

## Burns Harbor Stormwater Board

Minutes of Wednesday, June 15, 2016

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A regular meeting of the Burns Harbor Sanitary Board was called to order with the Pledge of Allegiance by President Toni Biancardi at 7:00pm. Present at roll call were Ray Poparad and Marcus Rogala.

Also present were Attorney Clay Patton, Engineer Jeanette Hicks, Sanitation & Building Superintendent William Arney, and Secretary Corinne Peffers.

### Approval of Minutes

Poparad made a motion to approve the May 18, 2016 Minutes. Rogala seconded the motion. Motion carried by all in favor vote.

### Engineer Report

None.

### Old Business

The board discussed the following letters received in 2012 from Charles Parkinson with Harris Welsh & Lukmann, the town's previous attorney, regarding costs associated with MS4 implementation.



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July 12, 2012

#### Via electronic mail only

Town of Burns Harbor Stormwater Board  
1240 N. Boo Road  
Burns Harbor, IN 46304

Re: MS4 Program Implementation

Dear Friends:

At your meeting in June, you asked us to look into several preliminary issues involved in implementing your MS4 program. First, you wanted to know whether storm water quality activities associated with ArcelorMittal must be regulated under the Town's permit. Second, you asked for an estimate of the time and expense associated with implementing the MS4 program. Finally, you requested some information regarding interim rates and charges which might help pay for the costs of implementing the MS4 program.

As far as ArcelorMittal, the short answer is that you will not need to regulate MS4 activities that are already covered by ArcelorMittal's Rule 6 permit. Rule 6 (327 IAC 15-6 et seq) concerns storm water discharges associated with industrial activity. ArcelorMittal has a permit issued by IDEM for its storm water discharges which are regulated under Rule 6, and there is no requirement that the Town duplicate these efforts. In fact, Rule 13, which governs the Town's MS4 program, limits the Town's permit boundaries as follows:

For each MS4 entity, the permit covers all storm water discharges from conveyance systems for which it has jurisdiction or, in the case of designated counties, the portion of the county jurisdictional area depicted in a mapped UA, as specified under section 3(a)(2) of this rule, unless appropriate written, enforceable, legal documentation has been obtained to allow another entity to have permit responsibilities for systems and areas within another entity's jurisdiction.

In this case, the other entity is ArcelorMittal, and the written, enforceable, legal documentation allowing ArcelorMittal to have permit responsibilities is ArcelorMittal's Rule 6 permit. Therefore, the Town is not required to regulate as part of its Rule 13 permit that area within ArcelorMittal's Rule 6 permit jurisdiction. Essentially, the storm water conveyances on ArcelorMittal's property are considered "private drains," for which the Town has no responsibility unless it is an outfall that falls within the Town's jurisdiction. That will be determined when the Town begins mapping all of the outfalls that are required to be regulated.

Town of Burns Harbor Stormwater Board  
July 12, 2012, p. 2

Even though you will not be responsible for regulating the storm water discharges within ArcelorMittal's plant boundaries, ArcelorMittal will remain a rate payer within the Town's MS4 jurisdiction and will have to pay its fair share of the program, subject to any credits or offsets the Board determines to create as part of the rate structure.

The second issue concerns the schedule for compliance. Attached to this letter is the compliance schedule set forth in 327 IAC 15-13-11. All of the applicable deadlines spring from the date the Notice of Intent ("NOI") letter is received by the Indiana Department of Environmental Management ("IDEM"). Your MS4 program will consist of three parts (Part A, Part B and Part C). Part A is the initial application, which must be submitted with the NOI. Part B is the "Baseline Characterization and Report," which is essentially a report detailing all of the receiving waters and storm water outfalls located within the MS4 jurisdiction, that must be submitted within six (6) months after the NOI. Part C is the program implementation, which includes a description of how the Town will implement its storm water program and must be submitted within one (1) year after submitting the NOI. These are very broad descriptions of the requirements associated with Parts A, B, and C. In practice, these component parts include many requirements, including the development of best management practices that must be implemented by the Town in the form of development standards and ordinances regulating discharges into the MS4 and construction activities. I have reviewed our records from working on the creation of the Town of Chesterton's MS4 program and can give you a rough estimate of the legal expenses involved in establishing an MS4 program.

