

ORDINANCE 2019-10

**AN ORDINANCE OF THE TOWN OF LOWELL, INDIANA
AMENDING THE STORM WATER MANAGEMENT USER FEES AND POLICIES**

WHEREAS, The Town of Lowell, owns and operates a municipal separate storm sewer system ("MS4"); and

WHEREAS, The Town of Lowell's (Town) Town Council (Council) created the Town's Department of Storm Water Management (hereinafter referred to as "Storm Water Utility") and delegated the plenary responsibility of overseeing the operation, maintenance, and repair of the Town's Municipal Separate Storm Sewer System (MS4) in compliance with all applicable federal, state, and local laws, rules and regulations to the Town's Storm Water Management Board (Board), including the responsibility of advising the Council on the implementation of federal, state and local rules concerning storm water management and identifying solutions to flooding concerns in the Town of Lowell; and

WHEREAS, Indiana Code § 8-1.5-5-7, as amended, provides authority to the Department of Storm Water Management (hereinafter referred to as "Storm Water Utility") for the Town of Lowell, Indiana, upon recommendation of the Board and after approval by the Council, to assess and collect user fees from all eligible properties identified in this Ordinance and located within the Town of Lowell (Town); and

WHEREAS, the Board has conducted an investigation into the needs for the management of the Town's storm water management, including holding an appropriately noticed public hearing on October 23, 2017, and has identified the need for an increase in user fees to properly and comprehensively deal with storm water management in the Town and the need for the policies of the Town governing the operations of the Storm Water Utility and storm water management in the Town as set forth herein below; and

WHEREAS, the Council finds that continued funding is needed to implement programs to comply with unfunded mandates from federal and state authorities relating to the management and regulation of the Town's MS4 and its related components; and

WHEREAS, Indiana Code § 8-1.5-5-6, as amended, enables the Board to:

1. Conduct investigations and studies;
- 1 2. Make findings and determinations;
- 2 3. Install, maintain and operate a storm water collection and disposal system;
- 3 4. Make all necessary or desirable improvements to the facilities, grounds and premises under its control;
- 4 5. Recommend to the Council reasonable and just rates and charges for all services provided by the Storm Water Utility; and

WHEREAS, after appropriate investigation and study, including input from the public, the Board determined that it is necessary for the public health and welfare, and to provide for public utility and benefit to the Town, to construct, reconstruct, repair and install capital improvements to the Town's storm water collection and conveyance systems in order to improve storm and surface water drainage within the Town; and

WHEREAS, based on the recommendation of the Board, and other information received by the Council, the Council has determined that it is necessary for increased funding to be provided to properly budget and support the operation, repair and maintenance of the Town's public storm water management system and to amend the Town's policies governing the operations of the Storm Water Utility and storm water management in the Town, all as set forth herein below.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Lowell, Indiana as follows:

§ 53.101 PURPOSE AND INTENT.

The purpose and intent of this subchapter is to ensure the health, safety and general welfare of the inhabitants of the Town of Lowell, Indiana, and protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the National Pollutant Discharge Elimination System (NPDES) permit process by reducing pollutants in storm water discharges and by prohibiting non-storm water discharges to the storm drain system.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06)

§ 53.102 INCORPORATION BY REFERENCE.

The following documents are incorporated by reference as a part of this subchapter and shall include any later amendments, repeals, and replacements to those regulations as the same are published in the Indiana Administrative Code with the effective dates as fixed herein.

(A) The requirements found in Rule 327 IAC 15-13-1 through IAC 15-13-22.

(B) The requirements found in Rule 327 IAC 15-5-1 through 15-5-12.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06)

§ 53.104 APPLICABILITY.

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

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06)

§ 53.105 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this subchapter are minimum standards; therefore, this subchapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the State of Indiana by that person. This subchapter shall not create liability on the part of the Town of Lowell, or any agent or employee thereof for any damages that result from any discharger's reliance on this subchapter or any administrative decision lawfully made hereunder.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06)

Section 53.103 is hereby amended to the Town of Lowell, Indiana Code of Ordinances which shall read as follows:

§ 53.103 DEFINITIONS.

For purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROVED PLANS. Plans approved by the Town of Lowell Storm Water Utility according to a permit and plan review by the Storm Water Utility which will govern all improvements made within the Town of Lowell that require storm water facilities or changes or alterations to existing storm water facilities.

AUTHORIZED ENFORCEMENT AGENCY. The Lowell Storm Water Management Board (see § 34.45), through its Lowell MS4 Operator or his or her designees.

BEST MANAGEMENT PRACTICES (BMPs). Any structural or nonstructural control measure utilized 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.

BOARD. The Town of Lowell Storm Water Management Board of Directors established pursuant to Indiana Code 8-1.5-5 under Section 7-51, 7-52, and 7-53, et seq., of the Town of Lowell Municipal Code.

CLEAN WATER ACT. The Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

CODE. Town of Lowell Municipal Code.

CONTIGUITY. Any entity's proximity to a designated MS4 area in such a way that it allows for direct discharges of storm water runoff into the regulated MS4 conveyance.

CONVEYANCE. Any structural process for transferring storm water between at least two points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, and roadways.

CONSTRUCTION ACTIVITY. Activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. These activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

COUNTY REGULATED DRAIN. Part of the storm water conveyance system under the jurisdiction of the Lake County Drainage Board, including certain ditches, tiles, and sewers.

DESIGN STORM. A rainfall event of specified size and return frequency that is used to calculate the runoff volume from an area and the capacity and peak discharge rate of a BMP.

DETENTION. The temporary storage of storm water runoff in a basin, pond or other structure to control the peak discharge rate to the MS4 by holding the storm water for a period of time and controlling the outflow.

DIRECTOR. A person appointed by the Town of Lowell Town Council to undertake the tasks and responsibilities set forth by this Ordinance, who shall serve at the discretion of the Council.

DISPOSAL. The discharge, deposit, injection, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste, or any constituent of the waste, may enter the environment, be emitted into the air, or be discharged into any waters, including ground waters.

DRAIN. Any separated storm sewer, tile, ditch, stream, swale or other storm water conveyance, channel or conduit.

EXEMPT DRAIN. Drains that are regulated by the Lake County Drainage Board.

GARBAGE. All animal solid, vegetable solid, and semi-solid wastes resulting from the processing, handling, preparation, cooking, serving or consumption of food or food materials.

HAZARDOUS WASTE. 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 CONNECTION. Either of the following:

(1) 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 conveyance which allows any non-storm water discharge including sewage, process wastewater, effluent, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains, washing machines, bathtubs, and sinks, regardless of whether the drain or connection had been previously allowed, permitted, or approved by any enforcement agency.

(2) 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.

ILLICIT DISCHARGE. Any discharge to an MS4 conveyance that is not composed entirely of storm water, except naturally occurring floatables, such as leaves or tree limbs.

IMPERVIOUS AREA. Real property that has been paved and/or covered with buildings and impervious materials which include, but are not limited to, concrete, asphalt, rooftop, blacktop and compacted gravel, such that the natural infiltration of water into the soil is prevented.

INDUSTRIAL ACTIVITY. An activity subject to NPDES industrial permits as defined in 40 C.F.R. pt. 122.26(b)(14).

INFILTRATION. A process by which storm water percolates into the ground.

LOT/PARCEL. A part or portion of land having a distinct legal description that is formally set forth in a conveyance instrument.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, swales or storm drains):

- (i) owned or operated by a city, town, borough, county, parish, district, association or other public body (created by or pursuant to State law);
- (ii) Designed or used for collecting, conveying or otherwise managing or treating storm water;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT. A permit issued by the EPA or the Indiana Department of Environmental Management 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.

PEAK DISCHARGE. The maximum rate of flow of water passing a given point during or after a rainfall event.

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.

POLLUTANT. Anything which causes or contributes to pollution. **POLLUTANTS** may include, but are not limited to: paints, varnishes, solvents; oil and automotive fluids; non-hazardous liquid and solid wastes; yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles or accumulations, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, effluent, fecal coliform, E. coli, 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.

PROPERTY CLASS CODE. A three-digit land use code number generated from the Lake County Assessors office's used to differentiate properties' use and primary purpose. For purposes of the Town's Storm Water Utility User Fee, this property class code will be used to determine each parcels monthly user fee.

