

ORDINANCE 36-2007

AN ORDINANCE ESTABLISHING ILLICIT DISCHARGE DETECTION AND ELIMINATION PROCEDURES

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
HOPKINSVILLE, KENTUCKY AS FOLLOWS:**

SECTION ONE

Title.

This ordinance shall be known as the Illicit Discharge Detection and Elimination (IDDE) Ordinance for the City of Hopkinsville, Kentucky.

Purpose.

(A) The purpose of this Ordinance is to safeguard persons, protect property and prevent damage to the environment in the City of Hopkinsville, and more specifically is intended to:

(1) Prohibit the introduction of any foreign matter, whether liquid or solid, other than normal surface or naturally occurring storm water into the municipal separate storm sewer system (MS4) or any conveyance.

(2) Prohibit illicit connections and discharges to the MS4 or any conveyance.

(3) Establish legal authority to carry out all inspections, surveillance and monitoring procedures necessary to ensure compliance with this Section.

(B) 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.

Public Purpose.

This ordinance is enacted to promote the public welfare by regulating the contribution of pollutants to the municipal separate storm sewer system MS4 by non-storm water discharges to the storm drainage system in the City

Findings of Fact.

(A) The Clean Water Act, EPA, and KYDOW established Phase II regulations and mandated Illicit Discharge Detection and Elimination (IDDE) procedures in the Commonwealth of Kentucky. Discharges to an MS4 that are not composed entirely of storm water runoff contribute to increased non-point source pollution and degradation of receiving waters. These non-storm water discharges occur due to spills, dumping, and improper connections to the MS4 from residential, industrial, commercial, or institutional establishments. These non-storm water discharges not only impact waterways individually, but geographically dispersed, small volume non-storm water discharges can have cumulative impacts on receiving waters. The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values, and other uses of lands and waters. These impacts can be minimized through the regulation of spills, dumping, and discharges into the MS4 in Hopkinsville.

Authority.

The Environmental Protection Agency (EPA) is empowered to regulate storm water by the authority of The Clean Water Act. The City of Hopkinsville, classified as a Municipal Separate

Storm Sewer System (MS4) under Phase II of the National Pollution Discharge Elimination System (NPDES) Storm Water Program, is empowered to regulate non-storm water discharges.

Definitions.

The following words and phrases, when used in this Ordinance, shall have the following meaning:

(A) Adverse Impact – A material negative impact to the land, water, and associated resources resulting from an illicit discharge. The negative impact includes degradation of water quality, increased sedimentation, reduced groundwater recharge, adverse effects on aquatic organisms and other resources, and threats to public health

(B) Authorized Enforcement Agency – The Hopkinsville Surface and Storm Water Utility (SSWU), or its designated agent, will enforce the Ordinance.

(C) Best Management Practices (BMP) – Any structural or non-structural control measure used to improve the quality and, as appropriate, reduce the quantity of storm water runoff. The term includes schedules of activities, prohibitions of practice, treatment requirements, operation and maintenance procedures, use of containment facilities, land use planning, policy techniques, and other management practices.

(D) Channel – 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.

(E) City – The City of Hopkinsville, Kentucky.

(F) Clean Water Act – Those Federal regulations (33 U.S.C - 1251 et seq. and as amended 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.

(G) Construction Activity – Any activities subject to NPDES construction permits issued by the United States Environmental Protection Agency (USEPA) or the Kentucky Division of Water (KYDOW). Currently these include construction projects resulting in land disturbance of one (1) acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating and demolition.

(H) Conveyance – Shall include, but not limited to, any of the following: blue line streams, channel, drainage basin, drainage way, drainage/dry well, ephemeral stream, flood plain, karst feature, public storm drain, storm drainage system, water body, watercourse or waterway.

(I) Detention – Restraining the rate of storm water runoff through some natural or man-made device; the temporary delay of storm runoff prior to discharge into receiving waters.

(J) Drainage Basin – A storage area to collect storm water.

(K) Drainage System Connection Permit – A permit for connection to the MS4 or any conveyance within the City.

(L) Drainage Way – Any channel that conveys surface runoff throughout the site.

(M) Drainage/Dry Well – A bored, drilled, driven, dug, or naturally occurring shaft or hole with a depth greater than the largest surface dimension; used to drain surface fluid, primarily storm water runoff, into a subsurface formation.

(N) Ephemeral Stream – 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.

(O) Flood Plain – 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.

(P) Hazardous Materials – 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.

(Q) Illegal Discharge – Any direct or indirect non-storm water discharge to the MS4, or conveyance, except as exempted in the Discharge Exceptions/Prohibitions Section.

(R) Illicit Connections – Any of the following:

(1) 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-storm water discharge, including sewage, process wastewater and wash water to enter the MS4 or conveyance.

(2) Any connections to the MS4 or conveyance, regardless of whether said connection had been previously allowed, permitted or approved by the SSWU 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.