Regulatory Review and Initial Ordinance:	8-10 hours
Preparation of Interim Rate Ordinance:	8-10 hours
Preparation of Illicit Discharge Ordinance:	8-10 hours
Creation of MS4 Administrative Structure and Ordinance:	25-30 hours
Preparation of Construction and Post-Construction Ordinances:	20-25 hours
Preparation of Permanent Rate Structure and Ordinance:	10-15 hours
TOTAL:	87-100 hours

Again, these time estimates are just that, estimates, which are based upon our previous experience. There undoubtedly will be some variation. At our current billing rate for the Storm Water Board, I anticipate these legal expenses could be anywhere between \$15,000 and \$17,500 over the course of the next 12-24 months. In discussing the MS4 program implementation with the Town Engineer, Hesham Khalil, I anticipate that engineering expenses could run between \$45,000 and \$55,000. Therefore, the initial estimate of program implementation (as distinct from ongoing costs of program operation) will be between \$60,00 and \$75,000, in addition to the cost of the time of the Town's paid staff.

In order to pay for the expenses associated with implementing your MS4 program, you may establish user fees. According to IC 8-1.5-5-7(b), the user fee must be "the minimum amount necessary for the operation and maintenance of the storm water system." For projects related to facilities, revenue and special taxing district bonds may be issued. However, for the most part, the operation of the MS4 program must be paid for by user fees. The statute allows you to consider several factors in setting user fees:

Town of Burns Harbor Stormwater Board  
July 12, 2012, p. 3

- (1) A flat charge for each lot, parcel of property, or building.
- (2) The amount of impervious surface on the property.
- (3) The number and size of storm water outlets on the property.
- (4) The amount, strength, or character of storm water discharged.
- (5) The existence of improvements on the property that address storm water quality and quantity issues.
- (6) The degree to which storm water discharged from the property affects water quality in the storm water district.
- (7) Any other factors the board considers necessary.

Fees may be adopted only after a public hearing. Since you would need to incorporate into your costs the costs associated with administrative expenses, such as Town staff, in addition to the cost of outside contractors, it would be appropriate to conduct a rate study prior to adopting a permanent rate.

That concludes my analysis of these preliminary issues. We can discuss this in more depth at the Stormwater Board meeting on July 17. If you have any questions before then, please let me know.

Sincerely,



Charles F.G. Parkinson  
[cparkinson@hwllaw.com](mailto:cparkinson@hwllaw.com)

attachment

SWQMP-Part C: Program Implementation to further identify and reduce, or eliminate, the possible sources of the limiting pollutant parameters. If sources can not be identified, treatment controls appropriate for the pollutant may be necessary.

SECTION 11 (327 IAC 15-13-11)  
COMPLIANCE SCHEDULE

\*"An MS4 operator shall comply with the following schedule for implementation of this rule:

<i>Rule Requirement</i>	<i>Compliance Deadline (from initial NOI letter receivership date)</i>
<i>Storm Water Quality Management Plan:</i>	<i>Components throughout term of permit</i>
<i>Part A: Initial Application submitted</i>	<i>With NOI letter</i> ✓
<i>Part B: Baseline Characterization and Report submitted</i>	<i>180 days</i> ✓
<i>Part C: Program Implementation submitted</i>	<i>1 year</i> ✓
<i>Public Education and Outreach MCM implementation:</i>	<i>Throughout term of permit</i>
<i>Public education and outreach program development certification submitted</i>	<i>1 year</i>
<i>Public Involvement/Participation MCM implementation:</i>	<i>Throughout term of permit</i>
<i>Public involvement and participation program development certification submitted</i>	<i>1 year</i>
<i>Illicit Discharge Detection/Elimination MCM implementation:</i>	<i>Throughout term of permit</i>
<i>Illicit discharge plan and regulatory mechanism certification submitted</i>	<i>1 year</i>
<i>25 percent of storm water outfalls systems mapped</i>	<i>Each year after 1 year</i>
<i>All known storm water outfall systems, with pipe diameters 12 inches or greater or open ditches with 2 feet or larger bottom width, mapped</i>	<i>5 years</i>
<i>Construction Site Run-Off Control MCM implementation:</i>	<i>Throughout term of permit</i>
<i>Construction site program plan and regulatory mechanism certification submitted</i>	<i>1 year</i>
<i>Postconstruction Run-Off Control MCM implementation:</i>	<i>Throughout term of permit</i>
<i>Operational and maintenance plan certification</i>	<i>2 years</i>

Draft 05/30/03

Page 37 of 103

<i>submitted</i>	
<i>Postconstruction program plan and regulatory mechanism certification submitted</i>	<i>2 years</i>
<i>Municipal operations pollution prevention and good housekeeping MCM implementation:</i>	<i>Throughout term of permit</i>
<i>Operations pollution prevention program development certification submitted</i>	<i>1 year</i>

*If an MS4 operator is unable to meet a compliance deadline under this section the operator shall submit a written request and justification for extending the deadline. The request must be submitted to the department no later than thirty (30) days prior to the due date."*

According to the compliance table and the rule language, all ordinances, or similar regulatory mechanisms, must be developed and implemented no later than 2 years from the submission of the NOI letter.

