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Title: Stormwater Enforcement

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Authorities: King County Code Chapter 9

Keywords: stormwater drainage enforcement

Sponsoring Agency: Department of Natural Resources and Parks



King County

Signature: _____

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Date signed: _____

1/19/18

I. Purpose

To establish procedures and criteria for the Water and Land Resources Division in determining penalties for the enforcement of King County Code 9.12, which regulates water quality for surface water, stormwater, and groundwater.

Applicability and Audience

This rule applies to:

The public, including businesses, organizations, public agencies, property managers, residents, and property users and property owners within unincorporated King County; and

Department of Natural Resources and Parks (DNRP), and its Water and Land Resources Division (WLRD), or their successor agencies.

II. References

King County Code (K.C.C.) Chapter 9.12, Water Quality Ordinances 18481 and 10636

Stormwater Pollution Prevention Manual (SPPM)

Surface Water Design Manual (SWDM)

King County Code Title 23

King County Code Chapter 2.98

King County's National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit

III. Definitions

"Best Management Practices" shall mean the best available and reasonable physical, structural, managerial, or behavioral activities, that when used independently or in combination, eliminate or reduce the contamination of both surface and ground waters.

"Businesses, residents or other organizations" shall mean businesses, organizations, public agencies, and all property owners within unincorporated King County.

"Cease Discharge Order" means a written order to immediately cease the activity or activities causing or contributing to the discharge of a prohibited substance to stormwater, surface water, groundwater or the conveyance system, or to any combination thereof. A cease discharge order is a form of a stop work order under K.C.C. chapter 23.28.

"Corrective Action Letter" A letter sent to the responsible party after an inspection by WLRD, that identifies the items out of compliance with the SPPM and/or K.C.C. Chapter 9.12 and what steps that need to be taken by when in order to come into compliance.

"Director" means the director of the department of natural resources and parks, or the authorized representatives of the director, including compliance officers and inspectors whose responsibility includes the detection and reporting of code violations.

"Drainage facility" means a constructed or engineered feature that collects, conveys, stores, treats or otherwise manages stormwater runoff or surface water. "Drainage facility" includes, but is not limited to, a constructed or engineered stream, lake, wetland or closed depression, or a pipe, channel, ditch, gutter, flow control facility, flow control BMP, water quality facility, erosion and sediment control facility and any other structure and appurtenance that provides for drainage.

"Illicit Connection" means any human-made connection to the storm drain system, surface water or groundwater that the director determines based on an investigation or other evidence is not composed entirely of stormwater. For the purposes of this subsection, "human-made connections" include, but are not limited to, sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, hoses, above-ground piping or outlets, that discharge directly to the storm drain system, surface water or groundwater.

"Maintenance Correction Letter" is a letter sent to a drainage facility owner listing any maintenance or operational deficiencies observed during a drainage facility inspection by WLRD. The letter specifies what needs to be corrected by what date in order to bring the facility into compliance based on the standards in the King County Surface Water Design Manual.

"Prohibited Discharge" also known as an "Illicit Discharge", means any direct or indirect action of discharging anything other than stormwater to the conveyance system, stormwater, surface water or groundwater, except as expressly allowed by K.C.C. 9.12.

"Responsible party" means the owner, operator or occupant of property; or any person causing or contributing to an action prohibited by K.C.C. Chapter 9.12, including but not limited to contractors, tenants, lessees or other person entitled to use or occupy a property.

"Significant Prohibited Discharge" shall mean a one-time discharge of a prohibited substance, either past or ongoing, that due the nature or amount of the substance has damaged infrastructure; water quality, sediment, or groundwater quality; requires additional infrastructure maintenance; disrupted natural processes, or caused a significant risk to public health or the environment.

"WLRD" shall mean the Water and Land Resources Division, or its successor agency.

IV. POLICIES:

A. Progressive Enforcement Action

A progressive approach is used to assist businesses and other entities, persons and residents in achieving and maintaining compliance with Surface Water, Stormwater, and Groundwater Management Regulations. This approach emphasizes outreach, education, and technical assistance before taking further enforcement actions or assessing penalties. However, such preliminary steps are not a bar to the Director's bringing enforcement actions or penalties, in the event that the Director determines that flagrant, serious or purposeful violations have occurred.

