

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. _____

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
C. Anderson Originator:			<p>RECEIVED</p> <p>JUN 29 2009</p> <p>WHATCOM COUNTY COUNCIL</p>	7/7/09	Introduction
K. Christensen Division Head:	JK	6.22		7/21/09	NR
F. Abart Dept. Head:	FA	6/26/09		7/21/09	Council
D. Gibson Prosecutor:	DG	06/22/09			
B. Bennett Purchasing/Budget:					
P. Kremen Executive:					

TITLE OF DOCUMENT:

An Interim Ordinance to Prohibit the Illegal and Illicit Discharge of Hazardous Materials and Non-Stormwater Run-off to the County's Municipal Separate Storm Sewer System (MS4)

ATTACHMENTS:

1. Memorandum
2. Ordinance
3. Exhibit A

SEPA review required? (X) Yes () NO SEPA review completed? (X) Yes () NO	Should Clerk schedule a hearing? (X) Yes () NO Requested Date: 7/21/09
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SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

The proposed interim ordinance establishes an Illicit Discharge, Detection, and Elimination program for Whatcom County. This proposed interim ordinance is to comply with Section S5.C3 of Western Washington Phase II Municipal Stormwater Permit which was issued to Whatcom County on January 17, 2007, in accordance with the State of Washington Water Pollution Control Law (Chapter 90.48 RCW) and the Federal Water Pollution Control Act (The Clean Water Act - Title 33 United States Code, Section 1251 et seq.).

COMMITTEE ACTION:

7/21/2009: Staff submitted amendments to this item during committee when discussing AB2009-320A

COUNCIL ACTION:

7/07/2009: Introduced
 7/21/2009: Council Adopted 6-1 Crawford opposed Ord. 2009-057

Related County Contract #:

Related File Numbers:

AB2009-320A & AB2009-320B

Ordinance or Resolution Number:

Ord. 2009-057

Please Note: *Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.*

SPONSORED BY: Consent

PROPOSED BY: **PUBLIC WORKS**

INTRODUCTION DATE: **JULY 7, 2009**

ORDINANCE NO. 2009-057

INTERIM ORDINANCE PROHIBITING THE ILLEGAL AND ILLICIT DISCHARGE OF HAZARDOUS MATERIALS AND NON-STORMWATER RUN-OFF TO THE COUNTY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

WHEREAS, in compliance with The State of Washington Water Pollution Control Law (Chapter 90.48 RCW) and the Federal Water Pollution Control Act (also known as The Clean Water Act, Title 33 United States Code, Section 1251 et seq.), discharging certain materials to Municipal Separate Storm Sewer Systems is prohibited; and

WHEREAS, the Washington State Department of Ecology issued the Western Washington Phase II Municipal Stormwater Permit on January 17, 2007, and Whatcom County was granted coverage; and

WHEREAS, Section S.5.C.3 of the Washington Phase II Municipal Stormwater Permit requires all permittees to adopt appropriate ordinances and policies prohibiting illicit discharges and illegal dumping, and establishing enforcement mechanisms for those policies; and

WHEREAS, the ordinance as proposed is in the best interest of public health and welfare; and

WHEREAS, the Whatcom County SEPA official issued a Determination of Non-Significance on June 16, 2009, and a Public Hearing is scheduled for July 21, 2009; and

WHEREAS, RCW 36.70.790 and RCW 36.70.795 permits the adoption of interim official controls so long as a public hearing is held within 60 days of adoption; and

WHEREAS, RCW 36.70.795 requires the adoption of findings of fact which justify such Council action on an interim basis; therefore, the Council makes the following findings of fact:

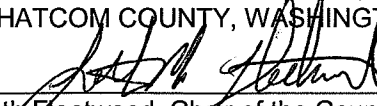
1. On January 17, 2007, Whatcom County was issued National Pollutant Discharge Elimination System Phase 2 Stormwater Permit which requires the County to adopt an Illicit Discharge Detection and Elimination Ordinance by August 16, 2009.
2. The interim ordinance allows the County to comply with mandated deadlines and provides additional time for formal review and processing of a permanent ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that an Interim Ordinance to Prohibit Illicit Discharges to Municipal Separate Storm Sewer System is adopted as set forth in exhibit A; and,

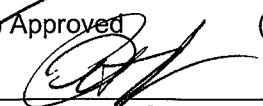
BE IT FURTHER ORDAINED, by the Whatcom County Council, pursuant to RCW 36.70.795, that this ordinance shall be effective until whichever of the following events occurs first: a) a replacement ordinance is adopted or b) the expiration of six months following the effective date of this interim ordinance, which may be renewed for one or more six month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

ADOPTED this 21st day of July, 2009.

