

**CITY OF BLOOMINGTON
LEGAL DEPARTMENT**

MEMORANDUM

TO: City of Bloomington Common Council Members
FROM: Christopher J. Wheeler, Assistant City Attorney
RE: Proposed Ordinance 2024-08
DATE: April 22, 2024

Ordinance 2024-08 proposes to enact a new title to the Bloomington Municipal Code: Title 13: Stormwater. Title 13 will be populated by language from five different source materials. First, stormwater language currently found under Title 10 of the Bloomington Municipal Code; Second and Third, the Indiana Department of Environmental Management (“IDEM”) Construction Stormwater General Permit (“CSGP”) and Municipal Separate Storm Sewer System General Permit (“MS4GP”), Fourth the Indiana Local Technical Assistance Program (“LTAP”) Model Stormwater Management Ordinance; Fifth, language currently found under Title 20 of the Bloomington Municipal Code.

Title 10 currently houses all of the regulatory language for the stormwater utility. Principally, Title 10 identifies rates for the utility, defines the storm sewer system, regulates that which is allowed to be discharged into the storm sewer system and regulates erosion control and sedimentation concerns.

Title 20 also contains regulatory language for erosion control and sedimentation concerns. Title 20 also requires developers to obtain a permit and to post a bond.

The LTAP Model Stormwater Management Ordinance contains language designed to meet current state and federal requirements for MS4 regulation and management of stormwater, erosion, sedimentation and stormwater infrastructure.

The reason for a proposed new title for storm water stems primarily from changes made at the state level in its approach to regulation of stormwater.

In December 2021, the Indiana Department of Environmental Management (“IDEM”) implemented two new permits: A Municipal Separate Storm Sewer General Permit (the “MS4GP”) and a Construction Stormwater General Permit (the “CSGP”) which replaced the two primary sections of the Indiana Administrative Code dealing with the regulation of stormwater in Indiana. Those two sections of the Indiana Administrative Code, 327 IAC 15-5 (Rule 5) and 327 IAC 15 – 13 (Rule 13) were then repealed. Simply stated, municipalities are now required to update and/or implement stormwater ordinances and other regulatory provisions that incorporate the new requirements contained in these 2021 permits.

These two new permits were issued as part of IDEM’s transition from administrative regulatory rule at the state level to a system of regulation by permit at the local level. The program for transition requires all MS4s to submit a Notice of Intent (“NOI”) with IDEM when their individual permit has expired. Submittal of the NOI starts a timeline of events and deadlines that must be

met. Most notably, MS4s have two years from the NOI submittal date to bring their stormwater ordinances and administrative regulatory mechanisms (policy, procedure, standards etc.) into compliance with the general permits. CBU submitted its NOI on July 5, 2022 and has until July 5, 2024 in which to have its stormwater ordinances and other administrative regulatory mechanisms updated.

Municipal Separate Storm Sewer Systems General Permit (MS4GP):

The MS4GP replaces the now repealed 327 IAC 15-13 (Rule 13) which used to be the administrative rule that established the permitting requirements for all designated MS4s in Indiana. Through this general permit, local MS4 (CBU included) are now responsible for regulating their own stormwater conveyance systems through local ordinance that complies with the language now set forth in the MS4 General Permit and not 327 IAC 15-13.

The Federal Clean Water Act requires certain urban areas to be permitted under the National Pollutant Discharge Elimination System Program. Any governmental entity that has a MS4 conveyance, regardless of population, can now be regulated through permitting, and CBU’s MS4 conveyance is so regulated.

An MS4 conveyance system subject to regulation, as is CBU’s MS4, includes roads with drains, municipal streets, catch basins, curbs, gutters, storm drains, piping, channels, ditches, tunnels, and conduits.

When IDEM vacated 327 IAC 15-13 and issued its MS4 General Permit, it placed the obligation for the regulation of these MS4 conveyances on the local governmental entities, including permitting.

Construction Stormwater General Permit (CSGP):

The CSGP replaces the now repealed 327 IAC 15-5 (Rule 5). Permitting will now go through the local MS4 for applicable land disturbing activity occurring within the boundaries of that MS4. As such, designated MS4s such as CBU are now required to enact local construction stormwater programs with ordinances that must be, at a minimum, as strict as the CSGP. The language of the CSGP gives local authorities the right to be more restrictive than the State.

The primary goal of the CSGP, aside from shifting the responsibility of regulation from the State level down to the MS4 on the local level, is to regulate erosion control, sedimentation and other pollutant concerns generated by construction activity (land disturbing activity). The CSGP requires regulation to commence, at a minimum, at one acre of land disturbance. Under the old rule (327 IAC 15-5 (Rule 5)) and under the CSGP, dual regulation could occur and did occur. As such, under both BMC Title 10- Wastewater, where current stormwater regulation resides, and under BMC Title 20 – Unified Development Ordinance, one would find regulatory language related to erosion, sedimentation and other pollutant concerns that are generated by land disturbing activity.

