

ORDINANCE NO. 1456

AN ORDINANCE OF THE CITY OF CLARKSTON, WASHINGTON RELATING TO THE ADOPTION OF REGULATIONS FOR ILLICIT DISCHARGE, DETECTION AND ELIMINATION (IDDE) AND ADDING A NEW CHAPTER, 14.20, TO THE CLARKSTON MUNICIPAL CODE.

WHEREAS, the City of Clarkston (the “City”) is regulated under the Washington State Department of Ecology’s Eastern Washington Phase II Municipal Stormwater Permit (the “Permit”); and

WHEREAS, the City will be adopting code policies and procedures as needed to comply with the Permit; and

WHEREAS, the Permit requires that an Illicit Discharge Detection and Elimination ordinance must be developed and adopted to prohibit non-stormwater discharges into the municipal separate storm sewer system (MS4) and authorizes enforcement actions, including on private property.

WHEREAS, the proposed Illicit Discharge Detection and Elimination chapter becomes an addition to the Clarkston Municipal Code intended to meet Condition S5.B.3 of the Permit with the goal of improving and maintaining water quality in compliance with the Clean Water Act; now, therefore,

THE CITY COUNCIL OF THE CITY OF CLARKSTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter 14.20 is added to Title 14 of the Clarkston Municipal Code to read as follows:

“Chapter 14.20

ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sections:

- 14.20.010 Purpose**
- 14.20.020 Definitions**
- 14.20.030 Applicability**
- 14.20.040 General Requirements**
- 14.20.050 Enforcement**
- 14.20.060 Inspections and Investigations**
- 14.20.070 Regulatory Consistency**
- 14.20.080 Severability**
- 14.20.090 Effective Date**

14.20.010 Purpose.

The purpose of this chapter is to regulate the city's municipal separate storm sewer system ("MS4 or stormwater drainage system") regarding the introduction of pollutants that would adversely impact surface and groundwater quality of the state of Washington in order to comply with requirements of the city's National Pollutant Discharge Elimination System ("NPDES") permit. The intent of this chapter is to:

- A. Prevent and control the introduction of pollutants to the stormwater drainage system by any person and/or entity within the Permit boundary.
- B. Prohibit illicit connections and discharges to the stormwater drainage system and receiving waters within the Permit boundary.
- C. Establish legal authority to carry out all inspection, surveillance, monitoring procedures and enforcement necessary to ensure compliance with this chapter.

14.20.020 Definitions.

"Enforcement Officer" means anyone authorized by the City to enforce this ordinance.

AKART – All Known, Available and Reasonable methods of prevention, control and Treatment as established by State Water Pollution Control Act, RCW 90.48.010 and 90.48.520.

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

"Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. 1251 et. Seq.), and any subsequent amendments thereto.

"Ground Water" means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

"Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial immediate or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hearing Officer" means the official appointed by the City for administrative hearings.

"Illicit discharge" means any direct or indirect non-stormwater discharge to the stormwater drainage system, except as permitted or exempted in CMC 14.20.040(A) (3).

“Illicit connection” is defined as either of the following:

- a) Any drain, conveyance, or hydraulic connection, whether surface or subsurface, which allows an illegal discharge to enter the stormwater drainage system including, but not limited to, any conveyances which allow sewage, process wastewater, or wash water to enter the stormwater drainage system and any connections to the stormwater drainage system from indoor drains and sinks, regardless of whether the connection had been previously allowed, permitted, or approved by the city or other authorized public agency.
- b) Any drain or conveyance connected to the stormwater drainage system from a residential, commercial, or industrial land use, including roof downspout systems, which does not conform to this ordinance.

“Municipal Separate Storm Sewer System (MS4)” or “Stormwater drainage system” includes, but is not limited to, the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, street gutters, ditches, dry wells, retention and detention ponds, manmade channels, or storm drains owned and operated by the city.

“National Pollutant Discharge Elimination System (NPDES) Phase II Permit” means the “Eastern Washington Phase II Municipal Stormwater Permit” issued by the Washington State Department of Ecology with an effective date of February 16, 2007 and subsequent reissues.

“Non-stormwater discharge” means any discharge to the stormwater drainage system that is not composed entirely of stormwater.

“Permit Boundary” means the geographic areas of the entire incorporated area of the City of Clarkston and the City of Asotin and the urbanized areas and urban growth areas of the cities and the urbanized area under the jurisdictional control of Asotin County and includes the 20-year growth boundary as defined by the Metropolitan Planning Organization.

“Person(s)” shall mean any individual, firm, company, partnership, association, corporation or group.

