



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 28, 2017

Ordinance 18481

Proposed No. 2017-0009.2

Sponsors Dembowski

1 AN ORDINANCE relating to King County stormwater and
2 surface water management requirements establishing
3 enforcement criteria; amending Ordinance 10636, Section
4 3, as amended, and K.C.C. 9.12.015, Ordinance 10636,
5 Section 4, as amended, and K.C.C. 9.12.025, Ordinance
6 10636, Section 7, as amended, and K.C.C. 9.12.050 and
7 Ordinance 10636, Section 10, as amended, and K.C.C.
8 9.12.080 and prescribing penalties.

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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

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

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

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

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

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

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

32 F. "Conveyance system" means the drainage facilities and features, both
33 natural and constructed that provide for the collection and transport of surface water or
34 stormwater runoff. The natural elements of the "conveyance system" include swales
35 and small drainage courses, streams, rivers, lakes and wetlands. The constructed
36 elements of the "conveyance system" include gutters, ditches, pipes, catch basins,
37 channels and most flow control and water quality facilities.

38 ~~((E-))~~ G. "Director" means the director of the King County department of
39 natural resources and parks, other department directors specified in enforcement
40 procedures established in accordance with this chapter, or the authorized
41 representatives of those directors, including compliance officers and inspectors whose

42 responsibility includes the detection and reporting of civil code violations, as defined
43 in K.C.C. 23.02.010.

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

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

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

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

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

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

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

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

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

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

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

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

89 ~~((Q-))~~ T. "Source control BMP" means a BMP intended to prevent
90 contaminants from entering surface water, stormwater or groundwater including the
91 modification of processes to eliminate the production or use of contaminants. "Source
92 control BMPs" can be either structural or nonstructural. Structural source control
93 BMPs involve the construction of a physical structure on site, or other type of physical
94 modification to a site. An example of a structural source control BMP is building a
95 covered storage area. A nonstructural source control BMP involves the modification
96 or addition of managerial or behavioral practices. An example of a nonstructural
97 source control BMP is using less toxic alternatives to current products or sweeping
98 parking lots.

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

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

107 ~~((T-))~~ W. "Stormwater Pollution Prevention Manual" means the manual
108 adopted in accordance with K.C.C. chapter 2.98, and supporting documentation
109 referenced or incorporated in the manual, describing BMPs and procedures for

110 existing facilities and existing and new activities not covered by the Surface Water
111 Design Manual.

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

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

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

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

- 124 a. trash or debris;
- 125 b. construction materials;
- 126 c. petroleum products including but not limited to oil, gasoline, grease, fuel
127 oil, heating oil;
- 128 d. antifreeze and other automotive products;
- 129 e. metals in either particulate or dissolved form;
- 130 f. flammable or explosive materials;
- 131 g. radioactive material;
- 132 h. batteries;

- 133 i. acids, alkalis((;)) or bases;
- 134 j. paints, stains, resins, lacquers or varnishes;
- 135 k. degreasers and solvents;
- 136 l. drain cleaners;
- 137 m. pesticides, herbicides or fertilizers;
- 138 n. steam cleaning wastes;
- 139 o. soaps, detergents or ammonia;
- 140 p. swimming pool or spa filter backwash;
- 141 q. chlorine, bromine and other disinfectants;
- 142 r. heated water;
- 143 s. domestic animal wastes;
- 144 t. sewage;
- 145 u. recreational vehicle waste;
- 146 v. animal carcasses;
- 147 w. food wastes;
- 148 x. bark and other fibrous materials;
- 149 y. collected lawn clippings, leaves or branches;
- 150 z. silt, sediment or gravel;
- 151 aa. dyes, except as stated in subsection C.1. of this section;
- 152 bb. chemicals not normally found in uncontaminated water; and
- 153 cc. any hazardous material or waste not listed (~~(above)~~) in subsection A.1.a.
- 154 through bb. of this section.

