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| Title: | AN ORDINANCE relating to King County stormwater and surface water management requirements establishing enforcement criteria; amending Ordinance 10636, Section 3, as amended, and K.C.C. 9.12.015, Ordinance 10636, Section 4, as amended, and K.C.C. 9.12.025, Ordinance 10636, Section 7, as amended, and K.C.C. 9.12.050 and Ordinance 10636, Section 10, as amended, and K.C.C. 9.12.080 and prescribing penalties. | | |
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| 1/17/2017 | 1 | Metropolitan King County Council | Introduced and Referred | |

Clerk 03/22/2017

AN ORDINANCE relating to King County stormwater and surface water management requirements establishing enforcement criteria; amending Ordinance 10636, Section 3, as amended, and K.C.C. 9.12.015, Ordinance 10636, Section 4,

as amended, and K.C.C. 9.12.025, Ordinance 10636, Section 7, as amended, and K.C.C. 9.12.050 and Ordinance 10636, Section 10, as amended, and K.C.C. 9.12.080 and prescribing penalties.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 10636, Section 3, as amended, and K.C.C. 9.12.015 are hereby amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "AKART" means "all known, available and reasonable methods of prevention, control and treatment." "AKART" represents the most current methodology that can be reasonably required for preventing, controlling or abating the pollutants associated with a discharge. "AKART" applies to both point and nonpoint sources of pollution.

B. "Best management practice" or "BMP" means any schedule of activities, prohibition of practices, maintenance procedure, or structural ~~and~~/or managerial practice approved by King County that, when used singly or in combination, prevents or reduces the release of pollutants and other adverse impacts to surface water, stormwater and groundwater.

C. "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.

D. "Chapter" means this chapter and any administrative rules and regulations adopted to implement this chapter.

~~((D.))~~ E. "Clean Water Act" means 33 U.S.C. 1251 et. seq., as amended.

F. "Conveyance system" means the drainage facilities and features, both natural and constructed that

provide for the collection and transport of surface water or stormwater runoff. The natural elements of the "conveyance system" include swales and small drainage courses, streams, rivers, lakes and wetlands. The constructed elements of the "conveyance system" include gutters, ditches, pipes, catch basins, channels and most flow control and water quality facilities.

((E-)) G. "Director" means the director of the King County department of natural resources and parks, other department directors specified in enforcement procedures established in accordance with this chapter, or the authorized representatives of those directors, including compliance officers and inspectors whose responsibility includes the detection and reporting of civil code violations, as defined in K.C.C. 23.02.010.

((F-)) H. "Discharge" means throw, drain, release, dump, spill, empty, emit, or pour forth any matter or to cause or allow matter to flow, run or seep from land or be thrown, drained, released, dumped, spilled, emptied, emitted or poured into water.

((G-)) I. "Drainage facility" has the same meaning as in K.C.C. 9.04.020.

((H-)) J. "Farm management plan" means a comprehensive site-specific plan developed by the farm owner in cooperation with the King Conservation District taking into consideration the land owner's objectives while protecting water quality and related natural resources.

((I-)) K. "Forest practices" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, as defined in chapter 222-16 WAC.

((J-)) L. "Groundwater" means all water found in the soil and stratum beneath the land surface or beneath the bed of any surface water.

((K-)) M. "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.

((L-)) N. "National Pollutant Discharge Elimination System" or "NPDES" means the national program for controlling pollutants from point source discharges directly into waters of the United States under the Clean Water Act.

((M-)) O. "National Pollutant Discharge Elimination System permit" means an authorization, license or equivalent control document issued by the United States Environmental Protection Agency or the Washington state Department of Ecology to implement the requirements of the NPDES program.

((N-)) P. "Normal single family residential activities" means activities that are ordinarily associated with domestic residential uses and that ordinarily occur on a single family residential property. "Normal single family residential activities" include but are not limited to washing and repair of personal vehicles and boats; storage and disposal of solid and yard wastes; use, storage and disposal of hazardous wastes; gardening and lawn care; home maintenance and repair; and swimming pool and hot tub maintenance. "Normal single family residential activities" do not include commercial business activities that are not associated with domestic residential uses or that do not ordinarily occur on a single family residential property.

((O-)) Q. "Person" means an individual and ((his or her)) the person's agent or assign, municipality, political subdivision, government agency, partnership, corporation, business or any other entity.

((P-)) R. "Prohibited discharge" also known as an illicit discharge, means any direct or indirect act of discharging anything other than stormwater to the conveyance system, stormwater, surface water or groundwater, except as expressly allowed by this chapter.

S. "Responsible party" means the owner, operator or occupant of property; or any person causing or contributing to an action prohibited by this chapter.