PUBLIC STORM WATER FACILITIES. The various storm water and drainage works under the control and/or ownership of the Town, County, State or Federal Government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, swales or other structural components and equipment designed to transport, move, hold, treat or regulate storm water.

RETENTION. The holding of storm water runoff in a constructed basin or pond or in a natural body of water without release except by means of evaporation, infiltration or emergency bypass.

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, detention and other drainage structures.

STORM SEWER. A sewer designed or intended to convey only storm water, surface runoff and drainage, and not intended for sanitary sewage and industrial wastes other than unpolluted cooling water. The portion of a sewer intended to carry storm water only, which begins at the grating or opening where water enters said sewer, through the sewer and any other conduits to the outlet structure where water enters a stream, lake, watercourse, ditch or combined sewer.

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

STORM WATER POLLUTION PREVENTION PLAN. A document which describes the best management practices (BMPs) and activities to be implemented by a person or business to identify the source of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters.

STORM WATER SYSTEM. All constructed facilities, structures and watercourses under the ownership and/or control of the Town and/or the Storm Water Utility, used for collecting, storing and conducting storm water to, through and from drainage areas to the point of final outlet, including, but not limited to, any and all of the following: inlets, conduits and appurtenant features, creeks, channels, catch basins, ditches, streams, culverts, swales, retention and detention basins and pumping stations; and excluding therefrom, any part of the system of drains and watercourses under the jurisdiction of the Lake County Drainage Board or under ownership other than the Town.

STORM WATER UTILITY USER FEE: A charge imposed on users of the Town's Public Storm Water Facilities and Storm Water System.

STORM WATER UTILITY CUSTOMER/USER. The owner of a lot or parcel of land located within the Town of Lowell.

SUBDIVISION GROUP. All of the parcels of land within a platted development.

TLSWMD. Town of Lowell Storm Water Management Department.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.
(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06)

Section 53.106 is hereby amended to the Town of Lowell, Indiana Code of Ordinances which shall read as follows:

§ 53.106 STORMWATER MANAGEMENT USER FEE

(A) Per Ordinance 2017-19 adopted October 23, 2017, there is established and enacted a Town storm water management user fee which shall be assessed against each and every improved parcel of real estate within the boundaries of the Town based on the schedule below:

Property Class Codes	Description	Monthly Fee
100 – 199	Agriculture	\$3.90
300	Industrial Vacant Land	\$3.90
330 – 399	Industrial	\$49.00
400	Commercial Vacant Land	\$3.90
401	Commercial Apartment 4-19 Units	\$21.00
402 – 499	All commercial including apartment buildings over 19 units	\$49.00
500 – 509	Residential Vacant Land	\$1.60
510 – 545	Residential Single Family, Duplex and Three Unit including excess acreage	\$7.00
550	Residential Condo	\$7.00
598	Residential Leased Land	\$7.00
599	Other Residential Structure	\$7.00
650	Board of Education	\$27.00
600, 610, 620, 621, 622, 630, 640, 645, 660, 661, 662, 665, 669	Federal, State, County, Municipal and Other Exempt Properties	\$9.00
680, 685, 686	Charitable, Religious and Churches	\$21.00
690	Cemetery	\$3.90
699	Other Exempt Properties	\$7.00
820	Heat and Power Utilities	\$49.00
830 – 841	Railroad and Pipeline	\$3.90
850 – 871	Sewage, Phone and Water Utilities	\$49.00

(B) The storm water management user fee shall be due on the same payment date as the due date on the Lake County Treasurer's Tax Bill. Delinquent storm water management user fees may be collected in any manner authorized by law. In pursuing the collection or

delinquent storm water management user fees, the Town shall be permitted to collect its costs of collection, including reasonable attorney's fees.

€ The Clerk-Treasurer is authorized to establish a storm water management fund. All revenue generated by imposition of the storm water management user fee shall be deposited in said fund, and the Clerk Treasurer shall be responsible for maintaining the appropriate ledgers and accounts associated with the creation of the fund.

(D) The Board of Directors of the Town of Lowell Storm Water Management Board shall annually submit to the Town Council a proposed budget for the expenditure of the storm water management user fee which shall be reviewed and approved by the Town Council in the same manner as other Town budgets.

(E) Upon approval of the submitted budget, the Board of Directors of the Town of Lowell Storm Water Management Board shall be authorized and empowered to spend the funds upon proper proof and approval of claims.

(F) The Board of Directors of the Storm Water Management Board shall implement policies and procedures governing the expenditure of the storm water management user fee, so as to remain in full compliance with IC 8-1.5-5-1 et seq., and any and all other applicable statutory requirements.

(G) *Storm Water Utility Improvement Fund.*

(1) *Establishment.* A Storm Water Utility Improvement Fund is hereby established for the purpose of receiving annual transfers.

(2) *Deposit of funds.* At the end of each calendar year, the Clerk-Treasurer shall determine a six-month average for operating expenses, and transfer any excess funds to the Storm Water Utility Improvement Fund.

(3) *Use of funds.* The Storm Water Management Board and/or the Town Council shall use the funds for specific capital improvements and/or projects appropriated in the same manner as other town budgets.

(Ord. 2012-14, passed 12-10-12; Am. Ord. 2014-29, passed 12-22-14)

§ 53.107 EXEMPT PROPERTIES

(1) Federal, State, Town and County Roadways – Streets, roads and highways owned by Federal, State, Town and/or County authorities shall be exempt from the Storm Water Utility User Fee. They form an integral part of the Storm Water System. These Primary elements of the drainage system yield community-wide benefits and are installed to service the general public's interests.

§ 53.108 APPEALS OF FEE DETERMINATIONS - If a Storm Water Utility Customer/User determines that the user fee assigned to said user's real property is incorrect due to an error in the properties classification code, said Storm Water Utility Customer/User shall have the right to appeal.

(A) The Storm Water Utility Customer/User shall complete a Petition to Appeal Storm Water Assessment form ("Petition"), copies of which are available at the Storm Water Utility's

administrative office, which, after being fully completed, shall be returned to the Storm Water Utility Director together with any documentation supporting the appeal.

(B) The Director shall consider the grounds for the appeal and, upon review thereof, shall render a written determination to the Board and the Storm Water Utility Customer/User that either the original user fee determination should be affirmed or the Storm Water Utility User Fee should be adjusted on the grounds stated in the Petition. The Director's determination shall be made within twenty (20) days of the filing of a Petition to Appeal.

(C) Said determination shall be forwarded to the Storm Water Utility Customer/User by certified mail, return receipt requested. The Storm Water Utility Customer/User shall then have thirty (30) days from the date of mailing of said determination to request reconsideration of the Director's decision by the Board. Any additional facts concerning the appeal shall be submitted in writing to the Board, along with a copy of the original Petition and supporting documents. The Director shall submit a written report to the Board regarding the reasons for the Director's determination in the case, along with any documents used in ruling on the appeal.

(D) Thereafter, the Board shall review all documentation and, if requested in writing by the Storm Water Utility Customer/User in its appeal petition, conduct a hearing to determine and resolve the appeal. Such hearing will be scheduled by the Board and the Storm Water Utility Customer/User will be notified by certified mail of the date of such hearing, which notice shall be received by the Storm Water Utility Customer/User at least seven (7) days prior to the date of such hearing. Whether or not a hearing is held, a written opinion shall be rendered by the Board within forty five (45) days after the hearing or submission of documentation if no hearing is conducted. The written opinion of the Board shall constitute the final determination of the Town. The hearing before the Board shall be electronically recorded and, if requested by the Storm Water Utility Customer/User, a transcript of the hearing shall be provided to the Storm Water Utility Customer/User. The Storm Water Utility Customer/User will be charged a cost per page as from time to time determined by the Board in accordance with applicable law as amended from time to time.

(E) A Storm Water Utility Customer/User aggrieved by the final Board determination shall have the right to judicial review of such determination in accordance with applicable Indiana law. Any judicial review must be filed with a court of competent jurisdiction within thirty (30) days of the date of the Board's determination.

(F) If a reduction is ordered by the Board or any Court of competent jurisdiction, the Storm Water Utility Customer/User shall be credited accordingly for any overpayment made from the date of the Petition.

(G) Dispute or appeal of a User Fee determination shall not be a valid reason for non-payment of the originally assessed storm water utility user fee by the Storm Water Utility Customer/User. The Board will refund to the user any overpayments made on user fee assessments that are reduced via the appeal process.