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

- 157 a. ~~connections conveying allowable discharges;~~
158 b. ~~connections conveying discharges pursuant to an NPDES permit, other~~
159 ~~than an NPDES stormwater permit, or a State Waste Discharge Permit; and~~
160 c. ~~connections conveying effluent from onsite sewage disposal systems to~~
161 ~~subsurface soils)).~~

162 3. The following connections are not considered illicit connections:

- 163 a. connections conveying stormwater or allowable discharges as described
164 in K.C.C. 9.12.025.C.;
165 b. connections conveying allowable discharges pursuant to an NPDES or
166 State Waste Discharge permit; and
167 c. connections conveying effluent from onsite sewage disposal systems to
168 subsurface soils.

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

- 173 1. Potable water line flushing;
174 2. Lawn watering with potable water;
175 3. Dust control with potable water;
176 ~~((3-))~~ 4. Automobile and boat washing;
177 ~~((4-))~~ 5. Pavement and building washing;

178 ~~((5.))~~ 6. Swimming pool and hot tub maintenance;

179 ~~((6.))~~ 7. Auto repair and maintenance;

180 ~~((7.))~~ 8. Building repair and maintenance;

181 ~~((8.))~~ 9. Landscape maintenance;

182 ~~((9.))~~ 10. Hazardous waste handling;

183 ~~((10.))~~ 11. Solid and food waste handling; and

184 ~~((11.))~~ 12. Application of pesticides.

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

189 1. Spring water;

190 2. Diverted stream flows;

191 3. Uncontaminated water from crawl space pumps, foundation drains or
192 footing drains;

193 4. Lawn watering with potable water or collected rainwater;

194 5. Pumped groundwater flows that are uncontaminated;

195 6. Materials placed as part of an approved habitat restoration or bank
196 stabilization project;

197 7. Natural uncontaminated surface water or groundwater;

198 8. Flows from riparian habitats and wetlands;

199 9. The following discharges from boats: engine exhaust; cooling waters;
200 effluent from sinks; showers and laundry facilities; and treated sewage from Type I
201 and Type II marine sanitation devices;

202 10. Collected rainwater that is uncontaminated;

203 11. Uncontaminated groundwater that seeps into or otherwise enters
204 stormwater conveyance systems;

205 12. Air conditioning condensation;

206 13. Irrigation water from agricultural sources that is commingled with
207 stormwater runoff;

208 14. Nonstormwater discharges authorized by another NPDES or State Waste
209 Discharge Permit;

210 15. Discharges from emergency fire-fighting activities; and

211 16. Other types of discharges as determined by the director.

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

215 2. A person does not violate subsection A. of this section if:

216 a. That person has properly designed, constructed, implemented and is
217 maintaining BMPs and is carrying out AKART as required by this chapter, but
218 contaminants continue to enter surface water, stormwater or groundwater; or

219 b. That person can demonstrate that ~~((there are))~~ no additional contaminants
220 are being discharged from the site above the background conditions of the water
221 entering the site.

222 3. ~~((A person who, under subsection D.2 of this section, is not in violation of~~
223 ~~subsection A. of this section is liable for any prohibited discharges through illicit~~
224 ~~connections, dumping, spills, improper maintenance of BMPs, or other discharges that~~
225 ~~allow contaminants to enter surface water, stormwater or groundwater.)) Subsection
226 D.2. of this section does not excuse from liability any prohibited discharges resulting
227 from illicit connections, dumping, spills, improper maintenance of BMPs or other
228 discharges that allow contaminants to enter surface water, stormwater, groundwater or
229 the conveyance system.~~

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

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

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

243 B. The director shall gain compliance with this chapter by requiring the
244 implementation of BMPs and, when necessary, AKART. The director shall initially

245 use education and technical assistance as much as possible to gain compliance with
246 this chapter, unless the director determines a violation is a result of a flagrant act that
247 should be addressed through immediate penalties or constitutes a hazard as set forth in
248 K.C.C.9.12.060.