B. Enforcement Steps

1. Technical Assistance Visits and Inspections
2. Corrective Action and Maintenance Correction Letters
3. Notice and Order
4. Voluntary Compliance Agreement
5. Penalty Waiver: The process for penalty waivers is found in K.C.C. 23.32.050
6. Appeals: The process for appeals is found in K.C.C. 23.36

C. Types of Violations

1. Failure to implement Best Management Practices (BMPs). Source control BMPs shall be implemented to prevent contamination of surface water, groundwater and stormwater. These BMPs are described in the Stormwater Pollution Prevention Manual, which was revised and adopted in 2016 by Public Rule PUT-8-8-3.
2. Discharge of prohibited substances. The discharge of any contaminants into surface water, stormwater or groundwater. The list of prohibited (and permitted substances) is found in King County Code 9.12.025.
3. Illicit Connections.
4. Failure to properly operate and/or maintain drainage facility. A required drainage facility shall be operated and maintained as designed.

D. Delegation of Authority

K.C.C. 9.12.050 establishes the DNRP Director, or his or her delegated agent, as the responsible party for taking enforcement action. Documentation of enforcement actions are authorized to be signed by personnel from WLRD as follows:

1. Corrective Action and Compliance Letters: Stormwater Inspector
2. Maintenance Correction Letters: Asset Unit Manager
3. Cease Discharge Notices: Source Control Program Manager
4. Voluntary Compliance Agreements: Source Control Program Manager
5. Notice of Violation and Penalties: Stormwater Services Section Manager
6. Notice of Violation and Penalties with fines and cost assessments in excess of \$100,000: Stormwater Services Section Manager with the approval the DNRP Director

E. Voluntary Compliance Agreement

The director may suspend the imposition of additional civil penalties if the person responsible for code compliance has entered into a voluntary compliance agreement, in accordance with the procedures and terms of K.C.C. 23.02.090..

F. Penalty Assessment

1. Penalties are to be determined through assigning a point rating to each of the following factors, the total of which shall be used to calculate the penalty assessment including:
 - a. Environmental or resource damage;
 - b. Actions was taken to remedy a problem after a discharge violation occurred;
 - c. Whether or not it was a willful or knowing violation;
 - d. Violation was a result of improper operation, inadequate maintenance or inadequate implementation of required BMPs or of a required plan that addresses stormwater management source control BMPs including: Stormwater Pollution Prevention Manual (SPPM) BMPs, Erosion Sediment Control Plan (ESCP), Stormwater Pollution Prevention Plan (SWPPP), Spill Response, and Operations & Maintenance”;
 - e. Compliance History;
 - f. Infrastructure damage or additional maintenance required;
 - g. Presence of an illicit connection; and
 - h. Economic gains of non-compliance

2. Penalty Matrix

1. Environmental or resource damage?	
0	If there is no evidence of detrimental impact or potential threat to water or sediment quality, human health, or the environment.
1	If there is evidence of a minor detrimental impact or potential threat to water or sediment quality, human health, or the environment.
2	If there is evidence of a moderate detrimental impact or potential threat to water or sediment quality, human health, or the environment.
3	If there is evidence of a major detrimental impact or potential threat to water or sediment quality, human health, or the environment.
2. Action taken to remedy a problem after a violation occurred?	
0	If the violation was corrected immediately upon discovery.
1	If the violation was corrected after corrective action letter.
2	If the violation was corrected but required more than one follow-up contact.
3	If the responsible party attempted to correct the violation but did not correct it.
4	If the responsible party made no attempt to correct the violation.
5	If the responsible party made an attempt to hide or disguise the violation.
3. Willful or knowing violation?	
0	If the violator did not know and had no reason to know that the action or inaction constituted a violation.
2	If the violator appears not to have known but should have known.
3	If it is clear from the circumstances that the violator knew.
4. Violation was a result of improper operation, inadequate maintenance or inadequate implementation of required BMPs or of a required plan that addresses stormwater management source control best management practices (BMPs)?	

