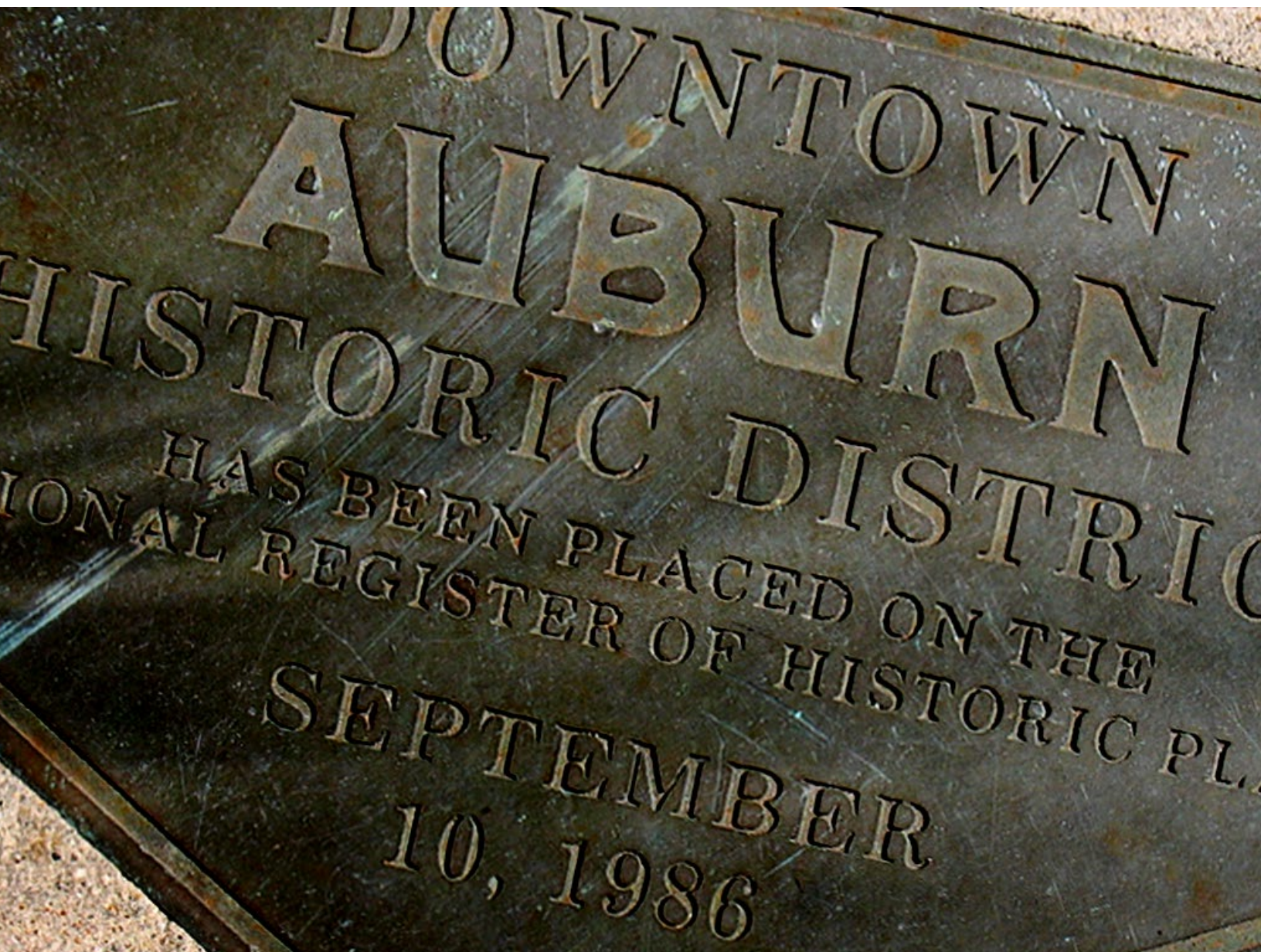




Code of Ordinances
CITY OF AUBURN





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Rules Related to the Illicit
Discharge and Connection to
Storm water Drains Within the
City of Auburn, Indiana.

CHAPTER
160

AUBURN



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160.1 PURPOSE/INTENT

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Auburn through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This Ordinance establishes methods for controlling the introduction of pollutants from illicit discharges and connections into the drainage system and the waters of the State of Indiana per the Clean Water Act and the Indiana Department of Environmental Management's (IDEM) National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit (MS4GP). The objectives of this Ordinance are:

- A. To regulate the contribution of pollutants to Auburn's MS4 by any user;
- B. To prohibit illicit connections and discharges to the MS4; and
- C. To establish legal authority to conduct all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Ordinance.

