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HARDIN COUNTY, KENTUCKY

ORDINANCE NO. 272 SERIES 2010

**AN ORDINANCE RELATING TO THE CONTROL OF
ILLICIT DISCHARGES TO THE STORMWATER SYSTEM
OF HARDIN COUNTY, KENTUCKY**

WHEREAS, Hardin County now operates under the requirements of the Kentucky Pollutant Discharge Elimination System (KPDES), and

WHEREAS, Hardin County has a stormwater permit which provides authorization to discharge under the KPDES general permit for small municipal separate storm sewer systems (MS4), and

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

WHEREAS, Hardin County must be compliant with the MS4 stormwater permit and finds it necessary to enact an ordinance to prohibit illicit discharges within the County limits,

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Fiscal County of County of Hardin, Commonwealth of Kentucky as follows:

SECTION I. Purpose/Intent.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Hardin County through the regulation of non-storm water discharges to the storm drainage system. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Kentucky Pollutant Discharge Elimination System (KPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user
2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

SECTION II. Definitions.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency. Employees or designees of the Director of the County Engineering Department shall administer, implement and enforce the provisions of this ordinance.

Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good housekeeping 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 materials storage.

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Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Activities subject to National Pollutant Discharge Elimination System (NPDES) and/or Kentucky Pollutant Discharge Elimination System (KPDES) Construction Permits including construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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.

Illicit Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section VII of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following: 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-storm water 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, 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 an authorized enforcement agency.

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

Kentucky Pollutant Discharge Elimination System (KPDES) Storm Water Discharge Permit means the general permit for stormwater discharges associated with construction activities in Kentucky. This permit authorizes the discharge of pollutants in stormwater discharges associated with both small and large construction activities (also known as the "construction general permit" or "KYR10").

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. Means a permit issued by EPA (or by a State 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.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

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.

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, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form 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.

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

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan. 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.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

SECTION III. Applicability.

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

SECTION IV. Responsibility for Administration.

The Engineering Department shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the Engineering Department to persons or entities acting in the beneficial interest of or in the employ of the agency.

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.

SECTION VI. 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, nor unauthorized discharge of pollutants.

SECTION VII. Discharge Prohibitions.

Prohibition of Illicit Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain 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 storm water.

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Exemptions

The commencement, conduct or continuance of any illegal discharge to the storm drain 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 (if de-chlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
2. Discharges specified in writing by the Engineering Department as being necessary to protect public health and safety.
3. Dye testing is an allowable discharge, but requires a verbal notification to the Engineering Department prior to the time of the test.
4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES and/or KPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency and/or the Kentucky Division of Water 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 storm drain system.

Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain 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.

SECTION VIII. Suspension of MS4 Access.

Suspension due to Illicit Discharges in Emergency Situations.

The Engineering Department 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, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency 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.

Suspension due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Engineering Department will notify a violator of the proposed termination of its MS4 access. The violator may petition the Engineering Department for a reconsideration and hearing.

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A person may not reinstate MS4 access to premises terminated pursuant to this Section, without the prior approval of the Engineering Department.

Suspension due to the Detection of Illicit Discharge at an Active Construction Site

For violations involving active construction sites, the Engineering Department may issue a Stop Work Order and require that all activities cease, except those actions that are necessary to eliminate the illicit discharge.

SECTION IX. Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES and/or KPDES storm water 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 Engineering Department prior to the allowing of discharges to the MS4.

SECTION X. Monitoring of Discharges.

A. Applicability.

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

B. Access to Facilities.

1. The Engineering Department 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 Engineering Department.
2. Facility operators shall allow the Engineering Department 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 and/or KPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
3. The Engineering Department shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Engineering Department to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Engineering Department has the right to require the discharger to install monitoring equipment as is reasonably 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 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 Engineering Department and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Unreasonable delays in allowing the Engineering Department access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES and/or KPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Engineering Department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

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7. If the Engineering Department has been refused access to any part of the premises from which stormwater is discharged, and he/she 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, then the Engineering Department may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION XI. Requirements to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices.

The Engineering Department will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain 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 storm drain 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 and/or KPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES and/or KPDES permit.

SECTION XII. 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 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 XIII. 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 storm water, the storm drain 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 notify emergency response agencies of the occurrence via emergency dispatch services.

In the event of a release of non-hazardous materials, said person shall notify the Engineering Department in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Engineering Department within three business days of the phone notice.

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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.**SECTION XIV. Enforcement.**

A. Whenever the County finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the County may order compliance by sending a written notice of violation to the property owner. All violations shall be corrected within the time period specified in the notice. The notice of violation shall be mailed to the property owner, or by personally serving, or by causing to be personally served, the property owner with a written notice of violation. If the violation is not corrected as specified, the County may, without limitation:

1. Order such work as is necessary to leave the site in a safe condition and to achieve compliance with this Ordinance by eliminating illicit discharges or connections.
2. Order the stoppage of any action that is determined to have created, or to have contributed to, any dangerous conditions.
3. Order the performance of monitoring, analysis and reporting.

B. Penalties: The County may commence appropriate legal action and/or seek equitable relief, including injunctive relief, against any person who fails to abate a violation and/or to restore an affected property prior to the deadline established in the notice of violation. Any person who violates, neglects, omits, or refuses to comply with any provision of this Ordinance shall, upon conviction, be fined not less than \$10.00 nor more than \$500.00 for each offense and/or imprisoned up the 12 months in the County jail. The time of violation shall be measured from the time written notice to correct is given to the owner. Each day a violation is maintained shall constitute a separate offense. Any recoverable cost of corrective action shall be in addition to fines imposed as a penalty. The imposition of any penalty shall not exempt the violator from compliance with the provisions of this Ordinance.

C. Stop-Work Order; Revocation of Building Permit: In the event that any person holding a building permit violates the terms of this Ordinance, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of the public near the development site or vicinity so as to be materially detrimental to the public welfare or injurious to property or improvements in the vicinity, the County may suspend or revoke the building permit.

SECTION XXII. 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 Engineering Department to seek cumulative remedies.

SECTION XXIII. Effective Date

The effective date of this Ordinance shall be January 1, 2011.

SECTION XXIV. Severability.

The provisions and sections of this ordinance shall be deemed to be severable, and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

SECTION XXV. Conflicts

All ordinance or parts of ordinances in conflict herewith are hereby repealed to the extent of said conflict.

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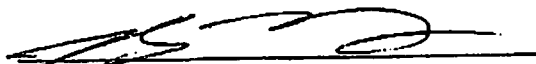
BE IT FURTHER ORDAINED that the Judge/Executive of Hardin County and/or his designate shall be and he is authorized and directed to take all steps necessary to perfect this Ordinance.

Given First Reading on the 23rd day of November, 2010.

Given the Second Reading on the 14th day of December, 2010.

Adopted by the Fiscal Court of Hardin County, Kentucky, on the 1st day of January, 2011.

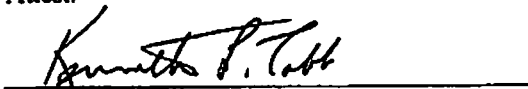
HARDIN COUNTY FISCAL COURT



HARRY L. BERRY

HARDIN COUNTY JUDGE/EXECUTIVE

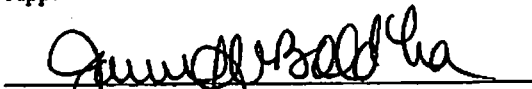
Attest:



KENNETH L. TABB

HARDIN COUNTY COURT CLERK

Approved as to form:



JENNIFER B. OLDHAM

HARDIN COUNTY ATTORNEY-ELECT

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