

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2009-320D

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
C. Anderson Originator:	CA	12-21-09	RECEIVED JAN 05 2010 WHATCOM COUNTY COUNCIL	1/12/10	Introduction
K. Christensen Division Head:	KNC	12/21/09		1/26/10	Hearing
F. Abart Dept. Head:	FAA	12/22/09			
D. Gibson Prosecutor:	DK	12/22/09			
B. Bennett Purchasing/Budget:					
P. Kremen Executive:	PK	1-5-10			

TITLE OF DOCUMENT:

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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO SEPA review completed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Should Clerk schedule a hearing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO Requested Date: 1/26/10
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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 ordinance establishes an Illicit Discharge, Detection, and Elimination program for Whatcom County. This proposed 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.). Staff has addressed comments from the Washington State Department of Ecology and Whatcom County Planning and Development Services in preparing this ordinance.

COMMITTEE ACTION:

COUNCIL ACTION:

1/12/2010: Introduced
 1/26/2010: Council Adopted 7-0
 Ord. 2010-002

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Ord. 2010-002

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: **JANUARY 12, 2010**

ORDINANCE NO. 2010- 002

ORDINANCE TO PROHIBIT THE ILLEGAL AND ILLICT 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 (The Clean Water Act - Title 33 United States Code, Section 1251 et seq.), discharge of certain waters 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 policies prohibiting illicit discharges and illegal dumping, and establishing enforcement mechanisms for those policies; and

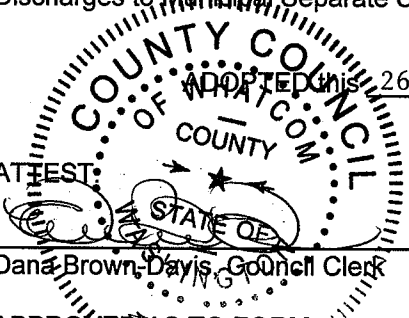
WHEREAS, the policy as proposed is in the best interest of public health and welfare; and

WHEREAS, the Whatcom County SEPA official issued a Determination of Non-Significance on June 16, 2009, and a Public Hearing has been held as scheduled on January 26, 2010;

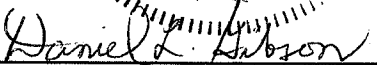
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that an Ordinance to Prohibit Illicit Discharges to Municipal Separate Storm Sewer System is adopted as shown in Exhibit A.

ADOPTED this 26th day of January, 2010.

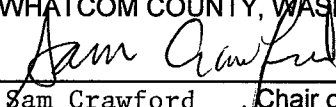
ATTEST:


Dana Brown-Davis, Council Clerk


APPROVED AS TO FORM:


Daniel L. Gibson
Assistant Chief Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL,
WHATCOM COUNTY, WASHINGTON


Sam Crawford, Chair of the Council

Approved Denied


Kate Kremen, County Executive

Date: 1-28-10

Exhibit A

16.36.010 Authority.

This chapter is adopted under the authority of the police power granted to political subdivisions of the state by Article XI, Section 11 of the Washington State Constitution.

16.36.020 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 (MS4) is prohibited.
- B. By prohibiting illicit discharges to the County's stormwater collection system, this ordinance seeks to:
 - 1. Protect vital drinking water, sensitive habitats, and recreational resources within Whatcom County.
 - 2. Minimize unnecessary maintenance of public facilities.
 - 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.

16.36.030 Applicability.

This chapter applies to the unincorporated areas of Whatcom County within the Department of Ecology's designated Western Washington Phase II Municipal Stormwater Permit area and the Lake Whatcom watershed as defined by the Surface Water Delineation Boundaries in Water Resource Inventory Areas (WRIA) 1.

16.36.040 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. Hyperchlorinated – water that contains more than 10 mg/l or parts per million (ppm) of chlorine.
- D. Illicit Connection – Any connection to a Municipal Separate Storm Sewer System (MS4) that allows prohibited or not approved conditional discharges.
- E. 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.
- F. Illicit Discharge Detection and Elimination (IDD&E) Program – A program of investigation, education, and enforcement to eliminate illicit connections and discharges.
- G. 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).
- H. 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

- I. Non-stormwater Discharge – Any discharge to the MS4 that is not composed entirely of stormwater.
- J. Pollutant – Contamination, or other alteration of the physical, chemical or biological properties, of any surface water or groundwater, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
- K. Stormwater – Runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

16.36.050 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 8 (Health and Safety) and 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 a pollutant to the County's MS4 and/or surface and ground waters.
- D. Conditional discharges. The following types of discharges shall not be considered illegal discharges if they meet the stated conditions, 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.

Exhibit A

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 and roof drains;
6. Air conditioning condensation;
7. Irrigation water from agricultural sources that is commingled with urban stormwater;
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. Any connection to the County's MS4 that allows prohibited or not approved conditional discharges is prohibited. This prohibition includes the following activities:

1. Construction, use, maintenance, or continued existence of illicit connections to the County's MS4.
2. 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.

16.36.060 Penalties and enforcement.

A. Any person who violates any of the provisions of this chapter shall be guilty of a civil offense and may be fined a sum not to exceed \$1,000 for each offense. After a notice of violation has been given, each day of site work in conjunction with the notice of violation shall constitute a separate offense.

B. The penalty provided in subsection A of this section shall be assessed and may be imposed by a notice in writing either by certified mail with return receipt requested or by personal service to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.

C. Within 30 calendar days after the notice is received, the person incurring the penalty may apply in writing to the county for remission or mitigation of such penalty. Upon receipt of the application, the county may remit or mitigate the penalty upon whatever terms the county in its discretion deems proper. The county's final decision on mitigation or revision shall be reviewed by the hearing examiner if the aggrieved party files a written appeal therewith of said decision within 10 calendar days of its issuance.

Exhibit A

D. If work activity has occurred on a site in violation of this chapter, prompt corrective action, restoration or mitigation of the site will be required when appropriate. If this provision is not complied with, the county may restore or mitigate the site and charge the responsible person for the full cost of such an activity. Additionally, any and all permits or approvals issued by the county may be denied for that site for a period of up to six years.

E. In the event any person violates any of the provisions of this chapter, the county may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a nonemergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 calendar days following the receipt of the correction notice, and provide for an administrative predeprivation hearing within 10 calendar days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the county may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative predeprivation hearing within 72 hours following receipt of the stop work order. Failure to comply with the order to stop work shall be a gross misdemeanor punishable upon conviction by a minimum fine of \$500.00 up to a maximum fine of \$1,000 or one year in jail, or both. Under no circumstance may the court defer or suspend any portion of the minimum \$500.00 fine for any conviction under this section. Each day or part thereof of noncompliance with said order to stop work shall constitute a separate offense.

F. The county may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.

G. The prosecuting attorney may enforce compliance with this chapter by such injunctive, declaratory or other actions as deemed necessary to ensure that violations are prevented, ceased, or abated.

H. Any person who, through an act of commission or omission, procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

16.36.070 Applicability and severability.

This ordinance shall be consistently applied to the unincorporated areas of Whatcom County within the Department of Ecology's designated Western Washington Phase II Municipal Stormwater Permit area and the Lake Whatcom watershed as defined by the Surface Water Delineation Boundaries in Water Resource Inventory Areas (WRIA) 1. Should any section or provision of this Ordinance be declared invalid, such decision shall not affect the validity of this Ordinance as a whole.