160.2 DEFINITIONS

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

- Accidental Discharge
A discharge prohibited by this chapter which occurs by chance and without planning or consideration prior to occurrence.
- 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.
- City of Auburn
Employees or designees of the City of Auburn designated to enforce and administer this Ordinance. This shall also include the Indiana Department of Environmental Management, the DeKalb County Office of the Soil and Water District, the United States Environmental Protection Agency and any of their agents and or successors in interest.
- Clean Water Act
The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), any subsequent amendments thereto, and all rules and regulations promulgated pursuant to said Act.
- Construction Activity
Activities subject to the NPDES Construction Stormwater General Permit (CSGP). These include construction projects resulting in land disturbance of one acre or more. Construction activities encompassing less than one acre but are part of a larger common development equaling greater than one acre will also require coverage under the CSGP. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
- Floatable
Any solid waste that, due to its physical characteristics, will float on the surface of water. For the purposes of this rule, the term does not include naturally occurring floatables, such as leaves or tree limbs.



- Ground Water
Accumulations of underground water, natural or artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state. The term does not include manmade underground storage or conveyance structures.
- Hazardous Materials, Substances or Wastes
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.
- IDEM
Refers to the Indiana Department of Environmental Management.
- Illegal Discharge
Any direct or indirect non-stormwater discharge to the MS4, except as exempted in Section 160.007 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-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 the City of Auburn; 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 the City of Auburn.
- Illicit Discharge
Any discharge to a MS4 conveyance that is not composed entirely of stormwater, except naturally introduced floatables, such as leaves or tree limbs. Sources of illicit discharges include but is not limited to sanitary wastewater, septic tank effluent, commercial car wash wastewater, oil spills or disposal, radiator flushing disposal, laundry wastewater, roadway accident spillage, pollutant run-off, and household hazardous wastes.
- Industrial Activity
Means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
- Maximum Extent Practicable (MEP)
A performance standard or requirement within a permit to reduce the discharge of pollutants from a MS4 to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, which is achieved through planning and implementation of specific measures that are identified in the Stormwater Quality Management Plan.
- Municipal Separate Storm Sewer System (MS4)
A conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, which is:
 1. owned or operated by a federal, state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over stormwater, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges into waters of the state; or privately owned



- stormwater utility, hospital, university, or college having jurisdiction over stormwater that discharges into waters of the state;
- 2. designed or used for collecting or conveying stormwater;
- 3. not a combined sewer; and
- 4. not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.
- National Pollutant Discharge Elimination System (NPDES)
A permit issued by the USEPA or IDEM that authorizes the discharge of pollutants to Waters of the United States, whether the permit is applicable to an individual, a group, or on a general area-wide basis.
- Non-Stormwater Discharge
Any discharge to the MS4 that is not composed entirely of stormwater.
- Outfall
A point source discharge via a conveyance of stormwater run-off into a receiving stream or other body of water.
- Person
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.
- Permit Holder
Any person, partnership, corporation, or landowner who holds, or has an IDEM, USEPA or City of Auburn permit.
- Point Source
A discernible, confined, and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, or discrete fissure.
- Pollutant
Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquids and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that the 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. Also, but not limited to dredged spoil; incinerator residue, filter backwash; sewage; garbage; sludge; munitions; chemical wastes; solid wastes; toxic wastes; hazardous substances; biological materials; radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended; 42 U.S.C. 011, et seq., heat, wrecked or discarded equipment; rock; sand; cellar dirt; and other industrial, municipal, and agricultural waste; discharged into water.
- Premises
Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- Receiving Waters
Waterbody that receives a discharge from an outfall. The term does not include private drains, retention and detention basins, or constructed wetlands used as treatment.
- Stormwater

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

- Stormwater Conveyance
Any structural process for transferring stormwater between at least two points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, and roadways.
- USEPA
The United States Environmental Protection Agency
- Wastewater
Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- Waters of the United States
A term used in federal regulations that defines all water bodies regulated as waters of the U.S. as defined in 33 U.S.C. 1251 (40 CFR 120).
- Watercourse
Any river, stream, creek, brook, branch, natural or man-made drainageway in or into which stormwater runoff or floodwaters flow either continuously or intermittently.
- Water Quality
A term used to describe the chemical, physical, and biological characteristics of water, usually in respect to its suitability for a particular purpose.

