

HOWARD COUNTY BOARD OF COMMISSIONERS - SPECIAL CALLED MEETING –
SEPTEMBER 27, 2004

The Howard County Board of Commissioners met in Special Session on Monday, September 27, 2004, at 7:00 p.m. in Hearing Room No. 338 of the Howard County Administration Center. President John B. Harbaugh, Vice President Paul J. Raver, and Member Bradley J. Bagwell were in attendance. Also present were County Attorney Larry Murrell, and Auditor Martha Lake.

The Special Meeting was called in order to conduct an informal public hearing on the proposed Howard County Municipal Separate Storm Sewer System (MS4) Illicit Discharge Ordinance, an ordinance prohibiting illicit discharges into MS4 Conveyances and to establish enforcement procedures and actions. The ordinance must be adopted by November 1, 2004. The purpose of the public hearing was to present the details of the ordinance and to allow input from the community. No decisions were made at this meeting in regard to finalization of the ordinance.

The MS4 program requires the passing of three local ordinances: (1.) The Illicit Discharge Ordinance, introduced at tonight's meeting (to be adopted by November 1, 2004); (2.) The Construction Site Storm Water Run Off Control Ordinance for sediment and erosion control (to be adopted by November 1, 2004); and (3.) The Post Construction Site Storm Water Run Off Control Ordinance to assure the best management practices (to be adopted by January 1, 2006).

President John B. Harbaugh called the meeting to order. Deputy Surveyor/County MS4 Coordinator Greg Lake and Ms. Amy Moore, Consulting Engineer with Butler, Fairman and Seufert, conducted the presentation.

The Municipal Separate Storm Sewer System (MS4) is a specified urbanized area outside of the city limits in which Howard County has been designated as a MS4 area storm water conveyance system. In 1999 the EPA passed a Discharge Elimination Systems and Indiana adopted regulations known as Rule 13. Rule 5 was adopted in 2003. Rule 13 requires Howard County to apply and receive a NPDES (Storm Water Discharge) Permit. The application requires submission of water quality measurement plans that contain six minimum control measures:

1. **Public education and outreach** - Educating the public about storm water, creating brochures, and public involvement.
2. **Public participation** – For example, the efforts of the Wildcat Creek Guardians in cleaning up the Wildcat Creek.
3. **Illicit Discharge Detection and Elimination** – Development of storm sewer maps and creation of a County Illicit Discharge Ordinance. The ordinance must be adopted by November 1, 2004
4. **Construction Site Storm Water Run Off Control** – An ordinance that needs to be established to bring the Rule 5 regulations to a local level and create a locality for the enforcement instead of I.D.E.M. This ordinance must be adopted by November 1, 2004.
5. **Post Construction Site Storm Water Run Off Control** – Adoption of an ordinance requiring that best management practices are implemented and maintained after the construction site has been developed. Structures are required to be in place to maintain sediment control. This ordinance is required to be in place by January 1, 2006.
6. **Municipal Operations Pollution and Prevention Good Housekeeping** – Reduction of pesticides, herbicides, fertilizers, street cleaning

Mr. Lake explained that the MS4 area consists of approximately 39 square miles contiguous to the Kokomo City limits. The City of Kokomo has an MS4 District of its own. Initially the County MS4 area will be managed and enforced on a local level, however I.D.E.M. would continue to have the final jurisdiction. In order to monitor storm water quality the county is required to map all of the conveyances and their outfalls. This includes pipes, ditches, swales, curbs, gutters, catch basins, storm drains, and roadways. As the County MS4 Coordinator, Mr. Lake would be required to investigate any complaints received about a discharge and take the necessary action to eliminate it.

Homebuilders in the audience stated concerns about liability issues. Mr. Bob McKean, a local homebuilder, asked if a builder would shoulder any liability regarding construction of swales, ditches, pipes, etc. County Attorney Larry Murrell advised that in addition to the property owner, the builder and developer could have a certain level of liability involved. According to Section 3 of the Ordinance, the commencement or continuance of any illicit discharge into the MS4 System is prohibited and illegal. Section 2.H. defines "Responsible Person" as the person who is responsible for any violation of the Ordinance.

