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**Information Maintained by the Office of Code Revision Indiana Legislative Services Agency****IC 36-9-28.7**

## Chapter 28.7. Storm Water Nuisances

**IC 36-9-28.7-1****"Artificial conveyance"**

Sec. 1. (a) As used in this chapter, "artificial conveyance" means a manmade structure in or into which storm water runoff or floodwaters flow, either continuously or intermittently.

(b) The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, downspouts, roadways, and any other structure using a similar method.

*As added by P.L.125-2011, SEC.3.*

**IC 36-9-28.7-2****"Channel"**

Sec. 2. As used in this chapter, "channel" means a part of a natural watercourse or artificial conveyance that:

- (1) periodically or continuously contains moving water; and
- (2) has a defined bed and banks that serve to confine the water.

*As added by P.L.125-2011, SEC.3.*

**IC 36-9-28.7-3****"Runoff"**

Sec. 3. As used in this chapter, "runoff" means the part of precipitation that flows from a drainage area on the land surface, in open channels, or in storm water conveyance systems.

*As added by P.L.125-2011, SEC.3.*

**IC 36-9-28.7-4****"Storm water conveyance system"**

Sec. 4. As used in this chapter, "storm water conveyance system" means all methods, natural or manmade, used for conducting storm water to, through, or from a drainage area to any of the following:

- (1) Conduits and appurtenant features.
- (2) Canals.
- (3) Channels.
- (4) Ditches.
- (5) Storage facilities.
- (6) Swales.
- (7) Streams.
- (8) Culverts.
- (9) Roadways.
- (10) Pumping stations.

*As added by P.L.125-2011, SEC.3.*

**IC 36-9-28.7-5****"Storm water nuisance"**

Sec. 5. As used in this chapter, "storm water nuisance" means a condition:

(1) that arises out of or is related to storm water that is

transferred through runoff or an artificial conveyance that:

- (A) is directed to the property of another person;
  - (B) discharges storm water at or near the property line of another person; or
  - (C) accelerates or increases the flow of storm water onto another person's property; and
- (2) to which one (1) or both of the following apply:
- (A) The condition is injurious to health.
  - (B) The condition substantially obstructs the free use of property.

*As added by P.L.125-2011, SEC.3.*

### **IC 36-9-28.7-6**

#### **"Swale"**

Sec. 6. As used in this chapter, "swale" means an elongated depression in the land surface that:

- (1) is at least seasonally wet;
- (2) is usually vegetated;
- (3) is a conduit for storm water flow; and
- (4) conducts storm water into primary drainage channels.

*As added by P.L.125-2011, SEC.3.*



### **IC 36-9-28.7-7**

#### **"Unit of government"**

Sec. 7. As used in this chapter, "unit of government" means:

- (1) the town council or its designee if the storm water nuisance is located within the boundaries of a town;
- (2) the city board of works or its designee if the storm water nuisance is located within the boundaries of a city; or
- (3) the county surveyor or its designee if the storm water nuisance is located within the boundaries of an unincorporated part of a county.

*As added by P.L.125-2011, SEC.3.*

### **IC 36-9-28.7-8**

#### **Request to investigate storm water nuisance**

Sec. 8. (a) If:

- (1) a person who owns a tract of land seeks the removal of a storm water nuisance; and
- (2) the owner of the land on which the storm water nuisance is located does not remove the storm water nuisance upon request;

the person seeking the removal may file a request under this chapter asking the unit of government to investigate the storm water nuisance.

(b) The request must be filed on a form published by the unit of government that includes:

- (1) a general description of the tract of land owned by the person making the request;
- (2) a general description of the site of the nuisance; and
- (3) a general explanation of the need for the removal of the

nuisance.

*As added by P.L.125-2011, SEC.3.*

### **IC 36-9-28.7-9**

#### **Investigation fee; assessment of nuisance; investigation report; limitations**

Sec. 9. (a) An ordinance may be adopted to allow for the payment of a fee to the unit of government as a condition of filing a request under this chapter. The fee may not be an amount greater than is

reasonably necessary to defray the expenses incurred in processing the request, conducting the investigation, and completing the assessment under this section.

(b) A unit of government shall investigate and make a visual assessment limited to the following:

(1) Determine whether the storm water nuisance exists.

(2) Assess whether the removal of the storm water nuisance will:

(A) remove the negative effect of the storm water nuisance from the land of a person making the request; and

(B) cause unreasonable damage to the land on which the storm water nuisance is located.

(3) Make any other observations that may be useful in solving an alleged storm water nuisance problem.

(c) A unit of government, upon making the assessment under subsection (b), shall provide the following to a person that filed the request under section 8 of this chapter:

(1) An oral or written report that may include:

(A) a general description of the investigation and its findings;

(B) whether the storm water nuisance exists;

(C) the need for the removal of the storm water nuisance;

(D) whether the removal of the storm water nuisance will:

(i) remove the negative effect of the storm water nuisance from the land of a person that filed the request under section 8 of this chapter; and

(ii) cause unreasonable damage to the land on which the storm water nuisance is located; and

(E) any other considerations that may be useful in solving the storm water nuisance.

(2) Information concerning alternative dispute resolution options.

(d) A unit of government is not required to use funds to meet the requirements under this chapter.

(e) Except under subpoena, a unit of government may not be compelled to testify in a legal proceeding related to its functions under this chapter.

(f) For purposes of this chapter, the unit of government has a right of entry as provided by IC 36-9-27.4-25.

(g) An artificial conveyance or runoff that was constructed and that operates in compliance with a permit issued by a political

subdivision is not subject to this chapter.

*As added by P.L.125-2011, SEC.3.*

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