((Q-)) T. "Source control BMP" means a BMP intended to prevent contaminants from entering

surface water, stormwater or groundwater including the modification of processes to eliminate the production or use of contaminants. "Source control BMPs" can be either structural or nonstructural. Structural source control BMPs involve the construction of a physical structure on site, or other type of physical modification to a site. An example of a structural source control BMP is building a covered storage area. A nonstructural source control BMP involves the modification or addition of managerial or behavioral practices. An example of a nonstructural source control BMP is using less toxic alternatives to current products or sweeping parking lots.

((R-)) U. "State Waste Discharge Permit" means an authorization, license, or equivalent control document issued by the Washington state Department of Ecology in accordance with chapter 173-216 WAC and under the authority of chapter 90.48 RCW.

((S-)) V. "Stormwater" means the water produced during precipitation or snowmelt that runs off, soaks into the ground or is dissipated into the atmosphere. Stormwater that runs off or soaks into the ground ultimately becomes surface water or groundwater.

((T-)) W. "Stormwater Pollution Prevention Manual" means the manual adopted in accordance with K.C.C. chapter 2.98, and supporting documentation referenced or incorporated in the manual, describing BMPs and procedures for existing facilities and existing and new activities not covered by the Surface Water Design Manual.

((U-)) X. "Surface water" means the water that exists on land surfaces before, during and after stormwater runoff occurs and includes, but is not limited to, the water found on ground surfaces and in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands and Puget Sound. It also includes shallow groundwater.

((V-)) Y. "Treatment BMP" means a BMP intended to remove contaminants once they are already introduced into stormwater. Examples of treatment BMPs include oil/water separators, biofiltration swales and wetponds.

SECTION 2. Ordinance 10636, Section 4, as amended, and K.C.C. 9.12.025 are hereby as amended to read as follows:

A.1. It is unlawful for any person to discharge any contaminants into the conveyance system, surface water, stormwater or groundwater. Contaminants include, but are not limited, to the following:

- a. trash or debris;
- b. construction materials;
- c. petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
- d. antifreeze and other automotive products;
- e. metals in either particulate or dissolved form;
- f. flammable or explosive materials;
- g. radioactive material;
- h. batteries;
- i. acids, alkalis(($\frac{1}{2}$)) or bases;
- j. paints, stains, resins, lacquers or varnishes;
- k. degreasers and solvents;
- l. drain cleaners;
- m. pesticides, herbicides or fertilizers;
- n. steam cleaning wastes;
- o. soaps, detergents or ammonia;
- p. swimming pool or spa filter backwash;
- q. chlorine, bromine and other disinfectants;
- r. heated water;
- s. domestic animal wastes;
- t. sewage;

- u. recreational vehicle waste;
- v. animal carcasses;
- w. food wastes;
- x. bark and other fibrous materials;
- y. collected lawn clippings, leaves or branches;
- z. silt, sediment or gravel;
- aa. dyes, except as stated in subsection C.1. of this section;
- bb. chemicals not normally found in uncontaminated water; and
- cc. any hazardous material or waste not listed ~~((above))~~ in subsection A.1.a. through bb. of this

section.

2. ~~((Illicit connections.))~~ Illicit connections are prohibited ~~((with the following exceptions:~~

- ~~a. connections conveying allowable discharges;~~
- ~~b. connections conveying discharges pursuant to an NPDES permit, other than an NPDES~~

~~stormwater permit, or a State Waste Discharge Permit; and~~

- ~~e. connections conveying effluent from onsite sewage disposal systems to subsurface soils)).~~

3. The following connections are not considered illicit connections:

- a. connections conveying stormwater or allowable discharges as described in K.C.C. 9.12.025.C.;
- b. connections conveying allowable discharges pursuant to an NPDES or State Waste Discharge

permit; and

- c. connections conveying effluent from onsite sewage disposal systems to subsurface soils.

B. BMPs shall be applied to any business or residential activity that might result in prohibited discharges as specified in the Stormwater Pollution Prevention Manual or as determined necessary by the director. Activities that might result in prohibited discharges include but are not limited to following:

- 1. Potable water line flushing;

2. Lawn watering with potable water;
3. Dust control with potable water;
- ~~((3-))~~ 4. Automobile and boat washing;
- ~~((4-))~~ 5. Pavement and building washing;
- ~~((5-))~~ 6. Swimming pool and hot tub maintenance;
- ~~((6-))~~ 7. Auto repair and maintenance;
- ~~((7-))~~ 8. Building repair and maintenance;
- ~~((8-))~~ 9. Landscape maintenance;
- ~~((9-))~~ 10. Hazardous waste handling;
- ~~((10-))~~ 11. Solid and food waste handling; and
- ~~((11-))~~ 12. Application of pesticides.