0	If the violation was not the result of inadequate or lack of source control BMPs.
1	If the property lacks or has inadequate source control BMPs, employee training, supplies, or maintenance, resulting in the potential for a prohibited discharge.
2	If the property lacks or has inadequate source control BMPs, employee training, supplies, or maintenance, resulting in the probability of a prohibited discharge.
3	If the property lacks or has inadequate source control BMPs, employee training, supplies, or maintenance, resulting in a prohibited discharge.
5. History of compliance problems on the property or with the potentially responsible party?	
0	If there is no previous history of compliance problems.
1	If only one correction letter has been issued to the property and/or party for a prior violation.
2	If two or more correction letters have been issued to the property and/or party for prior violations.
3	If a Notice of Violation and/or a Notice and Order have been previously issued to this property and/or party for a prior violation.
6. Infrastructure damage or additional maintenance required of conveyance system, drainage facilities, or right-of-way due to violation?	
0	If the violation provides no basis for concluding that there is damage to infrastructure or requires additional maintenance.
1	If there is a basis, for concluding that there is minor infrastructure damage or additional maintenance required based on knowledge of the effects of the violation.
2	If there is basis for concluding that there is moderate infrastructure damage or additional maintenance required based on knowledge of the effects of the violation.
3	If there is evidence linking significant infrastructure damage or significant additional maintenance required with the violation.
7. Is there an illicit connection?	
0	If there is no illicit connection.
2	If there is an illicit connection, but was not recognized as such by owner/operator.
3	If there is a known illicit connection, but was not self-created by owner/operator.
4	If there is known illicit connection self-created by owner/operator.
8. Economic benefit from non-compliance?	
0	If it is clear that no one gained an economic benefit.
1	If it is likely that someone gained a minor economic benefit.
2	If it is likely someone gained a moderate economic benefit.
3	If it is demonstrable that someone gained a significant economic benefit.

3. Penalty Assessment

Points	≤9	10-15	16-21	22-24	>24
Penalty	\$500	\$1,000	\$2,500	\$5,000	\$10,000

4. Guidance

The Water Quality Penalty Matrix Guidance, which constitutes Appendix A to this public rule, shall act as a general guide to applying the Penalty Matrix.

G. Additional Costs Assessment

In addition to any monetary penalties, the County may collect investigation and correction costs, which may include, but are not limited to:

5. Costs incurred by King County as a result of a violation including infrastructure repair, clean-up and remediation
6. Billed cost, including labor, administration, overhead, overtime, profit, taxes, and other related costs, for a hired contractor to investigate and/or perform the abatement work;
7. Labor, administration, overhead, overtime, and other related costs for the County staff and crews to investigate and/or perform the abatement work;
8. Administrative costs to set up contracts and coordinate work;
9. Time spent communicating with the responsible party, any other enforcing agencies, and the affected community;
10. Inspections for compliance with this rule, documentation of costs, and invoicing the responsible party;
11. Cost of equipment, materials, and supplies, including all related expenses for purchasing, renting, and leasing;
12. Laboratory sampling and analytical costs;
13. Recording fees; and
14. Cost of mobilization, disposal of materials, and cleanup.

H. Collection of Penalties and Costs

1. The Director may issue an invoice and demand for payment of civil penalties and costs when the responsible party has failed to pay a penalty by the deadline in a Notice and Order and has failed to file an appeal within the required time periods established in K.C.C 23.36. The invoice shall include:
 - a. Name of the responsible party
 - b. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address where the violation(s) has taken place;
 - c. A description of the violation(s);
 - d. The amount of the penalty;
 - e. Notice that if the amount due is not paid within 30 days, the Director may collect the unpaid amount in any lawful manner, including, but not limited to, referral of the matter to a collection agency; and
 - f. Notice that interest shall accrue on the unpaid balance at the statutory rate if not paid within 30 days after the invoice date.
2. If the Hearing Examiner has issued an order or judgment imposing penalties, costs, damages, or expenses for a violation of this subtitle, and the Hearing Examiner's order or judgment is not appealed within 30 days, the Director may:

- a. Refer the matter to the County Prosecutor to initiate any appropriate legal action in an appropriate forum;
- b. Send an invoice and demand for payment as described above; or
- c. Add a Special Assessment to the responsible party's property.

V. Implementation Plan

This rule becomes effective for the Department of Natural Resources and Parks on [insert date]. The Department of Natural Resources and Parks and its Water and Land Resources Division, are responsible for implementation of this rule.

VI. Maintenance

This rule will be maintained by the Department of Natural Resources and Parks, Water and Land Resources Division, Stormwater Services Section, or its successor agency.