“Pollutant” or “Pollution” shall be construed to mean such contamination or other alteration of the physical, chemical, or biological properties of any of the waters of the state including, change in temperature, taste, color, turbidity, or odor of the waters or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious, to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life; as defined in RCW 90.48.020 as now existing or hereafter amended.

“Stormwater” means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

“Surface Waters” includes lakes, rivers, ponds, streams, inland waters, salt waters, wetlands, other surface waters, and water courses as well as shallow ground water.

“Wastewater” or “Process wastewater” means any liquid or water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

“Watercourse” and “river or stream” means any portion of a channel, bed, bank, or bottom below the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, stormwater run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by humans.

“Waters of the state” means all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington as defined in RCW 90.48.

14.20.030 Applicability.

This chapter shall apply to any discharge entering the stormwater drainage system and waters of the state within the city jurisdiction.

14.20.040 General Provisions.

A. Prohibition of Illegal Discharges.

1. No person shall discharge or cause to be discharged into the city’s stormwater drainage system or waters of the state, any materials, including but not limited to, pollutants or waters containing any pollutants.

Emergency firefighting activities will not be considered illicit discharge. Fire departments will report any discharge to enforcement officers as set forth in Section 14.20.040(A) (3).

2. Prohibited discharges include, but are not limited to, the following:
 - a. Trash or debris;
 - b. Construction materials, including but not limited to cement and concrete;
 - c. Petroleum products including, but not limited to, oil, gasoline, grease, fuel oil, heating oil;
 - d. Antifreeze and other automotive products;
 - e. Metals in excess of naturally occurring amounts, in either particulate or dissolved form;
 - f. Flammable or explosive materials;
 - g. Chemicals not normally found in uncontaminated water;

- h. Acids, alkalis, or bases;
 - i. Painting products;
 - j. Degreasers and/or solvents;
 - k. Drain cleaners;
 - l. Commercial and household cleaning products;
 - m. Pesticides, herbicides, or fertilizers;
 - n. Steam cleaning wastes;
 - o. Pressure washing wastes;
 - p. Soaps, detergents, or ammonia;
 - q. Chlorinated spa or swimming pool water;
 - r. Domestic or sanitary sewage;
 - s. Discharge carrying pollutants from roof downspout systems;
 - t. Animal carcasses;
 - u. Food wastes;
 - v. Yard wastes;
 - w. Silt, sediment, or gravel;
 - x. Domestic animal wastes;
 - y. Recreational vehicle wastes;
 - z. Any hazardous material or waste not listed above;
 - aa. Wastewater or process wastewater (including filtered or purified wastewaters);
3. The following discharges are allowed by this chapter if the discharges do not contain pollutants. The Enforcement Officer may evaluate and remove any of the exemptions if it is determined that they are causing an adverse impact.
- a. Diverted stream flows (i.e., channeled or piped streams);
 - b. Rising ground waters and springs;
 - c. Flows from riparian habitats and wetlands.
 - d. Uncontaminated ground water infiltration (as defined in 40 C.F.R. 35.2005(20));
 - e. Uncontaminated pumped ground water;
 - f. Foundation and footing drains;
 - g. Air conditioning condensation;
 - h. Irrigation water from agricultural sources that is commingled with urban stormwater;
 - i. Water from crawl space pumps;
 - j. Discharges from emergency fire fighting activities;

- k. Discharges specified in writing by the Enforcement Officer as being necessary to protect public health and safety;
 - l. Minimal over spray that flows into the storm water system from watering or other irrigation run off, free from recent applications of fertilizer, pesticides or other yard treatments or soil amendments.
4. The following types of discharges shall only be permitted if the stated conditions are met:
- a. Discharges from potable water sources, including water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water; planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system.
 - b. Dechlorinated spa or swimming pool discharges; these discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system. The temperature of the discharge water shall conform to state regulation as currently enacted and may be amended (currently WAC 173-201A-200). Water used to clean spa or swimming pools and filter backwash shall not be discharged to the stormwater drainage system.
 - c. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents; the amount of street wash, dust control, and building wash water shall be minimized. At active construction sites, street sweeping must be performed prior to washing the street.
 - d. Dye testing with verbal notification to the city at least twenty-four (24) hours prior to the time of the test.
 - e. Discharges resulting from maintenance repair, or operation of fire fighting equipment and facilities that are not directly associated with public fire fighting, including discharges from public fire fighting training exercises; city-approved best management practices shall be implemented for these discharges.
5. Discharge prohibitions shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency or Washington State Department of Ecology, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the stormwater drainage system.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. The person with the illicit connection will receive a

notice to cease and desist, and have the right to appeal the cease and desist notice to the hearing officer as set forth above.

