

ORDINANCE #1676

AN ORDINANCE PROHIBITING NON-STORMWATER (ILLICIT) DISCHARGES INTO THE STORM SEWER SYSTEM OF THE CITY OF DANVILLE; AND ALSO PERTAINING TO THE DEVELOPMENT, IMPLEMENTATION AND ENFORCEMENT OF A PROGRAM TO DETECT AND ELIMINATE ILLICIT DISCHARGES.

Whereas, the City of Danville is the owner and operator of a small municipal separate storm sewer system, and

Whereas pursuant to the National Pollution Discharge Elimination System and the Kentucky Pollution Discharge Elimination System Permitting Process, the City of Danville has been issued a Kentucky Stormwater Phase II Small Municipal Separate Storm Water System (SMS4) General Permit, authorizing the discharge of storm water from the City's storm water system into the waters of the Commonwealth of Kentucky upon the conditions contained in the permit, and

Whereas the conditions of the permit require the City to adopt measures for the protection of water quality by prohibiting and eliminating the discharge of pollutants into streams, lakes and storm sewers and otherwise complying with the provisions of federal and state law with regard to storm water quality and control, and

Whereas the provisions of the federal Clean Water Act (33 USCA Section 1251, et seq.) and the provisions of Chapter 224 of the Kentucky Revised Statutes require municipal separate storm sewer systems and the operators of small constructions sites to implement programs and practices to control polluted storm water runoff, and

Whereas the City of Danville desires to preserve, protect and improve water resources through the management of storm water quality and runoff.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Danville as follows:

I. INTENT AND OBJECTIVES

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Danville, Kentucky, through the regulation of non-stormwater discharges to the stormwater system. To the maximum extent practicable, the introduction of pollutants into the municipal storm sewer system shall be controlled 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 to the municipal storm sewer system by non-stormwater discharges by any user
- (2) To prohibit illicit connections and discharges to the municipal storm sewer system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

II. DEFINITIONS

For the purposes of this ordinance, the following terms are defined:

Best Management Practices (BMPs): The 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.

City: The City of Danville, Kentucky.

City Engineer: The City Engineer of Danville, Kentucky, and the employees and/or the designees of the City Engineer.

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 NPDES Construction Permits. 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.

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.

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

Illicit Connections: An illicit connection is defined as either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drainage system including, but not limited to, any conveyances which allow any non-stormwater discharge including, but not limited to, sewage, process wastewater, or wash water to enter the storm drainage system or any connections to the storm sewer 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,

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm sewer system which has not been documented in plans, maps, or equivalent records and approved by the City Engineer.

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

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the Commonwealth of Kentucky pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the Commonwealth, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Stormwater Discharge: Any discharge to the storm drainage system that is not composed entirely of stormwater.

Person: Any individual, association, organization, partnership, firm, corporation or other entity whatsoever.

Pollutant: Anything which causes or contributes to the alternation of the physical, thermal, chemical or biological quality of, or the contamination of any water of the City, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; soap, detergent, degreaser, solvent, emulsifier, or other cleaning substance; 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 coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

Storm Drainage System: Facilities, both publicly and privately owned, 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, ditches, swales, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater: Any surface flow, runoff, or 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 to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, storm drainage system, and/or receiving waters to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated stormwater.

Waters of Danville: Groundwater, percolating or otherwise, lakes, ponds, impounded reservoirs, springs, rivers, streams, creeks, wetlands, marshes, and all other bodies of surface water including the bed and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the boundary of the City.

III. APPLICABILITY

This ordinance shall apply to all water entering the storm drainage system unless explicitly exempted herein.

IV. RESPONSIBILITY FOR ADMINISTRATION

The City Engineer shall administer, implement, and enforce the provisions of this ordinance.

V. 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.

VI. ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards. 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.

VII. DISCHARGE PROHIBITIONS

A. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the storm drainage system, or onto any 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. The commencement, conduct or continuance of any illegal discharge to the storm drainage system is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance: flushing of water lines 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 dechlorinated to less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.
- (2) Discharges specifically permitted in writing by the City Engineer as being necessary to protect public health and safety.

- (3) Dye testing, however, a verbal notification to the City Engineer shall be provided prior to the time of the test.
- (4) Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, 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.