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

(T) Karst Feature – Any cave, sinkhole, sinking stream, blue hole, crevice, spring, lost river, karst window or any other geologic feature associated with karst terrain.

(U) Municipal Separate Storm Sewer System (MS4) – Any physical inlet, natural or manmade, conveyance, storage basins or outfalls in which storm water is induced, conveyed, stored or discharged.

(V) NPDES – The National Pollution Discharge Elimination System, under the umbrella of this Ordinance, a process under which the federal government, through the state governments, has required the City to establish the means and methods to eliminate the erosion of soils during and after the construction process, and the release of same to public waters.

(W) Non-Storm Water Discharge – Any discharge to the MS4 or any conveyance that is not composed entirely of naturally occurring storm water.

(X) Person – Any individual, association, organization, partnership, firm, corporation or other entity recognized by law.

(Y) Plan – A document approved at the site design phase that outlines the measures and practices used to control storm water runoff at a site.

(Z) Pollutant – 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.

(AA) Premises – Any building, lot, parcel of land, easement or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(BB) Public Storm Drain – The drain system provided by and maintained by the City that is designed to help convey naturally occurring storm water runoff. It also provides inlets for water to travel to holding areas attempting to remove excessive water from streets and other areas.

(CC) Sediment – Solid material, both mineral and organic, that in suspension is being transported or has been moved from its site of origin by air, water, or gravity as a product of erosion.

(DD) Storm Drainage System – Drainage 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, drain wells, karst feature or other conveyance.

(EE) Storm Water – Any surface flow, runoff, ponding or drainage from any form of precipitation.

(FF) Wastewater – Any water or other liquid, other than naturally occurring storm water discharged from premises.

(GG) Watercourse – 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 the City.

(HH) Water Quality Standards – Administrative regulations promulgated by the State of Kentucky establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use (401 KAR 5:002; 401 KAR 5:031, as amended).

(II) Waterway – A channel that directs surface runoff to a watercourse or conveyance.

Administration.

The City has designated the Hopkinsville Surface and Storm Water Utility (SSWU) or the Utility's designated agent to administrate and enforce the Ordinance. The duties will include, but not be limited to:

- (A) Establishing methods for detecting illicit discharges and their sources.
- (B) Review plans and issue permits for connections to the MS4.
- (C) Coordinate permits, inspections, and other activities with city, state, and federal agencies under the City's NPDES.
- (D) Render judgment on the enforcement duties and requirements of this Ordinance.

Applicability.

Subject to the exemptions set forth below, the IDDE provisions of this Ordinance shall apply to all non-storm water discharges occurring within the City unless specifically exempted by the authorized enforcement agency.

Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this Section are minimum standards; therefore, this Section 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.

Discharge Exceptions/Prohibitions.

Other than naturally occurring storm water, 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 City streets 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:

(A) General Exceptions. 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, dechlorinated discharge from swimming pools (if discharged to the ground, not to a City street 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.

(B) Specified Discharges.

(1) Discharges specified in writing by the City as being necessary to protect public health and safety;

(2) Scientific research and sewer infrastructure use of fluorescent dye is an allowable discharge.

(C) NPDES Exceptions. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit issued to the discharger and administered under the authority of the USEPA or the KYDOW, provided that the permit holder is in full compliance with all requirements of the permit and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4 or any conveyance.

(D) 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 Drainage System Connection Permit is required by the City before any drainage system is connected to the MS4. The Drainage System Connection Permit shall be accompanied by a \$50.00 fee. A person is considered to be in violation of this Section 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.

(E) Industrial or construction activity discharges. Any person subject to an industrial or construction activity NPDES storm water 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 City prior to the allowing of discharges to the MS4 or any conveyance. However, should an illicit discharge be detected from such activities, the City shall have the authority to regulate the site per the provisions of this Section.

Accidental Discharge.

(A) 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 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 BMP plan as necessary for compliance with requirements of the NPDES permit.

(B) In the event of any accidental illicit discharge into the MS4 in an amount that could cause a threat to public health, safety, or welfare of the citizens of the City or the environment, the person responsible for the discharge or his designee shall:

(1) Give notice of the accidental discharge to the SSWU or its designated agent as soon as practicable. In no event shall this notice be more than two (2) hours after the discovery of the accidental discharge or when the responsible person becomes aware of the circumstances of the incident.

(2) Call 911 immediately to report the accidental discharge if an emergency response by government agencies is needed.

(3) Submit a written report of the accidental discharge within five (5) days of the time of the accidental discharge. The report shall contain the following information:

(a) A description of the accidental discharge; this description shall include, but may not be limited to, the material discharged, the amount of material discharged, and the amount of material recovered;

(b) The exact dates and times of the accidental discharge;

(c) Steps being taken to eliminate and prevent recurrence of the discharge;

(d) The name, title, telephone number, and business name (if applicable) of person making the report, and the name, title, and telephone number of a person who may be contacted for additional information regarding the accidental discharge.