PROHIBITIONS

§ 53.115 ILLEGAL DISCHARGES.

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

- (1) Waterline flushing or other potable water sources;
- (2) Landscape irrigation or lawn watering;
- (3) Diverted stream flows;
- (4) Rising ground water or ground water infiltration to storm drains;
- (5) Uncontaminated pumped ground water;
- (6) Foundation or footing drains (not including active ground water dewatering systems), and crawl space pumps;
- (7) Air conditioning condensation;
- (8) Springs;
- (9) Non-commercial washing of vehicles;
- (10) Natural riparian habitat or wetland flows;
- (11) Dechlorinated swimming pools to less than 0.05 milligrams per liter of chlorinated residual;
- (12) Fire-fighting activities;
- (13) Any other water source not containing pollutants;
- (14) Dye testing discharge upon verbal notification to the authorized enforcement agency prior to the time of the test;
- (15) Any non-storm water 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;
- (16) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

§ 53.116 ILLICIT CONNECTIONS.

(A) The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.

(B) 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.

(C) A person is considered to be in violation of this subchapter if the person connects a line conveying sewage, effluent, or biologically contaminated water to the storm drain system, or allows such a connection to continue.

(D) A person is considered to be in violation of this subchapter if the person reinstates a suspended connection to the storm drainage system without prior approval of the authorized enforcement agency.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

§ 53.117 WASTE DISPOSAL.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the State of Indiana, any refuse, rubbish, garbage, litter, or other discharged or abandoned objects, articles, accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purpose of collection are exempt from this prohibition.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

REGULATION OF DISCHARGES

§ 53.125 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 the permit. Proof of compliance with the permit may be required in a form acceptable to the Lowell MS4 Operator prior to allowing discharges to the MS4.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

§ 53.126 MONITORING OF DISCHARGES.

(A) The Lowell MS4 Operator shall be permitted to enter and inspect facilities subject to regulation under this subchapter as often as necessary to determine compliance with this subchapter.

(B) Persons shall allow the Lowell MS4 Operator ready access to all parts of the premises for the purpose 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 law.

(C) The Lowell MS4 Operator shall have the right to set up on any permitted facility such devices as necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

(D) The Lowell MS4 Operator 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 storm water flow and quality shall be calibrated to their accuracy.

(E) Any temporary or permanent obstruction to the facility being inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Lowell MS4 Operator and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(F) Unreasonable delay and/or denial of access to a permitted facility are violations of a storm water discharge permit and this subchapter. The Lowell MS4 Operator is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. (Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

§ 53.127 REQUIREMENTS TO PREVENT, CONTROL AND REDUCE STORM WATER POLLUTANTS.

The Lowell MS4 Operator 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 drainage system, or waters of the State of Indiana. The owner or operator shall provide, at his or her 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. 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 the 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 storm water 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 storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit. (Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

§ 53.128 WATERCOURSE PROTECTION.

Every person owning property within a watershed, through which a watercourse passes or the 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. (Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

§ 53.129 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 water of the State of Indiana, that person shall take all necessary steps to ensure the discovery, containment, and clean up of the release. In the event of such a release of hazardous materials, the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the authorized enforcement agency in person, by phone, or by facsimile no later than the next business day, and written notice given no later than three business days of initial notification. The owner or operator shall also retain an on-site written record, for three years, of the discharge and the actions taken to prevent its recurrence. (Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06) Penalty, see § 53.199

ADMINISTRATION AND ENFORCEMENT

§ 53.140 PROGRAM ENFORCEMENT.

(A) Suspension of MS4 access.

(1) In the event of an emergency, the Lowell MS4 Operator may, without prior notice, suspend MS4 discharge access to a person when the suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to public health, the environment, the MS4, or the waters of the State of Indiana. 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 the danger to the public, damage to the MS4 or waters of the State of Indiana.

(2) Any person discharging to the MS4 in violation of this subchapter may have their MS4 access terminated if the termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

(B) Notice of violation.

(1) Whenever the Lowell MS4 Operator finds that a person has violated any prohibition or failed to meet any requirements of this subchapter, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. The notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

(e) Payment of a fine to cover all attorney, administrative, sampling and remediation costs;

(f) The implementation of source control or treatment BMPs.

(2) If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which the remediation or restoration must be completed. The notice shall advise that should the violator fail to remediate or restore within the established deadline, the work will be done by a contractor and all the expenses shall be charged to the violator.

(C) *Appeal of notice of violation.* Any person receiving a notice of violation may appeal, in writing, the determination of the authorized enforcement agency. The notice of appeal must be received within 15 days from the date of the notice of violation. The Lowell Storm Water Management Board shall hold a hearing within 15 days from the date of receipt of the notice of appeal. The decision from the hearing shall be final.

(D) *Enforcement measures after appeal.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or deadline set during the appeal hearing, the authorized enforcement agency shall enter upon the subject private property and is 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, agent or person in possession of any premises to refuse to allow the authorized enforcement agency or its designated contractor to enter upon the premises for the purposes set forth above.

(E) *Cost of abatement.* Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of the abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days of notification. If the amount due is not paid within 30 days or by the date expressed by the authorized enforcement agency, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Auditor so that the Auditor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06)

§ 53.199 PENALTY.

(A) *Injunctive relief.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this subchapter. If a person has violated or continues to violate the provisions of this subchapter, the authorized enforcement agency may petition the courts 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.

(B) *Compensatory action.* In lieu of enforcement proceedings, penalties, and remedies authorized by this subchapter, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, and the like.

(C) *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 subchapter, is a threat to public health, safety and welfare, and is deemed a nuisance, and may be summarily abated or restored at the violator's expenses, and/or civil action to abate, enjoin, or otherwise compel the cessation of the nuisance may be taken.

(D) *Remedies not exclusive.* The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

(Ord. 2005-02, passed 1-24-05; Am. Ord. 2006-25, passed 12-28-06)

Cross-reference:

Nuisances, see Ch. 96

§ 53.201 GENERAL PROVISIONS.

(A) *Findings of fact.* It is hereby determined that land development projects increase storm water runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposit; and contribute to increased quantities of water-borne pollutants; and storm water runoff, soil erosion and non-point source pollution can be controlled and minimized through the regulation of storm water runoff from development sites.

(B) *Purpose.* This subchapter is intended to set standards to regulate the quantity and quality of storm water runoff when land use changes to a use that may result in increased imperviousness. These minimum requirements are established to protect and safeguard the general health, safety and welfare of the public residing in watersheds within this jurisdiction. It shall be the policy of the town and the Lowell Storm Water Management Board that these minimum requirements shall be required for any new development, redevelopment and new construction located within the town not exempt under this subchapter. This subchapter seeks to meet this purpose through the following objectives:

(1) Minimize increases in storm water runoff from any development in order to reduce flooding, siltation, increases in stream temperature and stream bank erosion, and maintain the integrity of stream channels;

(2) Minimize increases in non-point source pollution caused by storm water runoff from development that would otherwise degrade local water quality;

(3) Reduce storm water runoff rates and volumes, soil erosion and non-point source pollution, wherever possible, through storm water management controls; and to ensure that these management controls are properly maintained and pose no threat to public safety.

(C) *Applicability.* The performance standards herein must be met for all new development areas that disturb one or more acres of land; or disturbances of less than one acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land; and all redevelopment areas that disturb 10,000 square feet of surface area or more within the town. The following activities may be exempt from these storm water performance criteria;

(1) Developments that do not disturb more than one acre of land, provided they are not part of a larger common development plan; or

- (2) Any logging and agricultural activity; or
 - (3) Additions or modifications to existing single-family structures; or
 - (4) Repairs to any storm water treatment practice deemed necessary by the administering authority.
- (Ord. 2006-25, passed 12-28-06)

§ 53.202 DEFINITIONS.

For purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTERING AUTHORITY. The Town of Lowell Storm Water Management Board through the MS4 Operator, or designee, having been designated by the Town Council to administer this subchapter.

APPLICANT. A property owner or agent of a property owner who has filed an application for a storm water management permit.

AVERAGE ANNUAL RAINFALL. A calendar year of precipitation, excluding snow, that is considered typical.

BEST MANAGEMENT PRACTICE (BMP). Any structural or nonstructural control measure utilized 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.