C. Waste Disposal.

No person shall throw, deposit, leave, maintain, or keep in or upon any public or private property, the stormwater drainage system, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandon objects, articles, or accumulations that may cause or contribute to pollution of waters of the State. Wastes deposited in proper waste receptacles for the purposes of collection are exempt from this prohibition.

D. Requirement to Implement Best Management Practices.

The owner or operator of a commercial or industrial establishment and all property owners shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the stormwater drainage system or waters of the state through the use of structural and non-structural BMPs as listed and described in the Stormwater Management Manual for Eastern Washington. The Enforcement Officer may require any person responsible for a property or premise, which is, or may be, the source of an illicit discharge to implement, at their own expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the stormwater drainage system.

E. Watercourse Protection.

Any person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, and other items, as described in 14.20.040(A)(2), that would pollute or contaminate the flow of water through the watercourse.

F. Notification of Illegal Discharges.

1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected illegal discharges into the stormwater drainage system or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
2. In the event of an illegal discharge of hazardous materials into the stormwater drainage system or waters of the state, said person shall immediately notify emergency dispatch services (911) and the Enforcement Officer (IDDE hotline number).
3. In the event of an illegal discharge of non-hazardous materials into the stormwater drainage system or waters of the state, said person shall notify the Enforcement Officer by phone, (IDDE hotline number) by facsimile or in person within forty-eight (48) hours after said discharge.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be filed with the County Auditor in association with the deed or other transfer document and a copy provided to the Enforcement Officer.

14.20.050 Enforcement.

A. Failure to Comply.

It is unlawful for any person to violate any of the following provisions or fail to comply with any of the requirements of this chapter. Any activity or action caused or permitted to exist in violation of this chapter is a violation subject to enforcement under this ordinance.

B. Emergency Access and Reparation.

In the event the violation constitutes an immediate danger to public health or safety, the enforcement officer is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or person. Any relief obtained under this section shall not prevent the city from seeking further relief or applying other penalties as outlined in CMC 14.20.

C. Investigation

Investigation of a violation of this ordinance may be initiated by any enforcement officer duly authorized by the City upon observation or report of any violation. The violation will be investigated to determine whether or not an illicit connection or illicit discharge, as previously defined exists.

A written statement of the violation, including date, time, address, name of property owner, resident and/or name of person making illicit discharge or connection to the stormwater system and a description of the violation, will be signed under penalty of perjury and given to the person who has allegedly violated the ordinance. The written notice will also contain instructions on how to appeal the notice of violation. The enforcement officer will request a signature from the person, acknowledging receipt of the written notice of violation. The written notice may also be mailed, return receipt required, to the alleged violator and deemed served three days from date of mailing. A notice of violation shall be posted on the property. In the event personal service is not made, and mail is returned without forwarding information, the posted notice is sufficient notice to proceed with enforcement actions.

D. Violation

1. The first violation of this ordinance resulting from conduct made unlawful by this chapter shall result in a written Notice of Violation describing the illegal nature of the discharge or connection. The person will be required to develop a plan within 10 days of receipt of written notice of violation to be approved by the City designated official to eliminate the illicit discharge or illicit connection and remove the illicit discharge or illicit connection. The notice of violation will contain verbiage that informs the recipient that if the violation is not abated, a fine of up to \$1000 per day may be imposed until the violation is abated. The written notice will also contain instructions on how to appeal the notice of violation. The enforcement officer will request a signature from the person, acknowledging receipt of the written notice of violation. The written notice may also be mailed, by regular and return receipt required to the alleged violator and deemed served three days from date of mailing. Proof of this mailing and proof of posting the notice at the property will be required at any appeal.

2. Second and subsequent violations within 12 months constitutes a misdemeanor pursuant to RCW 9A.20.010 (2). The penalty for second violations will increase. The first day of a violation, the fine will be up to \$100, 2nd day the violation continues, the fine will be up to \$200, the 3rd day and every subsequent day the violation continues the fine will be \$300 up to \$1,000 and 30 days in the county jail. The City may elect to prosecute under any possible violations of the Federal Clean Water Act, NPDES Phase II Permit, and /or RCW 90.48 and will report second and subsequent violations to the Washington State Department of Ecology

The Enforcement Officer has the right to install or require the property owner to install monitoring equipment as is reasonably necessary in the opinion of the Enforcement Officer to conduct appropriate monitoring and/or sampling of the facility's stormwater discharge. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the property owner at his/her own expense. All devices used to measure stormwater flow and quality shall be calibrated according to industry standards to ensure their accuracy

All data shall be collected in accordance with a sampling and analysis plan that is approved by the Enforcement Officer.