The compliance schedule, and the appropriate rule sections related to each specific MCM, depict the timetable for development and implementation of each required ordinance, or similar regulatory mechanism. According to the rule language, all ordinances or similar regulatory mechanisms, except for the one related to the post-construction MCM described in section 16 of the rule, must be developed and implemented no later than one (1) year from the submission of the NOI letter. As soon as the corresponding state-issued certification forms (APPENDIX A) are submitted to IDEM, the MS4 operator is expected to begin implementation of the appropriate MCM(s).

The exception is related to the post-construction MCM, which allows for development and implementation within 2 years. The intent of the post-construction MCM extension is to allow MS4 operators more time, by developing a SWQMP-"Part C" first, and, based on the implementation plan, to determine appropriate best management practices to recommend.

SECTION 12 (327 IAC 15-13-12)  
SWQMP PUBLIC EDUCATION AND OUTREACH MCM

*\*“(a) An MS4 operator shall develop an SWQMP that includes methods and measurable goals that will be used to inform residents, visitors, public service employees, commercial and industrial facilities, and construction site personnel within the MS4 area about the impacts polluted storm water run-off can have on water quality and ways they can minimize their impact on storm water quality. The MS4 operator shall ensure, via documentation, that a reasonable attempt was made to reach all constituents within the MS4 area to meet this measure.”*

According to the rule language, all constituents within the MS4 area with the potential to impact

Draft 05/30/03

Page 38 of 103



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August 9, 2012

Town of Burns Harbor  
Storm Water Board  
1240 N. Boo Road  
Burns Harbor, Indiana 46304

Re: MS4 Interim Fee Structure

Dear Friends:

Last month you requested that we propose an interim fee structure after determining the amount of revenue necessary to fund the MS4 Program until a permanent rate is adopted. As you recall, last month I provided you with a rough estimate of the anticipated program costs for the initial two years in implementing the MS4 Program.

The first two years of the MS4 Program will most likely be the most expensive since there are initial legal and engineering costs to be incurred in preparing ordinances, mapping the Town's storm water conveyance systems and filing compliance reports concerning the program. Additionally, there will be administrative expenses including a portion of Bill Arney's MS4 operator salary and the costs of a part-time clerk to handle billing and administrative support for the MS4 Program. These administrative expenses will continue even after the initial implementation of the program. Once implemented, your legal and engineering expenses will decrease, but we anticipate that you will still need to generate at least \$50,000 a year to pay for the MS4 program.

The MS4 Program must be paid for by user fees and statute allows you to consider the following factors:

1. A flat charge for each lot parcel of property or building;
2. The amount of impervious surface area on the property;
3. The number and size of storm water outlets on the property;

4. The amount, strength, or character of storm water discharge;
5. The existence of improvements on the property that address storm water quality and quantity issues;
6. The degree to which storm water discharge from the property affects water quality in the storm water district; and
7. Any other factors the Board considers necessary.

If you are to consider flat rates, you should know that you currently have 308 residential sanitary sewer customers, 21 commercial sanitary sewer customers, 4 governmental sanitary sewer users and, of course, Arcelor Mittal. There are a number of residences and businesses which are not receiving sanitary sewer services but are within the Town's MS4 boundaries and should be considered as MS4 storm water rate payers. In order to generate \$50,000 per year, you will need to raise approximately \$4,170 each month. The Town engineer has recommended a flat rate determined by user class as follows:

Land Use	Existing No. of Customers	Rate per Month	Amount
Residential	308	5	\$1,540
Commercial	21	50	\$1,050
Government	4	10	\$0
Mittal Steel		1580	\$1,580
<b>Total</b>			<b>\$4,170</b>

You might question whether it is fair to charge one class of customer more than another class of customer. Consider that the area of the Town is approximately 4,378 acres and, of that amount, Arcelor Mittal constitutes 75% of the land area. By contrast, under this proposed interim rate, Arcelor Mittal would pay approximately 38% of the storm water fees. Another question is whether it is fair to ask Arcelor Mittal to pay for the MS4 Program when it has its own industrial storm water permit. My opinion is that you are entitled to charge Arcelor Mittal a storm water fee since it owns property within the Town's MS4 jurisdiction and also because it has an impact on storm water quality regardless of its own permitted activities.