BUILDING. Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal or property, and occupying more than 100 square feet of area.

BUSINESS DAY. A day the office of the MS4 Operator is routinely and customarily open for business.

CEASE AND DESIST ORDER. A court-issued order to halt land-disturbing construction activity that is being conducted without the required permit.

CHANNEL. A natural or artificial watercourse with a definite bed and banks that conduct continuously or periodically flowing water.

CLEARING. Any activity that removes the vegetative surface cover.

CONNECTED IMPERVIOUSNESS. An impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

CONSTRUCTION ACTIVITY. Land-disturbing activities associated with the construction of infrastructure or structures. The term **CONSTRUCTION ACTIVITY** does not include routine ditch or road maintenance, or minor landscaping projects.

CONSTRUCTION PROJECT SITE. The physical location(s) or legal boundaries within which a construction activity or a series of construction activities is planned to be or is being accomplished.

CONSTRUCTION SITE ACCESS. A stabilized stone surface at all points of construction-related egress from a project site, planned and installed in accordance with specification from an approved reference manual, and maintained throughout the period of land-disturbing activities for the purpose of capturing and detaining sediment carried by tires, tracks, or other surface-contact components of vehicles, earthmoving equipment, or material and personal transport conveyances.

DEDICATION. The deliberate appropriation of property by its owner for general public use.

DEPARTMENT. The Indiana Department of Environmental Management (IDEM).

DESIGN STORM. A hypothetical, discrete rainstorm, characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

DETENTION. The temporary storage of storm runoff in a storm water management practice, with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

DETENTION FACILITY. A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff, and gradual release of stored water at controlled rates.

DEVELOPER. A project site owner or person financially responsible for construction activity; or an owner of property who sells, leases, or offers for sale or lease, any lot(s) in a subdivision or larger common plan of development or sale.

DIRECTOR. The chief executive officer of IDEM or his or her designee.

DRAINAGE EASEMENT. A legal right granted by a landowner to a grantee, allowing the use of private land for storm water management purposes.

DRAINAGE WAY. Any channel that conveys surface storm water runoff.

EFFECTIVE INFILTRATION AREA. The area of the infiltration system that is used to infiltrate runoff, which does not include the area used for site access, berms or pretreatment.

EROSION. The process by which the land's surface is worn away by the action of wind, water, ice or gravity.

EROSION AND SEDIMENT CONTROL PLAN. A set of plans prepared by or under the direction of a licensed professional engineer, licensed land surveyor, or certified professional in storm water quality (CPSWQ), indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

EROSION AND SEDIMENT CONTROL SYSTEM. Appropriate control measures combined to prevent or minimize the wearing away of soil, sediment and rock fragments by

water, wind or ice, and to intercept detached or suspended particles to prevent their discharge from or within a project site.

FEE IN LIEU. A payment of money in place of meeting all or part of the storm water performance standards required by this subchapter.

FINAL STABILIZATION. The establishment of permanent vegetative cover or the application of a permanent, non-erosive material to areas where all land-disturbing activities have been completed, and no additional land-disturbing activities are planned under the current plan.

FINANCIAL GUARANTEE. A performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the town by the responsible party to assure that requirements of the article are carried out in compliance with the storm water management plan.

GRADING. Excavation or fill of material, including the resulting conditions thereof.

HOTSPUR. An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

HYDROLOGIC SOIL GROUP (HSG). A Natural Resource Conservation Service classification system, in which soils are categorized into four runoff potential groups. The groups range from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

IMPERVIOUS SURFACE. An area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of areas that typically are impervious.

INDIVIDUAL BUILDING LOT. A single parcel or land in a multi-parcel development.

INDUSTRIAL STORM WATER PERMIT. A National Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries, which regulates the pollutant levels associated with industrial storm water discharges or specifies on-site pollution control strategies.

IN-FILL AREA. An undeveloped area of land located within existing development.

INFILTRATION. The entry of precipitation or runoff into or through the soil.

INFILTRATION SYSTEM. A device or practice, such as a basin, trench, rain garden or swale, designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns, or minimal infiltration from practices, such as swales or roadside channels, designed for conveyance and pollutant removal only.

JURISDICTIONAL WETLAND. An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

LAND-DISTURBING CONSTRUCTION ACTIVITY. Any man-made change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting and grading.

LANDOWNER. The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

MAINTENANCE AGREEMENT. A legally recorded document that acts as a property deed restriction, and provides for long-term maintenance of storm water management practices.

MEASURABLE STORM EVENT. A precipitation event that results in a total measured accumulation of precipitation equal to or greater than one-half inch of rainfall.

MAXIMUM EXTENT PRACTICABLE (MEP). A level of implementing best management practices that takes into account the best available technology, cost effectiveness and other competing issues, such as human safety and welfare, endangered and threatened resources, historic properties and geographic features.

MS4 AREA. Within this subchapter, the corporate limits of the town permitted under an NPDES permit regulated by 327 IAC 15-13.

MS4 OPERATOR. The person locally responsible for development, implementation or enforcement of the storm water quality management plan (SWQMP) for the town, as regulated under 327 IAC 15-13, or an authorized representative thereof.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). A system of storm water conveyances either owned or operated or regulated by a governmental agency that IDEM has designed as responsible to eliminate or minimize pollutant loadings of the storm water entering waters of the state.

NEW DEVELOPMENT. Development resulting from the conversion of previously undeveloped land or agricultural land uses.

NON-POINT SOURCE POLLUTION. Pollution from any source other than from any discernible, confined and discrete conveyances, including but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

NOTICE OF PLAN APPROVAL (NPA). A notification from the MS4 Operator to the project site owner that the construction plan for a project site has been reviewed and approved by the MS4 Operator. The project site owner must insert the NPA with the notice of intent sent to the Director of IDEM at least 48 hours prior to initiating land-disturbing activities at the construction project site.

NPDES. The National Pollutant Discharge Elimination System, a program administered by IDEM to reduce or eliminate pollutant loadings into public waters.

OFF-SITE FACILITY. A storm water management measure located outside the subject property boundary described in the permit application for land development activity.

ON-SITE FACILITY. A storm water management measure located within the subject property boundary described in the permit application for land development activity.

PEAK DISCHARGE. The maximum rate of flow from a point of storm water discharge during or immediately following a storm event, usually in reference to a specific return period or "design storm."

PERCENT FINES. The percentage of a given sample of soil that passes through a # 200 sieve.

Note to uses: Percent fines can be determined using the *American Society for Testing and Materials, Volume 04.02*, "Test Method C117-95 Standard Test Method for Materials Finer than 75- μ m (No .200) Sieve in Material Aggregates by Washing." Copies can be obtained by contacting the American Society for Testing and Materials, 100 Barr Harbor Drive, Conshohocken, PA 19428-2958, by phoning 610-832-9585, or online at: "<http://www.astm.org>."

PERIMETER CONTROL. A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

PERMANENT STABILIZATION. The establishment, at a uniform minimum of 70%, across the disturbed areas of vegetative cover or permanent non-erosive material that ensures the resistance of the underlying soil to erosion, sliding or other movement.

PERVIOUS SURFACE. An area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

PHASING OF CONSTRUCTION. Sequential development of smaller portions of a large project site, stabilizing each portion before initiating land-disturbing activities on the next portion, to minimize exposure of land to erosion.

POST-CONSTRUCTION SITE. A site following the completion of land-disturbing construction activity and final site stabilization.

PRE-DEVELOPMENT CONDITION. The extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

PROTECTIVE AREA. An area of land that commences at the delineated boundary of lakes, streams, rivers or wetlands, and that is the greatest of the following widths, as measured horizontally from the boundary to the closest impervious surface. However, in this definition, **PROTECTIVE AREA** does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location. Six categories of protective area have been identified:

- (1) For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest: 75 feet.

(2) For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current: 50 feet.

(3) For lakes: 50 feet.

(4) For highly susceptible wetlands: 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

(5) For less susceptible wetlands: 10% of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

(6) For concentrated flow channels with drainage areas greater than 130 acres: 10 feet.

RECHARGE. The replenishment of underground water reserves.

REDEVELOPMENT. Any construction, alternation or improvement where structures and/or impervious surfaces are removed and/or replaced.

RESPONSIBLE PERSON. Any person who is responsible for or permits any violation of this subchapter.

