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Title: Stormwater Enforcement

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Keywords: stormwater drainage enforcement

Sponsoring Agency: Department of Natural Resources and Parks



King County

Signature: _____

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.

Appendix A

Penalty Matrix Guidance

Stormwater Enforcement Public Rule PUT-8-23 (PR)

The water quality inspection process is designed to approach the goal of compliance with County stormwater, groundwater, and surface water regulations in a progressive manner, from education to formal enforcement, and emphasizes outreach, education, and technical assistance as the primary tools to attain compliance. When it is necessary to assess a penalty against a responsible party, the inspection program uses guidelines to assist the inspector in making clear, consistent, and appropriate decisions about the nature of each individual violation. Inspectors are discouraged from engaging in speculation, and are encouraged to assign fewer points when there is a lack of clarity regarding specific of a violation.

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.

To assess the environmental or resource damage, the inspector should:

- ✓ Inspect the surrounding area to determine if pollution has affected nearby water or land resources. This may require acquiring familiarity with the storm system and points of discharge to surface waters.
- ✓ Determine the amount, concentration, and characteristics of the pollutant(s) with available equipment. Photo document results.
- ✓ Use best professional judgement to assess the scale of cleanup as a possible way to distinguish between moderate and major detrimental impact.
- ✓ Photo document specific evidence in support of a decision.
- ✓ Use Table 1 below as a starting point to determine the potential severity of impact. The table is divided up according to the severity of harm the material may pose to the environment and/or public health. However, the total volume and location of discharge must also be taken into account. The actual impact or threat of a discharge may result in selecting a higher or lower category.
- ✓ Make a reasonable determination about whether a pollutant is a threat to receiving waters. Evidence, either physical or circumstantial, must be present.

Table 1 Environmental and Public Health Impacts

Minor	Moderate	Major
Aquarium or hatchery wastewater	Antifreeze or other automotive products	Acidic or alkaline materials
Domestic animal wastes e.g. pet waste	Batteries	Animal carcasses
Floor wash water	Degreasers or solvents	Any hazardous material or dangerous waste
Heated water	Dyes or other chemicals	Chlorine, bromine or other disinfectants
Trash or debris	Food wastes	Drain cleaners, root killers
Untreated pool or spa water	Livestock waste or wash water	Flammable or explosive materials
Yard waste	Paints, stains, resins, lacquers or varnishes	Metals in either particulate or dissolved form
	Petroleum products	Pesticides, herbicides or fertilizers
	Silt, sediment or gravel	Radioactive material
	Soaps, detergents, ammonia, or soapy wastewater	Recreational vehicle or portable toilet waste
	Steam or carpet cleaning wastes	Sewage
	Swimming pool backwash	
	Vehicle or equipment wash water	

The inspector should not:

- Mark a point that is not justified. If in doubt, the inspector should default to the lower score.

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 severity of the violation.

To assess whether action was taken to remedy a problem after a violation occurred, the inspector should:

- ✓ If existing, have a history of correspondence on hand to remind the responsible party of the timeline identified in the corrective action letter.
- ✓ Use best professional judgement to determine whether the responsible party is making a good faith effort to correct the violation.
- ✓ Document the technical assistance provided during each visit to make sure there is a record of attempts to educate the responsible party.
- ✓ Document the attempt(s) made to correct the violation, even if determined by the inspector to be inadequate.

3. Willful or knowing violation?	
0	If the responsible party did not know and had no reason to know that the action or inaction constituted a violation.
2	If the responsible party appears not to have known but should have known.
3	If it is clear from the circumstances that the responsible party knew.

To assess whether there was a willful or knowing violation the inspector should:

- ✓ Speak with the individual or individuals directly involved in the violation.
- ✓ Speak with the co-workers or associates of the person(s) responsible for the violation.
- ✓ Speak with the supervisor of the persons involved in the violation.
- ✓ Obtain names and contact information for anyone making statements or providing information.
- ✓ If applicable, check lease agreements, permits, training documents, and maintenance manuals for language about responsible operation and maintenance.
- ✓ Determine whether there are standard practices such as a stormwater pollution prevention plan, erosion control plan, or spill plan in place whose purpose is to prevent the violation from happening.
- ✓ Check the facility for posted documentation regarding proper material management and handling practices.