C. The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the director determines that the type of discharge, whether singly or in combination with other discharges, is causing significant contamination of surface water, stormwater or groundwater:

1. Spring water;
2. Diverted stream flows;
3. Uncontaminated water from crawl space pumps, foundation drains or footing drains;
4. Lawn watering with potable water or collected rainwater;
5. Pumped groundwater flows that are uncontaminated;
6. Materials placed as part of an approved habitat restoration or bank stabilization project;
7. Natural uncontaminated surface water or groundwater;
8. Flows from riparian habitats and wetlands;
9. The following discharges from boats: engine exhaust; cooling waters; effluent from sinks;

showers and laundry facilities; and treated sewage from Type I and Type II marine sanitation devices;

10. Collected rainwater that is uncontaminated;
11. Uncontaminated groundwater that seeps into or otherwise enters stormwater conveyance systems;
12. Air conditioning condensation;
13. Irrigation water from agricultural sources that is commingled with stormwater runoff;
14. Nonstormwater discharges authorized by another NPDES or State Waste Discharge Permit;
15. Discharges from emergency fire-fighting activities; and
16. Other types of discharges as determined by the director.

D.1. Dye testing is allowable but requires verbal notification to the King County water and land resources division at least one day prior to the date of test. The King County department of public health is exempt from this requirement.

2. A person does not violate subsection A. of this section if:
 - a. That person has properly designed, constructed, implemented and is maintaining BMPs and is carrying out AKART as required by this chapter, but contaminants continue to enter surface water, stormwater or groundwater; or
 - b. That person can demonstrate that ~~((there are))~~ no additional contaminants are being discharged from the site above the background conditions of the water entering the site.
3. ~~((A person who, under subsection D.2 of this section, is not in violation of subsection A. of this section is liable for any prohibited discharges through illicit connections, dumping, spills, improper maintenance of BMPs, or other discharges that allow contaminants to enter surface water, stormwater or groundwater.))~~ Subsection D.2. of this section does not excuse from liability any prohibited discharges resulting from illicit connections, dumping, spills, improper maintenance of BMPs or other discharges that allow contaminants to enter surface water, stormwater, groundwater or the conveyance system.
4. Emergency response activities or other actions that must be undertaken immediately or within a

time too short to allow full compliance with this chapter in order to avoid an imminent threat to public health or safety, shall be exempt from this section. The director, by public rule, may specify actions that qualify for this exception in county procedures. A person undertaking emergency response activities shall take steps to ensure that the discharges resulting from such activities are minimized. In addition, ~~((this))~~ such a person shall evaluate BMPs and the site plan, where applicable, to restrict recurrence.

SECTION 3. Ordinance 10636, Section 7, as amended, and K.C.C. 9.12.050 are hereby as amended to read as follows:

A. The director is authorized to carry out enforcement actions pursuant to the enforcement and penalty provisions of K.C.C. 9.12.090 and K.C.C. Title 23 and other enforcement provisions adopted by rule under the procedures of K.C.C. chapter 2.98.

B. The director shall gain compliance with this chapter by requiring the implementation of BMPs and, when necessary, AKART. The director shall initially use education and technical assistance as much as possible to gain compliance with this chapter, unless the director determines a violation is a result of a flagrant act that should be addressed through immediate penalties or constitutes a hazard as set forth in K.C.C.9.12.060.

C. The director, in consultation with other departments of King County government, shall develop and implement additional enforcement procedures. The procedures shall indicate how the county will investigate and respond to reports or instances of noncompliance with this chapter and shall identify by title the official~~((s))~~ or officials responsible for implementing the enforcement procedures.

D.1. The director may perform such inspections and take any actions necessary to enforce this chapter.

2. The director may observe the implementation of BMPs or examine or sample surface water, stormwater or groundwater as often as necessary to determine compliance with this chapter. Whenever an inspection of a property is made, observed violations shall be documented and this documentation provided

to the responsible party.

3. When the director determines under subsection D.2. of this section that a person is violating this chapter, the director may require the violator to sample and analyze any discharge, surface water, stormwater, groundwater(~~(, and/)~~) or sediment, or any combination thereof, in accordance with sampling and analytical procedures or requirements determined by the director. If the violator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the King County water and land resources division.

E. In addition to any other penalty or method of enforcement, the prosecuting attorney may bring actions for injunctive or other relief to enforce this chapter.

F. Enforcement actions taken under this section shall be subject to the appeal procedures in K.C.C. Title 23.

SECTION 4. Ordinance 10636, Section 10, as amended, and K.C.C. 9.12.080 are each hereby as amended to read as follows:

The enforcement provisions for water quality are intended to encourage compliance with this chapter. To achieve this, responsible parties will be required to take corrective action and comply with this chapter, and may be required to pay a civil penalty and restitution payment for the redress of ecological, recreational and economic values lost or damaged due to their unlawful action.