RUNOFF. An accumulation of storm water flow that is moving across the surface of the earth as sheet flow or concentrated flow in natural surface watercourses, drains or waterways.

SEDIMENT. Solid material, both organic and mineral, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity or ice, and has come to rest on the earth's surface.

SEDIMENT CONTROL. Measures that prevent eroded sediment from leaving the site.

SEDIMENTATION. The settling and accumulation of unconsolidated sediment carried by storm water runoff.

SITE. A parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

SITE DEVELOPMENT PERMIT. A permit issued by the municipality for the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading.

START OF CONSTRUCTION. The first land-disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of

streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

STOP WORK ORDER. An order issued by the MS4 Operator, or designee, that requires that all construction activity on the site be stopped.

STORM WATER MANAGEMENT. The use of structural or nonstructural practices designed to reduce storm water runoff pollutant loads, discharge volumes, peak-flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat.

STORM WATER MANAGEMENT BOARD. The administering authority of this subchapter, established and empowered by the §§ 34.45 and 34.46.

STORM WATER MANAGEMENT PLAN. A comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.

STORM WATER QUALITY MEASURE. A practice or combination of practices to control or minimize pollutants associated with storm water runoff.

STORM WATER RETROFIT. A storm water management practice designed for an existing development site that previously had either no storm water management practice in place, or a practice inadequate to meet the storm water management requirements of the site.

TEMPORARY STABILIZATION. The covering of soil to ensure its resistance to erosion, sliding or other movement. The term includes vegetative cover, anchored mulch, or other non-erosive materials applied at a uniform minimum density of 70% across the disturbed areas of a project site.

TOTAL MAXIMUM DAILY LOAD (TMDL). A calculation of the maximum amount of pollutant that a water body can receive and still meet water quality standards, established under Section 303(d) of the Federal Clean Water Act, and allocating pollutant loadings among point and non-point sources. The calculation must include a margin of safety that accounts for scientific uncertainty and future growth. Seasonal variations are also included. The **TMDL** is calculated using the following equation

$$TMDL = WLA + LA + MOS + SV, \text{ where:}$$

- WLA = Waste Load Allocations (point sources)
- LA = Load Allocations (non-point sources)
- MOS = Margin of Safety
- SV = Seasonal Variation

TOP OF THE CHANNEL. An edge or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12 % or less continually for the initial 50 feet, landward from the ordinary high-water mark, the **TOP OF THE CHANNEL** is the ordinary high-water mark.

TR-55. The United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), *Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55*, June 1986.

TRACKING. The movement and re-depositing of dirt, mud, aggregate, sediment or other storm water pollutants from a project site by the actions of wheels, tires, skids, tracks or other surface-contact components of cars, trucks, heavy equipment, or material and personnel transport conveyances.

TYPE II DISTRIBUTION. A rainfall type curve as established in the United States Department of Agriculture, Soil Conservation Services, *Technical Paper 149*, published 1973.

WATER QUALITY VOLUME (WQ_v). The storage needed to capture and treat the "first flush" of runoff. The **WATER QUALITY VOLUME** is determined as the runoff resulting from the first inch of rainfall upon the site.

WATERCOURSE. Any body of water, including but not limited to, lakes, ponds, rivers, streams and bodies of water, delineated within the town.

WATERWAY. A channel that directs surface runoff to a watercourse or to the public storm drainage system.
(Ord. 2006-25, passed 12-28-06)

§ 53.203 PERFORMANCE CRITERIA FOR STORM WATER MANAGEMENT.

(A) *Performance criteria.* Prior to design, applicants are required to consult with the administering authority to determine if they are subject to additional storm water design requirements. Unless judged by the administering authority to be exempt or granted a waiver, the following performance criteria shall be addressed for storm water management at all sites.

(1) All site designs shall establish storm water management practices to control the peak-flow rates of storm water discharge associated with specified design storms, and to reduce the generation of storm water,

(2) These practices should seek to utilize pervious areas for storm water treatment, and to infiltrate storm water runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas, to the maximum extent practical, to provide treatment for both water quality and quantity.

(3) Natural topography and land cover features, such as natural swales, natural depressions, native soil-infiltrating capacity, and natural groundwater recharge areas, shall be preserved and used, to the extent possible, to meet the requirements of this section.

(B) *Minimum requirements.*

(1) *Quantity calculations - estimated.*

(a) Design of off-site runoff, on site conveyance network, and street drainage shall meet the minimum requirements set forth in the

current edition of the Lowell Town Standards adopted by the Lowell Town Council;

(b) *Lot drainage.*

1. *Minimum lot grades.*

a. *Primary lot.* The **PRIMARY LOT** is that portion of the lot between the frontage road and the rear face of the residence or building. The minimum grades permissible in the primary lot are as follows:

<i>Type of grade.</i>	<i>Recommended</i>	<i>Minimum</i>
Surface	2%	1%
Lot Line Swale	2%	1%
Cross Lot Swale	1%	0.5%

b. *Secondary lot.* The **SECONDARY LOT** is that portion of the lot between the rear property line and the rear face of the residence or building. The minimum grades permissible in the secondary lot are as follows:

<i>Type of grade</i>	<i>Recommended</i>	<i>Minimum</i>
Surface	1.5 %	1%
Lot Line Swale	1%	0.5%
Cross Lot Swale	1%	0.5%
Surface Over Septic Fields	2%	1

2. *Common swales.*

a. A **COMMON SWALE** is one that serves as a drainage course, carrying the runoff from two or more lots or properties. (Side lot line swales may be excepted from this requirement.)

(2) *Quality calculations - actual: storm water quality requirements (treatment of the WQ_v upon development completion).* The **WATER QUALITY VOLUME** is the storage needed to capture and treat the runoff from the first inch of rainfall. In numerical terms, it is equivalent to an inch of rainfall multiplied by the volumetric runoff coefficient (R_v) and the site area.

(a) The following equation is used to calculate WQ_v (in acre-feet):

$$WQ_v = \frac{(P)(R_v)(A)}{12}$$

where:

WQ_v = water quality volume (acre-feet)

P = one inch of rainfall

R_v = 0.05 + 0.009 (I) where I is the percent impervious cover

A = area in acres

(3) *Impact drainage areas – special requirements in protective areas.*

(a) The administering authority is authorized, but is not required, to classify certain geographical areas as impact drainage areas, and to enact and promulgate regulations, which are generally applied. In determining impact drainage areas, the administering authority shall consider such factors as topography, soil type, capacity of existing regulated drains, and distance from adequate drainage facilities. In addition to specific impact drainage areas classified by the administering authority, the following

areas are hereby designated as impact drainage areas, unless good reason for not including them is presented and approved by the Storm Water Management Board:

1. A floodway, floodway fringe or floodplain boundary as designated by the Indiana Department of Natural Resources.

2. A flood boundary area or floodway as designated by the Federal Emergency Management Agency National Flood Insurance Program.

3. Land within 75 feet of each bank of any open channel, regulated drain.

4. Land within 75 feet of the centerline of any regulated drain tile.

(b) Impervious surfaces shall be kept out of the protective area to the maximum extent practicable.

(c) Where land-disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

Note to users: It is recommended that seeding of non-aggressive vegetative cover be used in the protective areas. Vegetation that is flood- and drought-tolerant, and can provide long-term bank stability because of an extensive root system, is preferable.

(d) Best management practices, such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources may be located in the protective area.

(e) This paragraph does not apply to:

1. Redevelopment sites;
2. In-fill development less than five acres; or
3. Structures that cross or access surface waters, such as boat landings, bridges and culverts.

(f) Storm water discharges to critical areas with sensitive resources (i.e., navigable waters, receiving waters with approved TMDL limits, recharge areas, water supply reservoirs) may be subject to

additional performance criteria, or may need to utilize or restrict certain storm water management practices.

(4) *Fueling and vehicle maintenance areas.* Special requirements for new retail gasoline outlets, new municipal, state, federal, institutional or commercial refueling areas, or refueling areas that replace their existing tank systems. (Excludes individual or agricultural users.)

(a) Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

(b) **Note to users:** A combination of the following BMPs may be used:

1. Oil and grease separators;
2. Canopies;
3. Petroleum spill cleanup materials; or
4. Any other structural or nonstructural method of preventing or treating petroleum in runoff.