WHATCOM COUNTY COUNCIL,
WHATCOM COUNTY, WASHINGTON


Seth Fleetwood, Chair of the Council

() Approved () Denied


Pete Kremen, County Executive

Date: 7-23-09

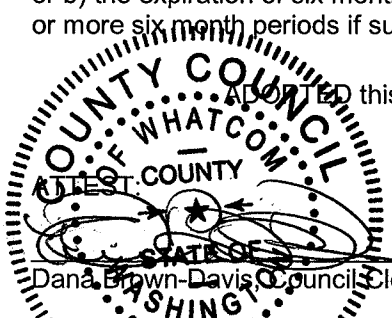
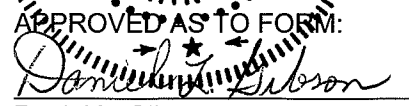

Dana Brown-Davis, Council Clerk
APPROVED AS TO FORM:

Daniel L. Gibson
Assistant Chief Civil Deputy Prosecutor

Exhibit A

I. Purpose and Intent

- A. The purpose of this ordinance is to comply with provisions of The State of Washington Water Pollution Control Law (Chapter 90.48 RCW) and the Federal Water Pollution Control Act (also known as The Clean Water Act, Title 33 United States Code, Section 1251 et seq.) Discharging certain substances to the County Municipal Separate Storm Sewage System is prohibited. It is unlawful for any person to discharge or cause to be discharged any storm water, surface water, roof runoff, subsurface drainage, cooling water, polluted or unpolluted industrial process waters, or waters or wastes of a type or quality which the County's Municipal Separate Storm Sewage System (MS4) has not been designed to receive, treat, or dispose.
- B. By prohibiting illicit discharges to the County's stormwater collection system, this ordinance seeks to:
 1. Protect the vital drinking water, sensitive habitats, and recreational resources within Whatcom County.
 2. Minimize unnecessary maintenance of public facilities, and costs associated with environmental degradation.
 3. Prevent adverse, cumulative and avoidable environmental impacts.
 4. Coordinate Whatcom County's Illicit Discharge Detection and Elimination activities and programs with those of other jurisdictions.

II. Definitions

- A. Clean Water Act – The Federal Water Pollution Control Act (33 United States Code, Section 1251 et seq.) and any subsequent amendments thereto.
- B. Ground Water – Water in a saturated zone or stratum beneath the surface of the land or below a surface water body.
- C. Hazardous Materials – 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,
- D. Hyperchlorinated – water that contains more than 10 mg/l or parts per million (ppm) of chlorine.
- E. Illicit Connection – Any man-made conveyance that is connected to a Municipal Separate Storm Sewer System without a permit, excluding roof drains and other similar type connections. Examples include: sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the Municipal Separate Storm System.
- F. Illicit Discharge – Any direct or indirect non-stormwater discharge to the County's Municipal Separate Storm Sewage System, except as expressly exempted by this chapter.
- G. Illicit Discharge Detection and Elimination (IDD&E) Program – A program of investigation, education, and enforcement to eliminate illicit connections and discharges.
- H. 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, or storm drains).
- I. National Pollution Discharge Elimination System (NPDES) Stormwater Discharge Permit – A permit issued by the Department of Ecology under the authority delegated pursuant to the Clean Water Act.

Exhibit A

- J. Non-stormwater Discharge – Any discharge to the MS4 that is not composed entirely of stormwater.
- K. Pollutant – Anything which causes or contributes to pollution, and noxious or offensive matter of any kind.
- L. Stormwater – Runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

III. Administrative Provisions

- A. The administrative portions of this ordinance shall be overseen by the Director of Public Works or his/her designee. The enforcement provisions of this ordinance shall be overseen by the Director of Planning and Development Services pursuant to Whatcom County Code 2.32.030, the Director of the Department of Health pursuant to Whatcom County Code, Title 24 (Health Code), and the County Sheriff, or their respective designees.
- B. This ordinance is adopted under the authority of The State of Washington Water Pollution Control Law (Chapter 90.48 RCW) and the Federal Water Pollution Control Act (also known as The Clean Water Act, Title 33 United States Code, Section 1251 et seq.).
- C. Prohibited Discharges. No person or entity or others under their control shall throw, drain, or otherwise discharge, to the County's MS4 and/or surface and ground waters any materials other than stormwater. The following list is not meant to be entirely inclusive, but to provide a list of examples:
 - 1. Trash or debris;
 - 2. Construction materials;
 - 3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, and heating oil;
 - 4. Anti-freeze and other automotive products;
 - 5. Metals in either particulate or dissolved form;
 - 6. Flammable or explosive materials;
 - 7. Radioactive material;
 - 8. Batteries;
 - 9. Acids, alkalis, or bases;
 - 10. Paints, stains, resins, lacquers, or varnishes;
 - 11. Degreasers and/or solvents;
 - 12. Drain cleaners;
 - 13. Pesticides, herbicides, or fertilizers;
 - 14. Steam cleaning wastes;
 - 15. Soaps, detergents, or ammonia;
 - 16. Swimming pool or spa filter backwash;
 - 17. Chlorine, bromine, or other disinfectants;
 - 18. Heated water;
 - 19. Domestic animal wastes;
 - 20. Sewage;
 - 21. Recreational vehicle waste;