3. The City may elect to implement an ordinance authorizing enforcement of this ordinance by in rem actions.
4. Hearing Request.
 - a. "Hearing Officer" means the official appointed by the City for administrative hearings.
 - 1) The hearing officer shall hear all appeals of decisions under this ordinance.
 - 2) The hearing officer shall hear evidence presented by whomever the City designates.
 - 3) The hearing officer shall likewise hear evidence presented by the person appealing the decision or interpretation.
 - 4) In the case of an appeal of a notice of civil violation and/or order to abate issued by the Enforcement Officer, the burden of proof at the hearing shall rest with the City. If the decision of the enforcement officer is found to be supported by a preponderance of the evidence, the decision shall be affirmed.
 - 5) Formal rules of evidence need not be followed, but witnesses shall be sworn by the hearing officer and a written order issued.
 - 6) A person may appeal the written notice of violation entered by the Hearing Officer to the District Court with ten (10) days of the hand delivered notice or within ten (10) days of the postmark of the mailed notice. The request must contain a copy of the written notice, and the name, address and telephone number of the person requesting the hearing. The request must also include a brief description of the reason the person believes there is no violation. This request will be mailed to the enforcement agency, which will set the hearing date. The District Court will review the matter de novo.

- 7) The city is not required to pay the hearing officer if a decision on a hearing has not been rendered within 30 days of the date of the hearing.
- b. A notification giving the time, location and date of such hearing on the questions of abatement and removal of the illicit discharge or connection will be sent to the person requesting the hearing or his/her authorized representative by certified mail with a five (5) day return receipt requested.
- c. Failure of any person to file a timely appeal or failure of any person, who has filed an appeal to attend the scheduled hearing, shall constitute a waiver of his or her right to an appeal hearing.
- d. Filing of an appeal shall stay the enforcement of any notice of civil violation, order to abate, collection of fine, penalties or assessments or termination of service during the pendency of such appeal except as otherwise provided.
- e. A copy of the final order of the hearing officer shall be mailed to the appellant(s) within three (3) working days following the entry of a written order under this section. Unless otherwise stated in the order, such order shall be final and conclusive ten (10) days from the date of mailing thereof unless any party of record makes application to a court of competent jurisdiction for judicial review and stay of enforcement.

The result of this hearing may be appealed to District Court. The court may consider mitigating factors to reduce or suspend fines and jail time.

F. Additional Remedies.

1. In addition to any other remedy provided by this chapter or under the Clarkston Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in courts against any person who violates or fails to comply with any provision of this chapter to prevent, enjoin, abate, and/or terminate violations of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining and/or prosecuting such action.

14.20.060. Inspections and Investigations.

A. Facility and Property Inspections.

The Enforcement Officer shall be permitted to enter and inspect facilities under this chapter as often as may be necessary as ordered by District Court, to determine compliance with this chapter including follow-up compliance. If a property owner has security measures in force which require proper identification and clearance before entry into its premises, the property or facility owner/operator shall make the necessary arrangements to allow access to the Enforcement Officer in conformity with the order of the court. The Enforcement Officer shall carry appropriate identification as an enforcement officer and display the identification to any person who requests identification

B. Facility and Property Access.

1. Pursuant to order of the Court, facility operators shall allow the Enforcement Officer ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and/or federal law. This section does not bar entry if state and/or federal law mandates access or if there is an emergency as set forth in Section 3 of this ordinance.
2. If the Enforcement Officer encounters any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled, and the obstacle is not moved at the request of an enforcement officer, the failure to remove the obstacle will be a violation. Unless the obstacle constitutes a safety feature, it shall be promptly removed by the property owner at the written or oral request of the Enforcement Officer and the obstacle shall not be replaced while the facility is under a duty to allow access for the above reasons or for follow up inspections if illicit discharge or illicit connection have been found. The costs of clearing such access shall be borne by the property owner

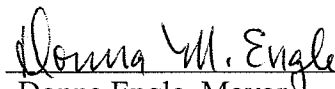
14.20.070 Regulatory Consistency. This Ordinance shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and the municipal NPDES Permit and any amendments, revisions or reissuance thereof. No permit or approval issued pursuant to this Ordinance shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable rule, code, act, permit or ordinance.

14.20.080 Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

14.20.090 Effective Date. This ordinance shall take effect on and be in force five (5) days from and after its passage, approval, and publication as required by law.

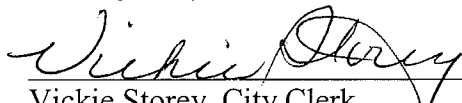
PASSED by the City Council this 27 day of July, 2009.

APPROVED by the Mayor this 28th day of July, 2009.



Donna Engle, Mayor

ATTEST/AUTHENTICATE:



Vickie Storey, City Clerk

APPROVED AS TO FORM:

James Grow, City Attorney