(4) The responsible person shall take all reasonable steps to minimize any adverse impact to the MS4 and/or any watercourse.

(5) The City and/or the SSWU and/or its designated agent shall assume no liability for any improper reporting by a responsible person regarding an accidental discharge.

(6) Reporting of an accidental discharge as defined in this section does not relieve the responsible person from complying with all other reporting requirements as mandated by applicable laws and/or regulations.

Monitoring of Discharges and Inspection of Facilities.

(A) The SSWU or its designated agent shall be permitted to enter and inspect any property or facilities subject to regulation under this Section as often as may be necessary to determine compliance with this Section. 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 by the SSWU or its designated agent (Ord. 32-2005 §24, as amended).

(B) Facility operators shall allow the SSWU or its designated agent 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 storm water, and the performance of any additional duties as defined by state and federal law.

(C) The SSWU or its designated agent shall have the right to install on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agent to conduct monitoring and/or sampling of the facility's discharge.

(D) The SSWU or its designated agent 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.

(E) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the SSWU or its designated agent and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(F) Any interference with allowing the SSWU or its designated agent access to a permitted facility is a violation of a storm water discharge permit and of this Section. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial

activity commits an offense if the person denies the SSWU reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Section.

(G) If the SSWU or its designated agent has been refused access to any part of the premises from which storm water is discharged and is able to demonstrate probable cause to believe that there may be a violation of this Section, 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 Section, or any order issued hereunder to protect the overall public health, safety and welfare of the community, the SSWU may seek all appropriate remedies from any court of competent jurisdiction, including the issuance of a search warrant (Ord. 32-2005 §26, as amended).

Enforcement and Penalties.

(A) Enforcement. The SSWU or its designated agent may pursue appropriate legal proceedings for the enforcement of this ordinance, and the SSWU shall be entitled to recover its costs expended and reasonable attorney's fees in such proceedings. If the person, property, or facility has or is required to have a storm water discharge permit from KYDOW, the SSWU shall notify the appropriate State authorities of the violation. Any of the following enforcement remedies and penalties, to be applied independently or in a sequence as deemed necessary, shall be available to the City or the SSWU in response to violations of this ordinance:

(1) Enforcement proceedings for this Section shall be initiated by the issuance of a notice of violation (NOV) or a citation by the SSWU or its designated agent.

(2) The provisions of this ordinance may be enforced by the Code of Ordinance Enforcement Board established in Chapter 33 of the Hopkinsville Code of Ordinances or in the alternative, the Christian County District Court as a misdemeanor and/or violation.

(3) For violations involving active permits, the City or the SSWU may revoke and require surrender of a permit or certificate by notifying the permit holder, in writing, of the reason for the revocation. Permits or certificates may be revoked for any substantial departure from the approved plans thereby resulting in an illicit discharge as defined herein (Ord. 32-2005 §23, as amended).

(4) For violations involving active construction sites, the SSWU or its designated agent may issue a Stop Work Order and require that all activities cease, except those actions that are necessary to eliminate the illicit discharge. Unacceptable or untimely actions attempting to eliminate the illicit discharge may be used as justification to revoke permits as described above.

(5) Suspension of MS4 access due to illicit discharges in emergency situations. The City or the SSWU 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 City or the SSWU 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.

(6) 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 City or the SSWU 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 Section without the prior approval of the SSWU.

(B) Penalties.

(1) Any person who violates this chapter or fails to comply with any of its requirements shall be fined not more than \$500.00 nor less than \$100.00.

(2) Each day such violation continues after receipt of a notice of violation shall be considered a separate offense. Nothing herein shall prevent the SSWU from taking such other lawful action as is necessary to prevent or remedy any violation (Ord. 32-2005 §36, as amended).

(C) Costs of abatement of a violation.

(1) Any person causing a violation of this Section which requires the City and/or the SSWU 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 the City and/or the SSWU for all recoverable fees and costs incurred by the City and/or the SSWU for such response, cleanup and removal, including but not limited to, personnel costs of any City 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.

(2) Any such illegal discharges shall be considered a public health hazard and the City or SSWU shall have a lien against the property for its recoverable costs if these costs are not paid within ninety (90) days of invoice.

SECTION TWO

If any section, subsection, sentence, clause, or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining portions of this Ordinance.

SECTION THREE

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION FOUR

This Ordinance shall take effect after its passage and publication according to law.

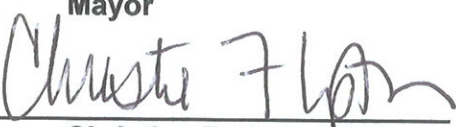
ORDINANCE 36-2007

Illicit Discharge Detection & Elimination

PUBLICLY READ AND PASSED FIRST TIME: November 6, 2007

PUBLICLY READ AND PASSED SECOND TIME: November 20, 2007

APPROVED: 
J. Daniel Kemp
Mayor

ATTEST: 
Christine F. Upton, CMC
City Clerk