Title 10 is administered by CBU and Title 20 is administered by the City of Bloomington Planning and Transportation Department (“Planning”). While the language is similar, it is not the same. Planning regulates these concerns through a grading permit and bonding while CBU operates

under the MS4GP and CSGP. Sometimes confusion occurs between the two departments as a result of both departments regulating the same area of concern. This confusion has sometimes created oversights, redundancies, and different messages issuing from the two departments which in turn creates confusion with those segments of the public sector that are affected by these regulations.

The proposed solution, therefore, is to shift all regulation of stormwater management and regulatory concerns to the Utilities Department. So, when you review Title 13, you will see language regarding a permitting and bonding process for stormwater management of construction sites and other land disturbing activity which is very much the same as that which you currently see under Title 20.

Title 13 consists of nine chapters, a very brief synopsis of which is as follows:

13.01: Ordinance Foundation. Establishes the foundation for the title (authority, purpose and intent, applicability, jurisdiction). Much of this language comes directly from BMC Title 10. Most new language is from the LTAP model ordinance.

13.02: Stormwater Rates and Charges. Sets forth the rates and charges. This language comes directly from BMC Title 10.

13.03: Prohibited Discharges and Connections. Discusses prohibited discharges into the MS4, exempt discharges, procedures to follow in the event of a spill/discharge and CBU authority to inspect and sample. Much of this language comes directly from Title 10 or the LTAP model ordinance.

13.04: Stormwater Development Standards. Sets forth stormwater management facility (infrastructure such as bioretention basins, bioswales, underground detention facilities etc.) development standards all designed to regulate both quantity and quality of downstream stormwater runoff and to mitigate its impacts. This section includes the codification of CBU's green infrastructure program. It includes such things as bioretention standards, regional detention options and acceptable vegetation for stormwater quality/quantity control/improvement. Much of this language comes from the LTAP model ordinance with some language coming from BMC Title 20.

13.05: Construction Site Stormwater Control. Addresses requirements set forth in the CSGP for land disturbing activity regulation. It is more restrictive than the CSGP in that regulation is triggered as the 2,500 square foot mark as opposed to the one acre mark. The 2,500 square foot mark was used because that is what Title 20 currently uses. Much of this language comes from BMC Title 10 and the CSGP itself, with some of the language coming from the LTAP model ordinance and BMC Title 20.

13.06: Post-Construction Stormwater Control. Sets standards for detention and water quality, and private property maintenance duties. As with chapter 13.05, this chapter addresses requirements set forth in the CSGP. Much of this language comes from the LTAP model ordinance with some language coming from BMC Title 10.

13.07: Stormwater Management Facilities Post-Construction Maintenance and Inspection. This section sets forth the responsibilities for continued maintenance and management of stormwater infrastructure by owners, and CBU's authority to inspect and require remediation of the same.

13.08: Administration and Procedures. This section outlines administrative regulatory and enforcement procedures, fines, appeals, etc. This section includes language for the new stormwater management permit and required bonding. This language comes largely from BMC Title 20 and the LTAP model ordinance with some of the language coming from BMC Title 10.

13.09: Definitions. The language from this section comes from BMC Title 10, the LTAP model ordinance and BMC Title 20.

Effective Date: The effective date of Title 13 is July 1 2024. However, permit issuance under section 13.08.020(b)(2) which deals with stormwater management permit applicability, shall be treated as follows: All plans submitted to CBU for review on or after the effective date will be required to be permitted per this section. Projects that are currently in the review process and were submitted to CBU before July 1 2024, are not required to obtain a Stormwater Management Permit and will only be required to meet previously established design guidelines.

Economic Impact: There is no economic impact related to the implementation of Title 13. The resources attributed to regulation and enforcement of stormwater as a result of those sections of Title 10 and Title 20 that are being absorbed into Title 13 are a zero sum. Planning will no longer need to have the obligation to regulate and enforce stormwater and those resources will be picked up by CBU. CBU does not need to hire any new staff to accommodate regulation and enforcement of stormwater that Planning once handled. No new equipment or supplies need to be acquired by CBU in order to regulate and enforce stormwater. If at some point CBU recognizes that it will need to hire additional staff, it will not be as a result of Title 13, but as a result of the reality that Bloomington continues to experience growth, both upwards, and potentially outwards. Furthermore, as the climate continues to change, the need for greater stormwater regulation increases. These are realities that exist regardless of whether the City has a Title 13 or not.