The rate determination can be made within your discretions so long as you pay reasonable attention to the factors described above which are set forth in the statute. The interim rate can be replaced by a permanent rate after an ERU study is completed. This permanent rate might more accurately be based upon the extent to which each purchaser contributes to storm water runoff and the water quality given the MS4 jurisdiction.

Town of Burns Harbor Storm Water Board  
August 9, 2012  
Page 3

Your interim rate must be implemented in the form of an ordinance that is ultimate approved by the Town Council after recommendation from the storm water board after a public hearing. If you have any questions regarding this matter, please contact me at your convenience and we can discuss this matter more fully at your meeting on August 21.

Sincerely,



Charles F.G. Parkinson  
[cparkinson@hwllaw.com](mailto:cparkinson@hwllaw.com)

CFP/pas

cc: Shem Khalil, Town Engineer

The board discussed if ArcelorMittal would need to be regulated by the town. It was noted that ArcelorMittal's MS4 activities are regulated by their Rule 6 permit, therefore the town is not required to regulate as a part of its Rule 13 permit. However, ArcelorMittal should still report to the town due to some of their discharge points being within our jurisdiction.

President Biancardi asked how the town will be officially notified it must become MS4 compliant. Superintendent Arney stated he believes a letter of compliance notification will come from Porter County Stormwater Management and then Phase 1 of the program will need to begin. He also stated that the new subdivisions have been engineered to meet MS4 compliancy. The board will continue discussing and planning on compliancy while they wait for an official notice to become MS4 compliant.

Poparad expressed concern for the town's responsibility on measuring outfalls for state highway areas.

## **New Business**

### **Old Porter Road Storm Sewer Project**

Engineer Hicks, with Global Engineering & Land Surveying, reviewed the Engineer's Estimate for this project which contains outlines of three (3) options.

- Option #1, with base bid total of \$30,147.71, is to replace the existing corroded metal storm sewer structure with a new concrete structure and new 8' concrete pipe to the west, east and south. (The north pipe under Haglund Road in that structure is already a concrete pipe.)
- Option #2, with base bid total of \$61,511.89, is to do the work of Option #1 but also remove and replace with concrete the existing 100' of 36" metal pipe to the east along with its storm structure.
- Option #3, with base bid total of \$206,021.26, is to do the work encompassed in the other options but also add remove and replace with concrete the existing 600' of 48" metal pipe to the east along with its storm structure. It also adds another storm structure midway along that 600' pipe length.

Engineer Hicks added that she believes Options #1 and #2 can follow the quote process, but Option #3 will have to go through the formal public bid process and be publicly advertised. Global will be in contact with Woodruff & Sons of Michigan City, H&G Underground of LaPorte, and RV Sutton of Chesterton for this project. She also stated that if Option #1 was chosen to take care of the immediate structure problem, it could be found that the CMP piping is not in good condition. Phasing the project in different ways is also a possibility.

A 50/50 grant with INDOT is possible for this project and will be applied for. The grant would have to be matched by LOIT or Rainy Day funds.

President Biancardi asked if Option #2 was chosen would it be easy to do the remainder of the project as a phase. Engineer Hicks said yes. Poparad does not want to have the area torn up twice and his recommendation is to go with Option #3 and be done with it all at once. If the town receives the grant, money will have to be moved from Rainy Day. Poparad also stated that money could be found in the budget right now, and moved to the Rainy Day Fund, to cover half of the project.

Rogala said that the grant would be a matching grant, but the town has to pay the costs and get reimbursed. The town has to begin the work to be eligible for the grant. Attorney Patton stated the debt has to be incurred first.

Superintendent Arney expressed concern with unnecessary work if Option #3 is chosen, as some of the structures aren't bad to the west coming back to SR149. He believes there is one structure that may not need to be replaced. Engineer Hicks will double check that.

President Biancardi noted that the grant application deadline has been extended until the end of July. Shem Khalil with Global Engineering and Biancardi will work together on the grant application. Engineer Hicks will work on the bid package for Option #3.

Poparad made a motion to finalize the plans, and go out for bids on Option #3 with President Biancardi's signature. Rogala seconded the motion. Motion carried by all in favor vote.

## **Good of the Order of the Community & Any Other Business**

None.

## **Announcements**

Next Meeting Wednesday, July 20 at 6:30 p.m.

## **Adjourn**

Poparad made a motion to adjourn at 6:50 p.m. Rogala seconded the motion. Motion carried by all in favor vote.

**Submitted by:** Corinne Peffers, Secretary

**APPROVED July 20, 2016**

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Toni Biancardi, President

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Corinne Peffers, Secretary