B. Prohibition of Illicit Connections

The construction, use, maintenance or continued existence of illicit connections to the storm drainage system 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. An illicit connection shall include, but not be limited to, the connection of a line conveying sewage to the storm drainages system or allowing such a connection to continue.

VIII. SUSPENSION OF ACCESS TO THE STORM DRAINAGE SYSTEM

A. Suspension due to Illicit Discharges in Emergency Situations

The City Engineer may, without prior notice, suspend discharge access to the storm drainage system 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 storm drainage system or the waters of Danville. If the violator fails to comply with a suspension order issued in an emergency, the City Engineer may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system or the waters of Danville, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge

Any person discharging to the storm drainage system in violation of this ordinance may have their access terminated if such termination would abate or reduce an illicit discharge. The City Engineer shall notify a violator of the proposed termination of its storm drainage system access. A person commits an offense if the person reinstates access to premises terminated pursuant to this Section, without the prior written approval of the City Engineer.

IX. 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 Engineer prior to the allowing of discharges to the storm drainage system.

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.

The City Engineer 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 the City Engineer.

- (1) Facility operators shall allow the City Engineer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (2) The City Engineer shall have the right to set-up on any permitted facility such devices as are necessary in the opinion of the City Engineer to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (3) The City Engineer 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 to ensure their accuracy.
- (4) 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 Engineer and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (5) Unreasonable delays in allowing the City Engineer access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the City Engineer reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (6) If the City Engineer 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, then the City Engineer may seek issuance of a search warrant.

XI. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The City Engineer shall adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility which may cause or

contribute to pollution or contamination of stormwater, the storm drainage system, or the waters of Danville. 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 storm drainage 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 storm drainage 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 compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

XII. PROTECTION OF THE WATERS OF DANVILLE

Every person owning property through which the water of Danville passes shall keep and maintain that part of such water within the property free of trash, debris, excessive vegetation, and other material that could pollute or contaminate water through the watercourse. In addition, the owner shall maintain the property adjacent to the water free of such trash, debris, excessive vegetation, and other materials that could pollute or contaminate the watercourse during periods of flooding.

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 drainage system, or the waters of Danville, 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 the Director of Emergency Management Services, the Chief of the Danville Fire Department, and the City Engineer. In the event of a release of non-hazardous materials, said person shall notify the persons listed above by phone, in person, or by 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 above listed persons within three business days of the phone or personal notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner and/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.

XIV. ENFORCEMENT, RELIEF AND PENALTIES

A. Notice of Violation

Whenever the City Engineer finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City Engineer may order compliance by sending a written notice of violation to the property owner. Such notice may require without limitation:

- (1) The elimination of illicit connections or discharges;
- (2) That violating discharges, practices, or operations shall cease and desist;
- (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
- (4) The performance of monitoring, analyses, and reporting;
- (5) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. The City of Danville may commence appropriate legal action and/or seek equitable relief, including injunctive relief, against any person who fails to abate a violation and/or restore an affected property prior to the deadline established in the notice of violation. The notice of violation shall be mailed to the property owner at the last known address listed on the current tax assessment roll, or by personally serving, or by causing to be personally served, the property owner with a written notice of violation.

B. Penalties

- (1) Any person violating the provisions of this Ordinance shall, upon conviction therefore, be fined not less than two hundred dollars (\$200.00) nor more than ten thousand dollars (\$10,000.00). Each day in which any such violation shall continue shall be deemed a separate offense.
- 2) Any person violating any section of this Ordinance shall become liable to the City of Danville for any expense, loss or damage caused to the City of Danville by reason of such violation, including but not limited to, any clean-up, evacuation, administrative or other expenses, including legal expenses, incurred. The City Commission of Danville is hereby directed to initiate proceedings in the name of the City of Danville in any court having jurisdiction over such matters as are necessary to recover costs to the City caused by said violation.

XV. 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 to seek cumulative remedies.

XVI EFFECTIVE DATE

This Ordinance Number _____ is effective upon final reading and publication.

GIVEN FIRST READING AND PASSED: _____

GIVEN SECOND READING AND PASSED: _____

PUBLISHED BY DANVILLE ADVOCATE-
MESSENGER: _____

JOHN W.D. BOWLING, MAYOR

ATTEST:

DONNA PEEK, CITY CLERK