160.3 APPLICABILITY

This Ordinance shall apply to all discharges, including illicit and illegal discharges, entering the MS4 that was generated on any developed and undeveloped lands unless explicitly exempted by the City of Auburn.

160.4 RESPONSIBILITY FOR ADMINISTRATION

The City of Auburn shall administer, implement, and enforce the provisions of this Ordinance within its jurisdiction. Any powers granted or duties imposed upon the City of Auburn may be delegated in writing by the Mayor to persons or entities acting in the beneficial interest of or in the employ of the City of Auburn, such as IDEM, the USEPA, or any of their agents, assignees and or successors in interest therein.

160.5 INTERPRETATION

Words and phrases in this chapter shall be construed according to their common and accepted meanings, except that words and phrases defined in § 160.02, shall be construed according to the respective definitions given in that section. Technical words and technical phrases that are not defined in this chapter, but which have acquired particular meanings in law or in technical usage shall be construed according to such meanings.

160.6 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.

160.7 ULTIMATE RESPONSIBILITY



The standards set forth herein and promulgated pursuant to this Ordinance are intended to comply with the NPDES permit issued to the City of Auburn. However, nothing herein shall be construed to ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the State.

160.8 DISCHARGE PROHIBITIONS

A. Prohibition of Illegal Discharges

No person shall discharge or cause to be discharged into the MS4, waterbodies or watercourses, directly or indirectly, 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 MS4 is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this Ordinance: water line and hydrant flushing for maintenance; irrigation water; uncontaminated pumped ground water; uncontaminated foundation, footing, and crawl space drains; fire suppression activities; uncontaminated excess storm sewer cleaning water not collected by a vacuum truck; residential car washing; non-commercial washing of vehicles by community organizations; external building wash down without detergents; uncontaminated condensate from air conditioning units, coolers, and other compressors, and from outside storage of refrigerated gases or liquids; springs; dechlorinated/debrominated residential swimming pool discharges; pavement wash waters provided spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; and uncontaminated ground water infiltration (as defined in 40 CFR 35.2005 (20)).
2. Discharges specified in writing by the City of Auburn as being necessary to protect public health and safety, nonthreatening to the public health and safety, or resulting in a discharge that would be contrary to the purpose of this Ordinance.
3. Dye testing is an allowable discharge but requires a verbal notification to the City of Auburn prior to the time of the test.
4. The prohibition shall not apply to 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 USEPA or IDEM, 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 MS4.

B. Prohibition of Illicit Connections

1. The construction, use, maintenance, or continued existence of illicit connections to the MS4 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 in violation of this Ordinance if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.

160.9 SUSPENSION OF MS4 ACCESS

A. Suspension due to Illicit Discharges in Emergency Situations

The City of Auburn may, without prior notice, suspend MS4 discharge access to a person or property owner 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 State or the United States. If the violator fails to comply with a suspension order issued in an emergency, the City of Auburn may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State, or to minimize danger to persons.

B. 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 City of Auburn will notify a violator of the proposed termination of its MS4 access.

The violator may petition the City of Auburn for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Auburn.

160.10 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 Auburn prior to the allowing of discharges to the MS4.

160.11 DISCHARGE INSPECTIONS AND MONITORING

A. Inspection and monitoring.

The City of Auburn has the authority to periodically inspect any portion of the MS4, whether publicly or privately owned, to detect and eliminate illicit connections and discharges into the MS4. The inspection may include dry weather screening of discharges from outfalls connected to the MS4 to determine if prohibited flows are being conveyed into the MS4. It could also include spot testing of waters contained in the MS4 itself to detect the introduction of pollutants into the MS4 by means other than a defined outfall, such as dumping or contaminated sheet runoff.

B. Access to Facilities

1. The City of Auburn, or a representative thereof, shall be permitted to enter and inspect the premises 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 Auburn.
2. Persons shall allow the City of Auburn 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.
3. The City of Auburn shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Auburn to conduct monitoring and/or sampling of the facility's stormwater discharge.
4. The City of Auburn has the right to require the discharger to install monitoring equipment, as necessary. The facility's sampling and monitoring equipment shall always be maintained 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 at a minimum in accordance with 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 permit holder at the written or oral request of the City of Auburn and shall not be replaced. The costs of clearing such access shall be borne by the permit holder.
6. Unreasonable delays in allowing the City of Auburn 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 of Auburn reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
7. If the City of Auburn 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 City of Auburn may seek issuance of a search warrant from any court of competent jurisdiction.