(5) *Alternative requirements.* The administrative authority may establish storm water management requirements more stringent than those set forth in this section, if the MS4 Operator determines that an added level of protection is needed to protect sensitive resources.

(Ord. 2006-25, passed 12-28-06; Am. Ord. 2015-21, passed 9-14-15)

§ 53.204 STORM WATER MANAGEMENT PLAN DESIGN CRITERIA.

(A) *Minimum requirements.* All development disturbing at least one acre and all redevelopment disturbing at least 10,000 square feet must include provisions to preserve or minimize impacts to pre-development site hydrology and topography, to the maximum extent practicable, through runoff pollution prevention techniques. In addition to runoff pollution prevention measures, storm water treatment BMPs shall be incorporated into plan design as needed to meet the performance criteria in § 53.203.

(B) *Runoff pollution prevention.*

(1) *Storm water management begins with thoughtful design.* Site planning that integrates comprehensive storm water management from the outset is the most effective way to reduce and prevent pollution and flooding. Good site planning can also reduce the size and cost of structural solutions. When BMP storm water structures are proposed only at the final stages of design and construction, the result is often unnecessarily large and costly facilities. Planning ahead can prevent the need for large structures.

(2) *Site-planning practices.* With careful site planning, developers and municipalities can reduce the amount of impervious area created by pavement and roofs,

and thus, reduce the volume of runoff and associated pollutants requiring control. Practices that could be considered:

- (a) Select site designs that preserve or minimize impacts to pre-development site hydrology and topography.
- (b) Protect environmentally sensitive areas.
- (c) Practice conservation development.
- (d) Use cluster development.
- (e) Create open space.
- (f) Maximize the flow path from inflow points to outflow points.
- (g) Provide underdrain systems, where applicable.
- (h) Reduce hydraulic connectivity of impervious surfaces.
- (i) Practice rooftop greening.
- (j) Relax frontage and setback requirements.
- (k) Modify sidewalk standards.
- (l) Modify driveway standards.
- (m) Use alternative cul-de-sac designs.
- (n) Use alternative parking lot surface.

(C) *Storm water treatment BMPs.*

(1) *Types of treatment BMPs.*

- (a) A variety of BMPs are effective in:
 - 1. Filtering storm water;
 - 2. Reducing the speed at which it leaves a site; and
 - 3. Reducing the volume of runoff
- (b) These three actions are critical to reducing non-point-source water pollution and protecting downstream water bodies.
- (c) Some types of storm water treatment BMPs are:
 - 1. Retention systems;
 - 2. Detention systems;

3. Infiltration systems;
4. Filtration systems;
5. Constructed wetlands; and
6. Alternative outlet designs.

(2) *Location and regional treatment options.* All storm water storage facilities shall be constructed within a dedicated storm water storage easement, which meets the minimum requirements set forth in the latest edition of the Lowell Town Standards adopted by the Lowell Common Council.

(3) *Location of BMPs.* BMPs may be located on site or off site as part of a regional storm water device, practice or system.

(4) *Off-site management conditions.* The administering authority may approve off-site management measures, provided that all of the following conditions are met:

(a) The administering authority determines that the post-construction runoff is covered by a storm water management system plan that is approved by the local public agency; and

(b) The plan approved contains specific management requirements consistent with the stated purposes and intent of this subchapter.

(5) *Off-site facility conditions.* The off-site facility shall meet all of the following conditions:

(a) The facility is in place;

(b) The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this subchapter; and

(c) The facility has a person or entity legally obligated and responsible for its long-term operation and maintenance.

(6) *Exemption fee.* Where a regional treatment option is utilized, such that the Storm Water Management Board may exempt the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Board. In determining the fee for post-construction runoff, the Board shall consider an equitable distribution of the cost for land, engineering design, construction and maintenance of the regional treatment option.

(Ord. 2006-25, passed 12-28-06; Am. Ord. 2015-21, passed 9-14-15)

§ 53.205 STORM WATER MANAGEMENT PERMIT PROCEDURES AND REQUIREMENTS.

(A) *Permit required.*

(1) No responsible party may commence a land-disturbing construction activity within the town without first receiving prior approval of a site development permit.

(2) No developer or other person shall be granted a site development permit without the approval of a storm water management permit application package by the administering authority for land-disturbing activity within the town. (Individual building lots of less than one acre, see division (A)(3) below.)

(3) The developer of an individual building lot containing less than one acre, but which is part of a multi-lot construction project within the town, shall be required to complete a Declaration of Responsibility for Erosion and Sediment Control for a Small Residential Lot, prior to receipt of a site development permit. This declaration assigns responsibility for conformance to the storm water management plan to the individual building lot developer, as required in 327 IAC 15-5-7.5.

(4) No site development permit is required for the following activities:

(a) Any emergency activity that is immediately necessary for the protection of life, property or natural resources.

(b) Existing nursery and agricultural operations conducted as a permitted main or accessory use.

(B) *Permit application package requirements.*

(1) *Written permit application.* The appropriate application may be obtained through the Community Development Director's Office.

(2) *Construction plans.* The following elements shall be included within the construction plan:

(a) *Contact information.* The name, address and telephone number for the following or their designees:

1. The landowner;
2. The developer;
3. The project engineer for practice design and certification; and
4. All other agents, attorneys or others, as applicable.

(b) *Legal description.* A formal and complete legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system, or to block and lot numbers within a recorded land

subdivision plat that has been approved or prepared by a registered land surveyor.

(c) *Location and vicinity maps.*

(d) *Topographic base map pre-developed condition.*

1. A topographic base map, not exceeding 1" 400' scale of the site, which extends a minimum of 300 feet beyond the limits of the proposed development, and indicates:

a. Existing surface water drainage, including streams, ponds, culverts, ditches and wetlands;

b. Predominant soil types and hydrologic soil groups, current land use, including all existing structures;

c. Existing cover type and condition, topographic contours of the site at intervals not to exceed five feet where the slope is greater than 10%, and not more than two feet when the slope is less than 10%;

d. Flow path and direction for all storm water conveyance sections;

e. Watershed boundaries used in hydrology determinations, to show compliance with the performance standards, locations of utilities, roads and easements; and

f. Significant natural and man-made features not otherwise shows.

(e) *Soils information.*

1. If a storm water management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted.

2. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined, based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.

(f) *Post-developed site conditions.* A map of the site, not exceeding 1"=100' scale, which extends a minimum of 300 feet beyond the limits of the proposed development, and shows the following:

1. Post-construction pervious areas, including vegetative cover type and condition; impervious surfaces, including all buildings, structures and pavement; post-construction topographic contours of the site at intervals not to exceed five feet where the slope is greater than 10%, and not more than two feet when the slope is less than 10%;
2. Post-construction drainage network;
3. Dimensions of drainage easements;
4. Locations of maintenance easements specified in the maintenance agreement;
5. Flow path and direction for all storm water management conveyance and treatment practices, including on-site and off-site tributary drainage areas;
6. Watershed boundaries used in hydrology determinations, to show compliance with the performance standards, locations of utilities and roads, and any changes to lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site

(3) *Technical information report.*

(a) *Location factors.*

1. Explanation of the provisions to preserve and use natural topography and land cover features, to minimize changes in peak-flow runoff rates and volumes to surface waters and wetlands; and

2. A detailed narrative explanation of any restriction on storm water management measures in the development area imposed by wellhead protection plans and ordinances.

(b) *Design calculations.* Design calculations are required as part of the storm water permit application package and shall, at a minimum, specifically include:

1. Estimation of storm water runoff. Runoff rates during the required storm durations; C-values or SCS runoff curve numbers; and computed times of concentration.

2. Drainage area calculations.

3. Weighted curve number or runoff coefficient computations.

4. Time of concentration computation, indicating overland flow time, shallow concentrated flow time, and flow time in the swale, gutter, pipe or channel.

5. Inlet grate and gutter flow computations.

6. Closed conduit and open channel design computations, including:

- a. Size of pipe or channel cross-section;
- b. Pipe or channel invert slope in percent;
- c. material and roughness coefficient; and
- d. Flowing velocities in feet per second.

7. Design capacity in cubic feet per second.

8. Storm drain flow and hydraulic grade line (HGL) computations.

9. Detention/retention summary information.

(4) *Erosion and sediment control plan and details.* The erosion and sediment control plan submitted shall include all documents and information required within 327 IAC 15-5.

