



City of Bellingham
Public Works Department

MEMORANDUM

To: Steve Hood, Water Quality Specialist
From: Jason Porter, Storm and Surface Water Manager
Cc: Renee LaCroix, Assistant Public Works Director
Subject: Lake Whatcom TMDL enforcement procedures and codes
Date: March 31, 2017

Steve,

The City of Bellingham is committed to the protection and recovery of Lake Whatcom. Part of this commitment is that the City has municipal codes and enforcement policies that address issues of illicit discharges and violations of municipal code. These codes and policies are applicable to all areas within Bellingham, including the Lake Whatcom watershed.

The City of Bellingham's Public Works Department currently utilizes an inspection staff of seven to nine people, depending on the time of year. Each inspector is required to have a CESCL certification and is expected to make stormwater inspection a part of all sight visits and proactively initiate contact on any site that appears to have the potential for a stormwater code violation.

Inspection frequency is determined by a number of factors including staff time, location, scope of the project, and complaints. Typically, all permitted sights are inspected for initial installation of erosion and sediment control measures then, as time allows, are inspected with a frequency of every 3-4 weeks or more depending on the project size, location, and risk level. Once the project is complete, an end of construction inspection is performed before projects permits are closed out or a certificate of occupancy is granted.

The City of Bellingham utilizes a number of enforcement strategies including education, sampling, correction notices, formal warning letters, stop work orders, and/or fines. The City's approach to enforcement and the progression of enforcement action level depends on the severity of the violation and the circumstances. Code enforcement typically begins with education along with a correction notice for first time offences unless the violation warrants a more severe action that may include fines. If the violation needs immediate action, a stop work order is issued to ensure all the focus is on correcting the issue; this may or may not be accompanied by a formal warning letter and/or a fine. Depending on the history with the site and/or the contractor, progressive enforcement measures are pursued and may include stop work orders and/or fines. Penalties can be accrued on a daily basis for non-compliance.

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Bellingham Municipal Code 15.42.020 Definitions

“Illicit discharge” means all non-stormwater discharges to natural or manmade stormwater drainage systems, including but not limited to sanitary sewer connections, industrial process water, interior floor drains, car washing, and greywater systems. All non-stormwater discharges not listed below are considered to be an illicit discharge.

A. The following are allowed discharges:

1. Diverted stream flows.
2. Rising ground waters.
3. Uncontaminated ground water infiltration (as defined in 40 CFR 35.2005(20)).
4. Uncontaminated pumped ground water.
5. Fountain drains.
6. Air conditioning condensate.
7. Irrigation water from agricultural sources that is commingled with urban stormwater.
8. Springs.
9. Water from crawl space pumps.
10. Footing drains.
11. Flows from riparian habitats and wetlands.
12. Non-stormwater discharges covered by and compliant with another NPDES permit.
13. Discharges from emergency firefighting activities in accordance with permit condition S2 of the Western Washington Phase II Municipal Stormwater Permit Authorized Discharges.

B. The following are conditionally allowed discharges:

1. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges will be to sanitary sewer. If sanitary sewer is not an option, the water shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the stormwater drainage system.
2. Dechlorinated swimming pool discharges. Any swimming pool, spa, or hot tub discharge that may be allowed must be dechlorinated to a concentration of 0.1 ppm or less, thermally controlled, pH-adjusted and re-oxygenized. Discharge volume and velocity will be controlled to prevent scour or resuspension of sediments in city stormwater conveyances. Swimming pool, spa or hot tub cleaning water and filter backwash is not an allowed discharge.
3. Street and sidewalk wash water, water used to control dust, and routine external building wash down are allowed if the water does not contain detergents and/or particulates will not cause an exceedance of state water quality standards. For city operations, to the extent practicable, the amount of street wash and dust control water used shall be minimized. At active construction sites, BMC 15.42.060(F)(2)(e)(ii)(D) requires that street sweeping must be performed prior to the washing of any street.
4. Stormwater discharges associated with construction, including dewatering practices, are regulated and enforced per this chapter.

Bellingham Municipal Code 15.42.050 General Requirements

C. Illicit Discharges.

1. Illicit discharges to stormwater drainage systems are prohibited.
2. No person shall throw, drain or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the stormwater drainage system and/or surface and ground waters any materials other than stormwater.
3. For Basin One of Lake Whatcom, activities and actions that result in the discharge of water exceeding an average of 0.15 pounds of phosphorus per acre per year from a site or that result in the discharge of water exceeding state water quality standards for fecal coliform are considered an illicit discharge.

Bellingham Municipal Code 15.42.070 Maintenance, inspection and enforcement.