160.12 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The City of Auburn is authorized to require dischargers to implement pollution prevention measures, utilizing Best Management Practices (BMPs) necessary to prevent or reduce the discharge or pollutants into the MS4, or Waters of the State or United States.

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 watercourses using structural and non-structural BMPs.

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 MS4.

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.

160.13 STORAGE OF HAZARDOUS AND TOXIC MATERIAL

Storage or stockpiling of hazardous or toxic material within any watercourse, or in its associated floodway or floodplain, is prohibited. Storage or stockpiling of hazardous or toxic material, including sewage treatment plant stockpiles, on a property must include adequate protection and/or containment to prevent any such materials from entering any temporary or permanent stormwater conveyance or watercourse.

160.14 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.



160.15 NOTIFICATION OF SPILLS

Any person who operates, controls, or maintains a facility, premises, or property from which a spill occurs is responsible for notifying emergency response agencies and taking all necessary steps to ensure the discovery, containment, and cleanup of such release. This section is in addition to the procedures and requirements identified in the Indiana Spill Rule, 327 IAC 2-6.1.

Any discharger who accidentally discharges into the MS4 or a waterbody any substance other than stormwater or an exempted discharge shall immediately inform the City of Auburn concerning the discharge.

A written report concerning the discharge shall be filed with the City of Auburn, by the dischargers, within five (5) days. The written report shall specify:

1. The composition of the discharge and the cause thereof;
2. The date, time, and estimated volume of the discharge;
3. All measures taken to clean up the accidental discharge, and all measures proposed to be taken to prevent any recurrence; and
4. The name and telephone number of the person making the report, and the name and telephone number of a person who may be contacted for additional information on the matter.

A properly reported accidental discharge shall be an affirmative defense to a civil infraction proceeding brought under this chapter against a discharger for such discharge. It shall not, however, be a defense to a legal action brought to obtain an injunction, to obtain recovery of costs, or to obtain other relief because of or arising out of the discharge. A discharge shall be considered properly reported only if the discharger complies with all the requirements of this section and the Indiana Spill Rule (327 IAC 2-6.1). This requirement does not relieve discharger from notifying other entities as required by state or federal regulations.

160.16 ENFORCEMENT

A. Notice of Violation

Whenever the City of Auburn finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City of Auburn, or its agency and or assignees may order compliance by written notice of violation to the responsible person. Such notice may require the violator to cure or mitigate the violation by requiring the responsible person to perform any or all the following 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;
5. Payment of a fine to cover administrative and remediation costs; and
6. 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. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator. Such notice of violation shall contain:

1. The names and addresses of the owner and violator;
2. The address when available, or a description of the building, structure of land upon which the violation has occurred;



3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to bring the illegal activity into compliance with this chapter and a time schedule for the completion of such remedial action, which may include designating the violation requires immediate action of less than 24 hours;
5. A statement that should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator;
6. A description of the remedial measures, if any, that were necessary to bring the illegal activity into compliance with this chapter that were already taken by the Authorized Enforcement Agency or the authorized enforcement agency, the cost thereof and a statement that the violator shall be responsible for the remedial action already taken; and
7. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is sent.

B. Emergency

If an emergency exists and immediate action is required, the City of Auburn may abate or remedy the violation and said notice may be given after said abatement or remediation has occurred. In the event of such emergency, the City of Auburn may enter onto the subject property and may take all measures necessary to abate the violation. It shall be unlawful for any person to refuse access to the government agency or designated contractor to enter upon the property for the purposes set forth above.

160.17 APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination to the City of Auburn. The notice of appeal must be received within 7 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. In the event the landowner disagrees with the determination of the City of Auburn, the landowner may appeal a decision of the City of Auburn to the City of Auburn Common Council. The decision of the municipal authority or their designee shall be final.

160.18 ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 days of the decision of the municipal authority upholding the decision of the City of Auburn, then representatives of the City of Auburn shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, or agent in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

160.19 COST OF ABATEMENT OF THE VIOLATION

Within 15 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 objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority 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 by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of eight percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.



160.20 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 Auburn or designee 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.

160.21 COMPENSATORY ACTION

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

160.22 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.

160.23 PENALTY

Any person found in violation of any provision of this chapter shall be responsible for a civil infraction and subject to a maximum fine of \$2,500 for each offense, plus costs, damages, and expenses. Each day a violation continues after the original notification shall be deemed a separate offense under this Ordinance. The City of Auburn may recover all attorneys' fees court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

160.24 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 Auburn to seek cumulative remedies.