

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. _____

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
C. Anderson Originator:	<i>CA</i>	7-8-09	<p>RECEIVED</p> <p>JUL 14 2009</p> <p>WHATCOM COUNTY COUNCIL</p>		
K. Christensen Division Head:	<i>KNC</i>	7/8/09		7/21/09	Natural Resources
F. Abart Dept. Head:	<i>FAB</i>	7/9/09		7/21/09	Council
D. Gibson Prosecutor:	<i>DG</i>	07/08/09			
B. Bennett Purchasing/Budget:	<i>BEN</i>				
P. Kremen Executive:	<i>PK</i>	7/13/09			

TITLE OF DOCUMENT:

Resolution Establishing Policies Regarding Detection and Assessment of Illegal and Illicit Discharge of Hazardous Materials and Non-Stormwater Run-off to the County's Municipal Separate Storm Sewer System (MS4) and Enforcement of Prohibitions Against Such Discharges in Designated NPDES Phase II Areas

- ATTACHMENTS:**
1. Memorandum
 2. Resolution
 3. Exhibit A

SEPA review required? (X) Yes () NO	Should Clerk schedule a hearing? () Yes (X) NO
SEPA review completed? (X) Yes () NO	Requested Date:

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.)

An interim ordinance establishing an Illicit Discharge, Detection, and Elimination program for Whatcom County was introduced on 7/7/09 to comply with Section S5.C3 of Western Washington Phase II Municipal Stormwater Permit (issued to Whatcom County on 1/17/07) 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.). The attached proposed resolution sets forth the policy of the County as related to the interim ordinance.

<p>COMMITTEE ACTION:</p> <p>7/21/2009: Staff submitted amendments to Public Hearing item 5 (AB2009-320), which is related to this item and was discussed during committee. This item is amended and approved.</p>	<p>COUNCIL ACTION:</p> <p>7/21/2009: Council Approved 7-0 Res. 2009-043</p>
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Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number: Res. 2009-043
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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: 7/21/09

RESOLUTION NO. 2009-043

ESTABLISHING POLICIES REGARDING DETECTION AND ASSESSMENT OF ILLEGAL AND ILLICIT DISCHARGE OF HAZARDOUS MATERIALS AND NON-STORMWATER RUN-OFF TO THE COUNTY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) AND ENFORCEMENT OF PROHIBITIONS AGAINST SUCH DISCHARGES

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

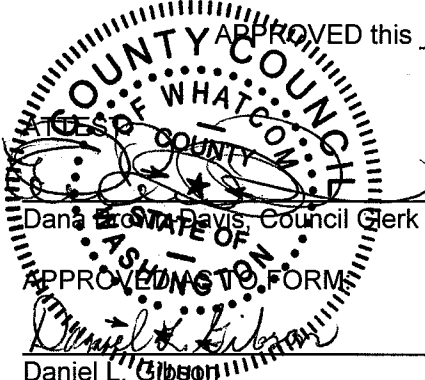
WHEREAS, the accompanying proposed ordinance is in the best interest of public health and welfare; and

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, on the accompanying proposed ordinance; and

WHEREAS, in addition to the language in the accompanying proposed ordinance, Whatcom County should, as a matter of policy and for the benefit of staff and public, address the preferred approach to enforcement of the prohibitions against illegal discharges and prohibited connections, and should also address the manner in which detection, assessment, and abatement of such discharges and connections will be pursued in designated NPDES Phase II areas;

NOW, THEREFORE, BE IT RESOLVED that the policies contained in the attached Exhibit A are hereby adopted as guidance for County staff in the administration of the provisions of the interim ordinance that prohibits illegal discharges into the County's Municipal Separate Storm Sewer System and illegal connections through which such discharges may be channeled.

APPROVED this 21st day of July, 2009.



Dana Brown Davis, Council Clerk

Daniel L. Gibson

Daniel L. Gibson
Assistant Chief Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL,
WHATCOM COUNTY, WASHINGTON

Seth Fleetwood

Seth Fleetwood, Chair of the Council

EXHIBIT A

- I. Whatcom County will address any category of discharges other than those already listed in the illicit and illegal discharge ordinance if the discharges are identified by responsible regulatory authorities with jurisdiction over the County as significant sources of pollutants to waters of the State. The County will also implement the following:
 - A. A progressively increasing enforcement strategy, including the enforcement provisions of the ordinance.
 1. Written warning with voluntary compliance. May be applied to first time, minor violations. Educational materials and informational assistance will be provided to the violator.
 2. Compensatory actions such as community service related to stormwater education or mitigation in lieu of penalty or enforcement proceedings. Requires a formal written agreement between the Director and the violator.
 3. Written notice of violation ordering compliance.
 4. Civil penalties. Includes daily financial penalty imposed by a judicial authority for each day the violation remains unfixed.
 5. Criminal prosecution. Applies to intentional and flagrant violations of this Chapter. Each day discharge continues shall be considered a separate offense which can result in fines and imprisonment.
 6. Emergency Cease and Desist order. Applies when this Chapter continues to be violated. Requires immediate compliance with this Chapter by halting operations and/or terminating discharges.
 7. Disconnection from the MS4. Applies to illicit connections to MS4, to illicit discharges in emergency situations, or continued failure of the property owner to comply.
 - B. An ongoing program to detect and address non-stormwater discharges, spills, illicit connections and illegal dumping into the County's MS4. Procedures for locating priority areas for Illicit Discharge will at a minimum include:
 1. Consideration of which land uses and associated business/industrial activities are present.
 2. Attention to areas where complaints have been registered in the past.
 3. Attention to areas with storage of large quantities of materials that could result in spills.
 4. Field assessment activities, including visual inspection of priority outfalls identified above, during dry weather and for the purposes of verifying outfall locations, identifying previously unknown outfalls, and detecting illicit discharges.
 5. Completion of a Baseline Drainage System Inventory: Stormwater facilities include the stormwater conveyance system (i.e., stormwater pipe, ditches, catch basins, and other structures) and retention/detention facilities. In accordance with (Section S5.C.3.a of The Western Washington Phase II Municipal Stormwater Permit) the County will complete a map of the Municipal Separate Stormwater Sewer System (MS4) in the affected areas.

- II. The County will assess the nature of, and potential public or environmental threat posed by, any illicit discharge found by or reported to the County. Assessment procedures will include detailed instructions for evaluating whether the discharge must be immediately contained and steps to be taken for containment of the discharge.
 - A. Compliance with this provision will be achieved by investigating (or referring to the appropriate agency) within 7 days, any complaints, reports or monitoring information that indicate a potential illicit discharge, spill, or illegal dumping. Immediately investigating (or referring) problems and violations determined to be emergencies or otherwise judged to be urgent or severe.
 - B. Compliance with this provision will be achieved by initiating an investigation within 21 days of a report or discovery of a suspected illicit connection to determine the source of the connection, the nature and the volume of discharge through the connection, and the party responsible for the connection. Upon confirmation of the illicit nature of a storm drain connection, termination of the connection shall be verified within 180 days, using enforcement authority as needed.