The inspector should not:

- Automatically assume the operator/violator knew the action was a violation.
- Select a score of 3 without confirming that the violator must have known that the action or omission constituted a violation.

4. Violation was a result of improper operation, inadequate maintenance, or inadequate implementation of required best management practices (BMPs) or of a required plan that addresses stormwater management source control 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.

To assess whether there was a failure to properly implement source control BMPs, the inspector should:

- ✓ Identify the BMPs required of the specific activity.
- ✓ Consider the maintenance schedule of the BMPs when determining whether the violation could have been avoided.
- ✓ Ask about training records or programs to teach staff how to maintain BMPs.
- ✓ Assess the probability of whether a violation could happen due to inadequate BMPs. Is it more or less likely than not? Consider workplace processes and the likelihood of accidents happening.
- ✓ Is there evidence of a past violation such as staining, erosion, or used cleanup materials?
- ✓ Determine whether the violation would have been prevented if there were appropriate BMPs in place.
- ✓ Assign a score of "0" if the discharge was not the result of inadequate source control BMPs.

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.

To assess whether there is a history of compliance problems on the property or with the potentially responsible party the inspector should:

- ✓ Consider "History" to mean the previous 6 years in order to include results of the previous water quality inspection(s) and drainage facility inspections, which generally occur on a 5 and 3 year cycle.
- ✓ Pull and review previous files prior to the site inspection.
- ✓ Make an attempt to ask the responsible party if they are aware of any existing history.
- ✓ Use documented records of violations to assess this score appropriately.

The inspector should not:

- Rely on memory or anecdotal evidence to justify a score greater than "0".
- Count as a previous violation, any Cease Discharge Order or Notice and Order that was appealed and subsequently reversed.

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 minor 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 moderate 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.

To assess whether the violation resulted in damage to infrastructure or whether it required additional maintenance of the conveyance system, drainage facilities, or right-of-way the inspector should:

- ✓ Take photographs for possible review by engineers or other appropriate staff.
- ✓ Use professional judgement to determine whether the need for maintenance or repairs has been caused by the violation.
- ✓ Consider the extent of the violation and weather when assessing the potential need for system maintenance. For instance, if it was raining hard during the violation how much of the pollutant remains in the system, or was it flushed through?
- ✓ Review existing work orders to determine whether the damage to infrastructure had already been identified by another inspection program.

The inspector should not:

- Automatically assume damages are caused by the violation without some concrete evidence.

7. 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 that was self-created by owner/operator.

To assess whether there is an illicit connection the inspector should:

- ✓ Review plan sets and records.
- ✓ Conduct dye testing if necessary.
- ✓ Talk with the property manager to determine how the connection was made, and whether it was intentional.
- ✓ Determine whether the connection is allowed under another National Pollutant Discharge Elimination System (NPDES) permit.

The inspector should not:

- Automatically assume a given connection is illicit.

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 may have gained a minor economic benefit.
2	If it is likely that someone gained a moderate economic benefit.
3	If it is demonstrable that someone gained a significant economic benefit.

To assess whether there was an economic benefit to non-compliance the inspector should:

- ✓ Consider who may have gained an economic benefit for non-compliance.
- ✓ Determine whether the responsible party actively pursued an alternative method for managing pollution-generating materials that led to the violation but chose not to use them.
- ✓ Assess whether the details are available to allow for an accurate estimate of the total benefit gained (cost of proper disposal, cost of BMPs that could have prevented the violation, operational costs saved by not responding appropriately, etc.).

The inspector should not

- Attempt to quantify the economic benefit onsite and without consulting the source control program manager or designee.
- Assume that the economic benefit was the reason for the violation. Often violations can be related to accidental discharges for which economic benefit is not a factor.

Penalty Charges

Use the table below to determine penalty amounts, adding up points from the violation factors listed above.

Penalty Points Score with Penalty Amount					
Score	≤9 points	10-15	16-21	22-24	>24
Penalty	\$500	\$1000	\$2500	\$5000	\$10,000
Penalty amounts are issued on a per-day basis for ongoing violations.					

All penalty matrix decisions are to be reviewed and approved by source control program staff to ensure consistency of application.