For clarification, Ms. Moore said a backyard swale for a home being built is not actually a part of the MS4 Conveyance System. However, roadside ditches along county highways or an improper septic system connection that seeps into the conveyance system might affect the builder. She said the erosion and sediment control ordinance currently being drafted would more aptly cover those issues. The builder would be responsible for making sure the swale or ditch has adequate sand and vegetation in place to prevent sediment from getting into the conveyance system.

Another homebuilder asked at what point would the responsibility leave the builder after the site has been developed? Mr. Lake and Ms. Moore stated that this issue would be addressed with the proposed Post Construction Site Storm Water Run Off Control Ordinance (*See Control Measure No. 5 listed above*). Attorney Murrell pointed

out that sedimentation issues are not a part of the Illicit Discharge Ordinance. He said the definition of "Illicit Discharge" pertains to non-storm water pollutants, and not sedimentation. Ms. Moore commented that part of the MS4 program is to begin the elimination of pollutants into waterways. Examples of illicit discharge are dumping of automotive fluids, illegal septic connections, and dumping anything in the conveyance system that is not storm water.

Homebuilder Mike Ullery asked why the ordinances were being presented separately. Attorney Murrell stated that the other two ordinances were in the process of being drafted. Ms. Moore explained that Rule 13 requires that all three ordinances must be adopted; the deadline for the first and second ordinance is November 1, 2004. Ms. Moore later commented that the intent of the Post Construction Site Storm Water Run Off Control Ordinance is to convey the requirements that I.D.E.M. has already been enforcing at the State level to enforcement at the county level.

Mr. Harbaugh asked, "How are the levels of contaminants measured?" Mr. Lake explained that the State sets specific levels for the contaminants.

Attorney Murrell advised that the MS4 Committee, consisting of representatives from across the community, have been working on drafting the ordinance, and not just a group of two or three people. There is a cost to the county in regard to the implementation of the three ordinances, including enforcement costs.

Homebuilder Chris Monroe asked if enforcement of the ordinances would become a full time job. In order to move forward the MS4 Office was initially set up in conjunction with the Surveyor's Office. Although Mr. Lake works out of the Surveyor's Office, the work is anticipated to develop into a full time position when the funding becomes available.

There was discussion that improperly installed septic systems in some of the rural communities are already in violation of the Illicit Discharge Ordinance. It was noted that the county is trying to resolve those problems through the Taylor Township Regional Sewer District Project, etc.

Mr. Harbaugh commented that some septic systems have been dispersing waste into backyards for a number of years. He asked if there were any records regarding the impact on public health. Mr. Lake explained it is difficult to trace health problems back to the septic systems; it is a risk-based assessment. Ms. Moore said I.D.E.M. has a 303D list of waters in the state that do not meet water quality standards. Wildcat Creek, Kokomo Creek, and several receiving waters in Howard County are on the list and being closely monitored for e-coli and other contamination risks. Mr. Bagwell commented the current concept is to take preventative action on the issue of contamination rather than waiting until people get sick.

Discussion ensued regarding various potential contaminants such as dumping used motor oil onto stone driveways, paving roads, and the chip and seal process currently being used by the County Highway Department to maintain county roads. Mr. Lake talked briefly about the complaint and investigation process. Complaints that are not relevant to MS4 regulations would be forwarded to the appropriate agencies.

Mr. Raver advised that the next MS4 Advisory Committee meeting is scheduled for **Tuesday, October 19th, 2004 at 9:30 a.m.** in Hearing Room No. 338 of the Howard County Administration Center. Mr. Lake hopes to place MS4 information on the Howard County Website (co.howard.in.us) as part of the public education requirement. Mr. Lake said the MS4 Advisory Committee would welcome further comments and suggestions from the public. In addition, the homebuilders and any interested persons were invited to participate on the MS4 Committee. Another public hearing will be held soon for further review of the ordinances. Drafts will be distributed to those interested before the next hearing.

There being no further questions or comments, Mr. Bagwell made a motion to adjourn. Mr. Raver seconded the motion, which carried. The meeting closed at 7:55 p.m.

THE HOWARD COUNTY BOARD OF COMMISSIONERS

JOHN B. HARBAUGH, PRESIDENT

PAUL J. RAVER, VICE PRESIDENT

BRADLEY J. BAGWELL, MEMBER

ATTEST:

MARTHA J. LAKE, AUDITOR
Commissioner Minutes, September 27th, 2004