Exhibit A

22. Animal carcasses;
 23. Food wastes;
 24. Bark and other fibrous materials;
 25. Lawn clippings, leaves, or branches;
 26. Silt, sediment, concrete, cement or gravel;
 27. Dyes;
 28. Chemicals not normally found in uncontaminated water;
 29. Any other process-associated discharge except as otherwise allowed described under conditional discharges;
 30. Any other hazardous material.
- D. Conditional discharges. The following types of discharges shall not be considered illegal discharges if they meet the stated conditions, or unless the Director of Public Works or his/her designee determines that the type of discharge, whether singly or in combination with others, is causing, or is likely to cause pollution of surface water or groundwater.
1. Discharges from potable water sources, including water line flushing, hyper-chlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 part per million (ppm) or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the MS4.
 2. Discharges from lawn watering and other irrigation runoff. These shall be minimized through, at a minimum, public education activities and water conservation efforts.
 3. De-chlorinated swimming pool and spa discharges. The discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted and re-oxygenated if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the MS4. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4.
 4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. The County will reduce these discharges through, at a minimum, public education activities (see Section S5.C.1. of The Western Washington Phase II Municipal Stormwater Permit) and/or water conservation efforts. To avoid washing pollutants into the MS4, contractors must minimize the amount of street wash and dust control water used. At active construction sites, street sweeping must be performed prior to washing the street.
 5. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of the stormwater pollution prevention plan reviewed by the County, which addresses control of construction site de-watering discharges.
- E. Permissible discharges:
1. Diverted stream flows;
 2. Rising ground waters;
 3. Uncontaminated ground water infiltration (as defined at 40 Code of Federal Regulations 35.2005(20));
 4. Uncontaminated pumped ground water;
 5. Foundation drains;
 6. Air conditioning condensation;
 7. Irrigation water from agricultural sources that is commingled with urban stormwater;

Exhibit A

8. Springs;
9. Water from crawl space pumps;
10. Footing drains;
11. Flows from riparian habitats and wetlands;
12. Non-stormwater discharges covered by another NPDES permit;
13. Discharges from emergency fire fighting activities in accordance with Authorized Discharges (Section S2 of The Western Washington Phase II Municipal Stormwater Permit);

F. Prohibition of Illicit Connections

1. Prohibited Connections. The ordinance will prohibit any connection to the County's MS4 that allows prohibited or conditional discharges listed above. This prohibition includes but is not limited to the following activities:

a. The construction, use, maintenance, or continued existence of illicit connections to the County's MS4.

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 or entity is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

2. Any person or entity that is not responsive to compliance actions of this ordinance shall be held monetarily responsible for any abatement costs incurred by the County in correcting the violation.

IV. Enforcement and Penalties.

- A. Violations of this ordinance shall, except as provided in paragraph B. below, constitute Class 1 civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80 RCW. All violations shall be heard and determined in accordance with the system established in Chapter 7.80 RCW. Employees of the Whatcom County department of planning and development services, or its successor agency, if any there be, as well as all others who are otherwise authorized to enforce ordinances of this county, are hereby authorized to enforce the provisions of this title, consistent with the provisions of Chapter 7.80 RCW.
- B. After having been found to have committed two successive infractions for violations of the same provision of this ordinance on the same property, any person, firm, company or corporation who continues to violate this title in the same manner on the same property shall be subject to criminal penalties including a fine of not more than \$500.00, together with costs of action, and imprisonment in the county jail for a period of not more than six months.
- C. In addition to the civil and criminal remedies provided for above, the County or the owner or owners of land affected by violations of the provisions of this title may bring such injunctive, declaratory or other actions as deemed necessary to ensure that violations are prevented or cease, and to otherwise enforce the provisions of this title.
- D. Appeals. Appeals may be taken and shall be heard as provided in RCW 7.80.100.

Exhibit A

V. Applicability and severability.

This ordinance shall be consistently applied to any geographical areas of the designated NPDES Phase II Permit Areas of Whatcom County. Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of this ordinance as a whole.