A. The provisions in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided by law.

B. Any responsible party in violation of this chapter shall be subject to civil penalties assessed as follows:

1. An amount reasonably determined by the director to be equivalent to the economic benefit the responsible party derives from the violation as measured by: the greater of the resulting increase in market value of the property or business value received or savings of construction or retrofitting costs realized; and

2. An amount of civil penalties, not to exceed ten thousand dollars per violation per day, that is reasonably based upon the ~~((nature and gravity of the violation and the cost to the county of enforcing this chapter against the violator))~~ criteria of subsection E.1. through 8. of this section. The director is hereby authorized to utilize in the form of a point-based penalty matrix that increases the penalty assessed as the seriousness of the violation increases. The point-based penalty matrix shall be adopted together with guidance for compliance officers and inspectors through the rule-making procedures of K.C.C. chapter 2.98. In addition to the notification procedures required by K.C.C. chapter 2.98, for the initial rule making under this section, the director shall:

- a. hold a public meeting to take comments on the draft rule;
- b. provide notice to the clerk of the council and each member of the county council regarding the date, time and location of such meeting at least thirty days in advance of the meeting; and
- c. provide notice to the clerk of the council and each member of the county council of proposed revisions to the initially drafted rule at least fifteen days prior to adoption of the final rule.

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

D. In addition to civil penalties, a responsibility party whose violation of this chapter causes damage to or impairs a drainage facility, or causes damage to physical, chemical, or biological systems of waters of the state or waters of the United States, shall be liable to and reimburse the county for any restitution, damage, cost and expense caused by such a violation or discharge.

E. Each responsible party is jointly and severally liable for a violation of this chapter. The director may take enforcement action, in whole or in part, against any responsible party. The decisions of whether to take enforcement action, what type of action to take, and which person to take action against, are all entirely within the director's discretion. Factors to be used in taking such enforcement actions shall ~~((be))~~ include whether or not:

1. ~~((Awareness of the violation))~~ The violation caused any environmental or resource damage;
2. ~~((Ability to correct the violation))~~ Action was taken to remedy the problem after a violation occurred;
3. ~~((Cooperation with government agencies))~~ It was a willful or knowing violation;
4. ~~((Degree of impact or potential threat to water or sediment quality, human health, or the environment))~~ The 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;
5. There is a history of compliance problems on the property or with the responsible party;
6. There is infrastructure damage or additional maintenance required of conveyance system, drainage facilities or right-of-way due to the violation;
7. There was an illicit connection; and
8. Anyone benefitted economically from noncompliance.

F. Civil penalties as provided for under subsection B.2. of this section shall be assessed daily for any failure to comply with a notice and order or a voluntary compliance agreement for the first thirty days following the date the notice and order or voluntary compliance agreement that required the violation to have been corrected. If after thirty days the person responsible for correcting the violation has failed to do so, penalties shall be double that of the initial rate for each day thereafter, until the violation is corrected.

G. Civil penalties as provided for under subsection B.2. of this section that are assessed for a violation of a cease discharge order shall be applied daily for each day that the director determines that work or activity was done in violation of the cease discharge order.

H. In the event more than one person is determined to have violated this chapter, all applicable civil penalties may be imposed against each person, and recoverable damages, costs, and expenses may be allocated among the persons on any equitable basis. Factors that may be considered in determining an

equitable allocation include:

1. Each person's:
 - a. culpability or degree of involvement in the violation;
 - b. awareness of the violation;
 - c. ability to correct the violation;
 - d. ability to pay damages, costs, and expenses;
 - e. cooperation with government agencies; and
2. Degree of impact or potential threat to water or sediment quality, human health, or the environment.

~~((G.))~~ I. The director may engage in mitigation discussions with the responsible party. The director may reduce the penalties based upon one or more of the following mitigating factors:

1. The person responded to county attempts to contact the person and cooperated with efforts to correct the violation;
2. The person showed due diligence ~~((and/))~~ or substantial progress, or both, in correcting the violation; or
3. An unknown person was the primary cause of the violation.

~~((H.))~~ J. Payment of a monetary penalty under this chapter does not relieve the responsible party of the duty to correct the violation.

~~((I.))~~ K. All civil penalties recovered during enforcement of this chapter shall be deposited into a fund of the division taking the enforcement action and, subject to appropriation, shall be used for the protection of surface water, stormwater or groundwater as set forth in this chapter, through education or other implementation procedures determined by the director.

~~((J.))~~ L. Civil penalties assessed under this section may be appealed in accordance with the appeal and waiver procedures for civil penalties in K.C.C. ~~((C.))~~ chapter 23.32.

SECTION 5. **Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.