation to the owner/developer together with a notice that the project site is subject to an immediate "Stop Work" order. The civil penalty for a third violation will be no less than Five Hundred Dollars (\$500.00) and no more than Seven Hundred Fifty Dollars (\$750.00). If the penalty is not paid within thirty (30) days, the citation may be

enforced in Court by any remedy allowed by Law and an action may be maintained to recover the costs of corrective measures employed by the County and the reasonable costs of legal services, if the owner/developer does not make a good faith effort to correct the violation, in addition to the fine or penalty referred to above.

- B. Stop Work orders will not be rescinded until all recommended corrective measures have been completed and the County has been paid for all costs incurred, as applicable.
- C. The County reserves the right to accelerate the schedule assigned in this section for correcting a violation if required to protect life or property from an eminent and severe threat of loss or damage.
- D. The County may perform, or cause to be performed, such work as is necessary to accomplish corrective measures at a project site by their own forces or by a contractor hired to perform the work.
- E. Any project site owner, individual lot operator, contractor, subcontractor, property owner, or other person or persons responsible for construction activities at a project site who violate the terms, requirements, provisions, or regulations of this ordinance are liable for the costs of removal of sediment and other stormwater pollutants deposited in any right-of-way, drain, storm sewer, drainage easement, or County maintained or controlled property to a condition equal to or better than the condition prior to a violation. Such costs may be pursued in Court and/or filed as a lien against the property as allowed by State law.

SECTION 14: Administration.

- A. Generally. The County Building Commissioner, through the MS4 Operators & County MS4Coordinator, is hereby authorized to implement and monitor all aspects of this ordinance.
- B. Project Specific Administration. The MS4 Coordinator shall be responsible for implementation and monitoring compliance with the provisions of this ordinance.

SECTION 15: Appeal of Decisions.

The interpretation or implementation of the Rule 5 or Rule 13 program requirements by the MS4 Coordinator may be appealed to the MS4 Advisory Committee, in writing and within five (5) days of the interpretation or implementation decision. The appeal will be decided by the MS4 Advisory Committee within ten (10) days. The appeal process does not stay a stop work order issued under Sections 12 and 13.

SECTION 16: 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.

INTRODUCED BY:

CO-SPONSOR:

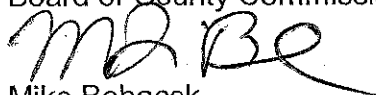
Passed by the Board of Commissioners of LaPorte County, Indiana, this
17th day of April, 2007.

Barbara Huston
President, County Commissioners

Approved by me, this 17th day of April, 2007.

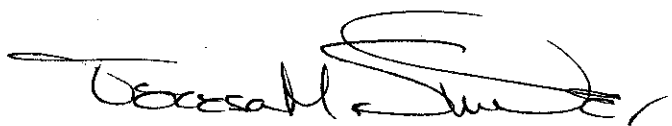


Bill Hager
Board of County Commissioners Member



Mike Bohacek
Board of County Commissioners Member

ATTEST:



Teresa Shuter
Auditor