A. General Requirements.

1. Maintenance Required. All stormwater facilities shall be maintained in accordance with this chapter and the Stormwater Management Manual. Systematic, routine preventive maintenance is preferred.
2. Minimum Standards. The following are the minimum standards for the maintenance of stormwater facilities:
 - a. Facilities shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility.
 - b. Grassy swales and other biofilters shall be inspected monthly and mowed or replanted as necessary. Clippings are to be removed and properly disposed of.
 - c. Maintenance of stormwater facilities including LID facilities, which may include, but are not limited to, bioretention, dispersion, and infiltration facilities, amended soils, pervious systems, vegetated roofs, or roof water harvesting, shall be maintained consistent with conditions of approval, and recorded agreements against subject properties, and city standards as enacted at the time of approval.
 - d. Where lack of maintenance is causing or contributing to a water quality problem or violation, immediate action shall be taken by the subject property owner to correct the problem.
3. Compliance. Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs unless the city has accepted maintenance responsibility in writing and a written easement exists granting the city an adequate and sufficient right, in the city's discretion, to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this chapter and the DOE Manual (current edition).

B. Administration. The director of public works shall develop and administer an inspection program for stormwater facilities in Bellingham.

C. Inspection Program.

1. Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Bellingham to determine compliance with the provisions of this chapter.

2. Development Inspection. All new development and redevelopment shall provide for and install adequate runoff controls per an approved SSP or SWPPP. Failure to provide such required runoff controls prior to or simultaneously with the commencement of land disturbance activities and failure to schedule an inspection for the runoff controls shall result in an order to stop all work upon the site for a minimum of three working days; provided, that such work that is necessary to bring the site into compliance with this code, permits, or an approved SSP or SWPPP shall be allowed to continue.

D. Enforcement.

1. Orders. The director shall have the authority to issue to an owner or person an order to install, maintain or repair a component of a stormwater facility or BMP to bring it in compliance with this chapter, the Ecology Manual (current edition), and/or city regulations. The order shall include:

- a. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;
- b. A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and
- c. A reasonable time to comply, depending on the circumstances.

2. Civil Penalty. In addition to any other remedy or sanction available, a person who fails to comply with a final order issued by the director or city council pursuant to this chapter, or who fails to conform to the terms of an approval issued, shall be subject to a civil penalty and/or a stop work order.

- a. Amount of Penalty. The penalty shall be not less than \$100.00 or exceed \$5,000 for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.
- b. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
- c. Notice of Penalty. A civil penalty shall be imposed by the director, by a notice in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.
- d. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within 10 days of receipt of the penalty to the director of public works (or designee) for remission or mitigation of such penalty. Upon receipt of the application, the director of public works may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The director's decision may be appealed to the hearing examiner within 10 days of the decision.
- e. Appeal of Civil Penalty. Persons incurring a penalty imposed by the director may appeal in writing within 10 days of the receipt of the notice of penalty to the hearing examiner. The hearing examiner shall hold a de novo hearing to consider the appeal and may affirm, modify or reverse the penalty. The decision of the hearing examiner may be appealed to superior court within 10 days of the date of the hearing examiner's decision.

3. Penalties Due. Penalties imposed under this section shall become due and payable 10 days after notice of the penalty is mailed or delivered, whichever occurs first, unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made or

an appeal to the hearing examiner filed (including payment of all applicable hearing examiner fees), penalties shall become due and payable 10 days after the date of the decision regarding the remission or payable after all review proceedings and a final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed is not paid within the time specified in this section, the city may take actions necessary to recover such penalty.

4. Penalty Recovered. Penalties recovered shall be paid to a fund dedicated to enforcement and/or enhancement of the stormwater management program.

E. City Action. In addition to any other remedies the city may have under this chapter or at law or in equity, nothing in this chapter or elsewhere within this code shall prevent the city from effecting repairs or maintenance to stormwater facilities if the director of public works (or designee) determines that imminent danger to public safety, health or welfare, or public or private property, or critical areas or habitat is likely as a result of the actions or inaction of the property owner(s). If the city affects repairs or maintenance, the cost will be charged to the property owner(s) together with any penalties incurred under this chapter and any costs of collection (including attorneys' fees), all of which shall be considered a lien against the subject property and also collectable as a personal debt against the property owner(s).

Bellingham Municipal Code 15.42.100 Infractions – Penalty.

A violation of any provision of this chapter, other than as set forth in BMC 15.42.110, shall be considered an infraction, punishable by a stop work order and/or a fine of up to \$500.00. Each day of continued violation or repeated violation shall constitute a separate violation. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.

The court may order, in addition to any fine imposed, that a person found to have committed an infraction shall make restitution to any person damaged by the violation.

Bellingham Municipal Code 15.42.110 Misdemeanors – Penalty.

Any violation of this chapter which results in damage to public or private property, other than the property of the violator, in an amount greater than \$250.00, or which results in any physical injury to a person, shall be a misdemeanor. For purposes of this section, "damage" shall include cost to restore as well as loss of value.

Each second or subsequent violation of this chapter by any person within a period of three years may be a misdemeanor.

Any violation of this chapter committed intentionally by any person may be a misdemeanor.

Each misdemeanor shall be punishable by a fine not to exceed \$1,000. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.

The court may order, in addition to any fine imposed, that a person found to have committed a misdemeanor shall make restitution to any person damaged by the violation.