(5) *BMP calculations and schedules.* Pertinent calculations illustrating the water quality volumes, and the like, along with the installation schedule and maintenance requirements, shall be submitted for each BMP selected.

(6) *Operation and maintenance manual for BMPs.* An operations and maintenance (O&M) manual for BMPs (when required) shall be submitted for the final plan approval and permit process, and will become a compliance guideline for the BMP once development is complete. The O&M manual will include the following:

(a) BMP owner name, address, business phone number, home phone number, e-mail address, cellular phone number, pager number;

(b) Site drawings (8-1/2" x 11"), showing both plan and cross-section views, showing the BMP and applicable features, including dimensions, easements, outlet works, forebays, signages, and the like;

(c) Guidance on owner-required periodic inspections, and identification of inspection certification requirement to the administering authority;

(d) Requirement of owner to perform maintenance specified by administering authority inspection, if any;

(e) Guidance on routine maintenance, including mowing, litter removal, woody growth removal, signage, and the like;

(f) Guidance on remedial maintenance, such as inlet replacement, outlet works maintenance, and the like;

(g) Guidance on sediment removal, both narrative and graphical, describing when sediment removal should occur in order to insure that the BMP remains effective as a water quality and/or quantity control device;

(h) A statement that the administering authority's representatives have the right to enter the property to inspect the BMP;

(i) A tabular schedule showing inspection and maintenance requirements; and

(j) Identification of the property/ BMP owner as the party responsible for maintenance, including costs

(k) *Financial guarantees.* As required in § 53.207.

(C) *Application review fees.* The application package shall be accompanied by a fee for plan review and a fee for on-site inspections of implementation of requirements of this subchapter. These fees shall be as follows and in addition to all other local fee(s) charged for development and building:

(1) A storm water management plan review fee equal to 0.125% of the cost of proposed improvements; and

(2) A fee for on-site inspections for storm water management equal to 0.625% of the cost of proposed improvements; and

(3) All storm water review fees due and owing, including any other permit or building fees, must be paid in full prior to commencement of construction.

(D) *Application procedures.*

(1) Applications for site development permits must be filed (i.e., delivered) with the administering authority on any regular business day.

(2) Permit applications shall include: four copies of the construction plans, and the erosion and sediment control plan and details; four copies of all remaining required elements; and full payment of any required review fees.

(3) The administrative authority shall determine if the application package is complete within ten business days of receipt of items noted in division (D)(2). If the application package is determined incomplete, the review period indicated in § 53,206(A) shall not commence.

(E) *Permit conditions.*

(1) *General conditions.* All permits issued under this subchapter shall be subject to the following conditions, and holders of permits issued under this subchapter shall be deemed to have accepted these conditions:

(a) The administering authority may suspend or revoke a permit for violation of a permit condition, following written notification to the responsible party.

(b) An action by the administering authority to suspend or revoke this permit may be appealed in accordance with § 53.210.

(c) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state and local laws and regulations.

(d) The responsible party shall design and install all runoff pollution prevention and/or storm water treatment BMPs in accordance with the approved storm water management plan and this permit.

(e) The responsible party shall notify the administering authority at least two business days before commencing any work in conjunction with the storm water management plan.

(f) The responsible party shall notify the administering authority of any significant modifications it intends to make to an approved storm water management plan. The administering authority may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.

(g) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan, until the practices either become the responsibility of the town, or are transferred to subsequent private owners, as specified in the approved maintenance agreement.

(h) The responsible party authorizes the administrative authority to perform any work or operations necessary to bring storm

water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property, or to charging such costs against the financial guarantee posted under § 53.207.

(F) *Permit duration.*

(1) *Initial term.* The permit shall be valid for the shorter of five years from the date of issuance, or until:

(a) The permit is revoked through enforcement action;

(b) The permit is transferred; or

(c) The permit is terminated as stated in division (F)(2).

(2) *Permit termination.* Upon completion of all construction activities associated with the site development permit, the applicant shall submit a notice of termination (NOT) letter to the MS4 Operator. Termination of permit will be issued by the MS4 Operator only if the following conditions are met:

(a) All land-disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized.

(b) All public and common improvements, including infrastructure, have been completed, permanently stabilized, and transferred to the appropriate local entity.

(c) The applicant may submit a NOT letter to obtain early release from compliance with this rule, if the following conditions are met:

1. The remaining, undeveloped acreage does not exceed five acres, with contiguous areas not to exceed one acre.

2. A map of the project site, clearly identifying all remaining undeveloped lots, is attached to the NOT letter. The map must be accompanied by a list of the names and addresses of individual lot owners or individual lot operators of all undeveloped lots.

3. The remaining acreage does not pose a significant threat to the integrity of the infrastructure, adjacent properties, or water quality.

4. All permanent storm water quality measures have been implemented and are operational.
(Ord. 2006-25, passed 12-28-06)

§ 53.206 STORM WATER MANAGEMENT PLAN REVIEW AND APPROVAL.

(A) *Review period.*

(1) Within 28 days after the receipt of a completed permit application, including all documents and fees required by this subchapter, the administering authority shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved.

(2) If the project site owner does not receive notification, within 28 days after the administering authority has received the completed permit application, stating that the plan has been disapproved, the project site owner may submit the notice of intent (NOT) letter information to IDEM in accordance with 327 IAC 1556(a) and § 207(B) below.

(3) If notification of a disapproved plan is received after the review period outlined above and following commencement of construction activities, the plans must be modified to meet the requirements of the article and resubmitted within 14 days of receipt of the notification of disapproved plans.

(4) The initiation of construction activity, following notification by the administering authority that the plan does not meet the requirements of this subchapter, is a violation and subject to enforcement action.

(B) *Review actions available.*

(1) *Approve.* If the permit application is found to be completely consistent with the requirements within this subchapter, the administering authority shall issue a notice of plan approval (NPA).

(2) *Approve with conditions.* The permit application is generally consistent with the requirements within this subchapter, but specific minor modification are required to meet all of the applicable requirements. Therefore, the administering authority shall issue the permit subject to these written conditions, along with a conditional notice of plan approval (CNPA).

(3) *Disapprove.* The permit application does not meet the requirements of this subchapter and requires modifications that would result in significant changes to the construction plan, or erosion and sediment control plan. Therefore, the administering authority shall disapprove the application, indicating

the reason(s) and procedure for submitting a revised application and/or submission.

(C) *Notification to the Indiana Department of Environmental Management.* At least 48 hours prior to any land-disturbing activities, the developer must include:

(1) The NPA or CNPA as verification of plan approval; and

(2) A notice of intent (NOT) sent to the Director of IDEM in accordance with 327 IAC 15-5-6(a),
(Ord. 2006-25, passed 12-28-06)

§ 53.207 FINANCIAL GUARANTEE AND AS-BUILT DOCUMENTS.

(A) *Performance bonds or irrevocable letters of credit for storm water treatment BMPs.*

(1) Prior to the issuance of any permit, the applicant will be required to file with the town a faithful performance bond, letter of credit, or other improvement security, to insure that the storm water practices are timely and properly installed by the permit holder, as required by the approved storm water management plan.

(2) The performance security shall contain forfeiture provisions for failure to complete work specified in the storm water management plan. The amount of the installation security shall be the total estimated construction cost plus 20% of the storm water management practices approved under the permit, including but not limited to:

(a) Total installed cost for storm drain pipe, culvert, manhole, and box inlet installation;

(b) Total cost for site filling and grading, including construction of open drainage swales and detention/retention facilities, landscaping; and

(c) Engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

(B) *Maintenance bonds.*

(1) Prior to the release of the performance surety, a maintenance surety will be required.

(2) This surety will be in an amount deemed sufficient by the MS4 Operator to cover all costs of maintenance of improvements, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site, and to cover a period of two years from the date of acceptance by the administering authority.

(C) *As-built documents required.*

(1) As part of the final acceptance process, as-built documents, being plans and calculations of the as-built conditions, of the storm water facilities shall be submitted to the administering authority, as set forth herein, for each of the following types of developments:

- (a) All platted subdivisions.
- (b) All industrial and commercial sites.