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

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

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

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

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

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

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

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

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

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

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

287 2. An amount of civil penalties, not to exceed ten thousand dollars per violation
288 per day, that is reasonably based upon the ~~((nature and gravity of the violation and the
289 cost to the county of enforcing this chapter against the violator))~~ criteria of subsection
290 E.1. through 8. of this section. The director is hereby authorized to utilize in the form of

291 a point-based penalty matrix that increases the penalty assessed as the seriousness of the
292 violation increases. The point-based penalty matrix shall be adopted together with
293 guidance for compliance officers and inspectors through the rule-making procedures of
294 K.C.C. chapter 2.98. In addition to the notification procedures required by K.C.C.
295 chapter 2.98, for the initial rule making under this section, the director shall:

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

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

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

311 E. Each responsible party is jointly and severally liable for a violation of this
312 chapter. The director may take enforcement action, in whole or in part, against any
313 responsible party. The decisions of whether to take enforcement action, what type of

314 action to take, and which person to take action against, are all entirely within the
315 director's discretion. Factors to be used in taking such enforcement actions shall ~~((be))~~
316 include whether or not:

317 1. ~~((Awareness of the violation))~~ The violation caused any environmental or
318 resource damage;

319 2. ~~((Ability to correct the violation))~~ Action was taken to remedy the problem
320 after a violation occurred;

321 3. ~~((Cooperation with government agencies))~~ It was a willful or knowing
322 violation;

323 4. ~~((Degree of impact or potential threat to water or sediment quality, human~~
324 ~~health, or the environment))~~ The violation was a result of improper operation,
325 inadequate maintenance or inadequate implementation of required BMPs or of a
326 required plan that addresses stormwater management source control BMPs;

327 5. There is a history of compliance problems on the property or with the
328 responsible party;

329 6. There is infrastructure damage or additional maintenance required of
330 conveyance system, drainage facilities or right-of-way due to the violation;

331 7. There was an illicit connection; and

332 8. Anyone benefitted economically from noncompliance.

333 F. Civil penalties as provided for under subsection B.2. of this section shall be
334 assessed daily for any failure to comply with a notice and order or a voluntary
335 compliance agreement for the first thirty days following the date the notice and order
336 or voluntary compliance agreement that required the violation to have been corrected.

337 If after thirty days the person responsible for correcting the violation has failed to do
338 so, penalties shall be double that of the initial rate for each day thereafter, until the
339 violation is corrected.

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

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

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

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

360 1. The person responded to county attempts to contact the person and
361 cooperated with efforts to correct the violation;

362 2. The person showed due diligence (~~(and/)~~or substantial progress, or both,
363 in correcting the violation; or

364 3. An unknown person was the primary cause of the violation.

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

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

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

374 ~~((C.))~~chapter 23.32.

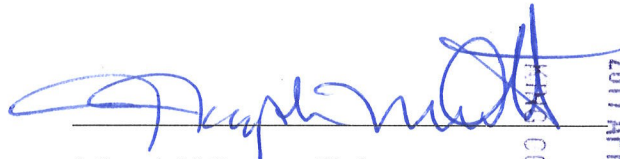
375 SECTION 5. Severability. If any provision of this ordinance or its
376 application to any person or circumstance is held invalid, the remainder of the

377 ordinance or the application of the provision to other persons or circumstances is not
378 affected.
379

Ordinance 18481 was introduced on 1/17/2017 and passed by the Metropolitan King
County Council on 3/27/2017, by the following vote:

Yes: 8 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove and Ms. Kohl-
Welles
No: 0
Excused: 1 - Ms. Balducci

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



J. Joseph McDermott, Chair

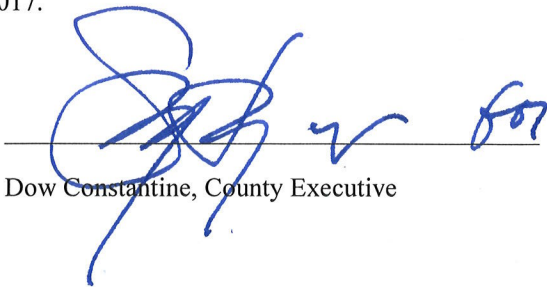
ATTEST:



Melani Pedroza, Acting Clerk of the Council

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KING COUNTY COUNCIL CLERK

APPROVED this 7th day of April, 2017.



Dow Constantine, County Executive

Attachments: None