(2) As-built drawings shall be prepared and certified, by either a registered land surveyor or a professional engineer licensed in the State of Indiana, and provide the following information:

- (a) Building pad elevations;
- (b) Structure inverts, pipe inverts, top-of-casting elevation and the flow line of rear and/or side yard swales, at 50-foot intervals or at lot lines;
- (c) Horizontal alignment of storm drain pipes, culverts, streets, and storm drain structures, to a minimum accuracy of plus or minus two feet;
- (d) The horizontal location and/or bank cross-sections for all detention/retention facilities, or other information sufficient to verify that the constructed detention/retention facility provides the required minimum runoff storage volume;
- (e) A tag reference to the operations and maintenance manual for each BMP will be included.

(3) All as-built plans shall be submitted in both an approved digital format and a paper copy.

(a) The digital submittal will be in a format compatible with Lake County's Geographical Information System (GIS) database.

(b) If notice of non-compliance is not given within 30 calendar days from the date of submission of the as-built documents, they shall be construed as approved.

(D) *Release of sureties.*

(1) Notice of the scheduled date for completion of construction shall be provided to the administering authority at least 72 hours prior to its planned completion.

(2) The contractor or owner will schedule the final inspection with the administering authority's observer.

(3) A bond or letter of credit will not be released by the Town Council until final approval and acceptance of all improvements has been made.
(Ord. 2006-25, passed 12-28-06)

§ 53.208 SITE INSPECTIONS AND MAINTENANCE PROVISIONS.

(A) *Notice of construction commencement.*

(1) The applicant must notify the administering authority 48 hours in advance before the commencement of construction.

(2) It shall be a condition of every site development permit that the administering authority has the right to enter the construction project site periodically to inspect for compliance with the site development permit and this subchapter.

(B) *Inspections during construction.*

(1) *By permitted project owner.*

(a) The permittee shall maintain a copy of the approved storm water management plan on site.

(b) When required, the permittee shall designate a responsible person for "self-monitoring", and provide all contact information for such individual to the administering authority.

(c) Self-monitoring shall be conducted within 24 hours of a measurable rain event, or at minimum once per week.

(d) All inspections shall be documented, and written reports prepared that contain the following information:

1. The date and location of the inspection.
2. Whether construction is in compliance with the approved storm water management plan.
3. Any remedial action needed to maintain compliance with the approved storm water management plan.
4. Schedule and designated party for proposed remedial actions.
5. Written reports shall be kept on site, and be made available to the administering authority within 48 hours of request for review.

(2) *By administering authority.*

(a) Regular inspections of the storm water management system construction shall be conducted by the staff of the administering authority.

(b) All inspections shall be documented and written reports prepared that contain the following information:

1. The date, location and name of inspector.

2. Whether construction is in compliance with the approved storm water management plan.

3. Variations from the approved construction specifications.

4. Any violations that exist.

5. Inspectors shall notify the on-site personnel or the developer in writing when violations are being observed, describing items to address and actions to be taken.

(C) *Post-construction*

(1) *Maintenance agreement required.*

(a) A maintenance agreement shall be required for storm water management practices, and shall be an agreement between the town and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit.

(b) The maintenance agreement shall be filed with the County Recorder as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices.

(2) *Maintenance covenants.* The maintenance agreement shall contain the following information and provisions:

(a) Identification of the storm water facilities and designation of the drainage area served by the facilities.

(b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under § 53.205, and the requirement that the responsible party(s), organization, or city, county or town shall maintain the practices in accordance with the schedule.

(c) Identification of the responsible party(s), organization or city, county or town responsible for long-term maintenance of the

storm water management practices identified in the storm water management plan required under § 53.205.

(d) Authorization for the administrative authority to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

1. The party responsible for long-term maintenance of the storm water management practices shall be notified by the administrative authority of maintenance problems that require correction.

2. The specified corrective actions shall be undertaken within a reasonable time frame as set by the administering authority.

(e) Parties responsible for the operation and maintenance of a storm water management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five years. These records shall be made available to the administrative authority during inspection of the facility, and at other reasonable times upon request.

(f) At minimum, annual inspection of the storm water management facility shall be the responsibility of the party responsible for the long-term maintenance of the storm water management practices. Record of the inspection and certification by a qualified individual that the storm water management system has been adequately maintained shall be submitted to the administering authority.

(g) Authorization of the administering authority to perform the corrected actions identified in the inspection report, if the responsible party for the long-term maintenance of the storm water management practices does not make the required corrections in the specified time period. The administering authority shall enter the amount due on the tax rolls and collect the money as a special charge against the property.

(h) Upon the recommendation of the Storm Water Management Board, in lieu of a maintenance covenant, the Town Council may accept dedication of any existing or future storm water management facility for maintenance; provided such facility meets all the requirements of this subchapter, and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.
(Ord. 2006-25, passed 12-28-06)

§ 53.209 ENFORCEMENT

(A) *Violations.*

(1) Any land-disturbing construction activity or storm water runoff initiated after the effective date of this subchapter by any person, firm, association or corporation subject to its provisions shall be deemed a violation, unless conducted in accordance with all terms, conditions and requirements of this subchapter.

(2) The MS4 Operator shall issue a notice of violation to any person holding a site development permit that violates any term or condition contained in the permit, any provisions of this subchapter, or to any person who implements any site development in such a manner as to:

(a) Adversely affect the health, welfare or safety of persons residing or working in the neighborhood or development; or

(b) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood or development.

(B) *Notice of violation: types.*

(1) *Written notice of violation.* A written notice of violation, indicating actions deemed contrary to the permit, which are required to be corrected and brought into compliance within 48 hours or other specified period of time. An alternative period of time shall take into account issues such as the severity of the problem, pending weather, seasonal conditions, and the level of effort necessary to correct the problem.

(2) *Stop work order; revocation of permit.* A stop work order or revocation of permit is provided in writing to any persons engaged in the doing or causing of such work to be done in violation of this subchapter, and all persons receiving notice of such order shall immediately cease all work until authorized by the MS4 Operator in writing to proceed with work.

(C) *Penalties.*

(1) No person shall construct, enlarge, alter, repair or maintain any grading, excavation or fill, or cause the same to be done, contrary to or in violation of any terms of this subchapter.

(2) Any person violating any of the provisions of this subchapter shall be subject to the general penalties provided for by § 10.99.

(3) In addition to any other penalty authorized by § 10.99, any person, partnership, corporation or other entity convicted of violating any of the provision of this subchapter shall also be required to bear all costs and expenses of restoration.

(Ord. 2006-25, passed 12-28-06)

§ 53.210 APPEALS.

(A) *Appeals process.*

(1) Upon receipt of a written notice of violation or stop work order against a site development permit, the developer may file a written appeal to the Lowell Storm Water Management Board, via certified mail or hand delivery to the Office of the Community Development Director for review.

(2) All such appeals shall be in writing, under oath, and must be delivered within five business days of receipt of any written notice of violation or stop work order, or the developer shall be deemed to have waived any right to appeal.

(B) *Appeal authority.*

(1) The Board shall complete its review within 60 days of receipt of a proper and timely filed request for appeal.

(2) The Board's determination on the appeal shall be in writing, and set forth in detail the reason for its decision.

(3) In evaluating the appeal, the Board shall be strictly bound by the standards and review criteria contained or referenced in this subchapter.

(4) All determinations of the Board arising out of any appeal shall be final.
(Ord. 2006-25, passed 12-28-06)

§ 53.211 EFFECTIVE DATE.

This subchapter shall be effective upon passage, any IDEM review, and any publication required according to law.
(Ord. 2006-25, passed 12-28-06)

Any Ordinances or provision of any Ordinance of the Town of Lowell in conflict with the provisions of this Ordinance is hereby repealed.

The invalidity of any section, clause, sentence, or provision of the Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.


This Ordinance shall be in full force and effect upon its passage, approval by the Executive, and publication as required by law.

* * * * *

DULY ORDAINED AND ENACTED by the Lowell Town Council on the 28th day of
May 2019, by a vote of 4 Ayes and 0 Nays.

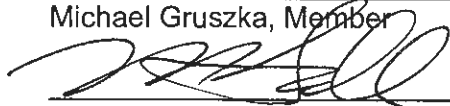
LOWELL TOWN COUNCIL

Chris Salatas, President



Will Farrellbegg, Vice President

Michael Gruszka, Member



Matt Felder, Member

ATTEST:



Judith Walters, Clerk-Treasurer