



Planning & Development Services

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Staff Report

To: Board of County Commissioners
From: Jenn Rogers, Assistant Long Range Planner
Re: Amendments to Skagit County Code 16.32 Water Pollution
Date: June 22, 2022

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Summary

State law requires cities and counties who hold Western Washington Phase II Municipal Stormwater Permits (Stormwater Permit) to implement a pollution source control program. This includes adopting an ordinance that requires the application of source control Best Management Practices (BMPs) for pollution generating sources, associated with existing land use and activities. This must be adopted no later than August 1, 2022. The requirements for the source control program are met by using the source control BMPs identified in the 2019 Stormwater Management Manual for Western Washington (Stormwater Manual).

The Stormwater Permit also requires Phase II Permittees to generate an inventory of publicly and privately owned institutional, commercial, and industrial sites which have the potential to generate pollutants to the County’s stormwater system by August 1, 2022. The proposed code changes, relevant to the enforcement of this requirement, will only apply to sites within the County’s National Pollutant Discharge Elimination System (NPDES) permit area. This requirement has been met, and the County’s current inventory is 194 sites.

This proposal would amend Skagit County Code 16.32 Water Pollution to ensure compliance with S5.C.8, Source Control Program for Existing Development, of the Stormwater Permit and allow staff to engage in a progressive enforcement process if a site refuses to comply. The proposed code changes also include format and text updates designed to make the code more user friendly for both the public and staff.

Background

Skagit County is a permittee under the Stormwater Permit, and the requirements for this Stormwater Permit apply to the NPDES Stormwater Permit area. The current Stormwater Permit, effective from August 1, 2019, through July 31, 2024, contains eight components. One of the new requirements is in

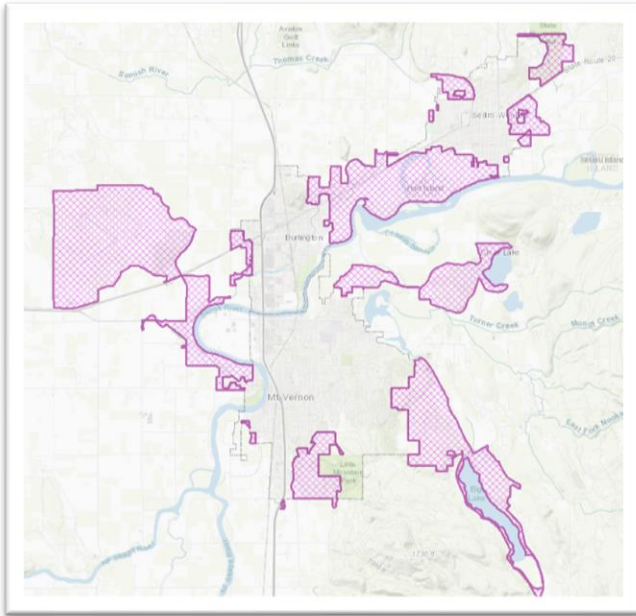


Figure 1: Skagit County Municipal NPDES Coverage Areas shown in pink.

component S.5.C8 of the Stormwater Permit and is titled, Source Control Program for Existing Development.

The Stormwater Permit is written and enforced upon by the Washington State Department of Ecology (Ecology). The Stormwater Permit is a requirement of the Environmental Protection Agency’s NPDES program and a product of the Federal Clean Water Act. This component requires us to implement a source control program to “prevent and reduce pollutants in runoff from areas that discharge” to the County’s stormwater system.

Contaminated stormwater runoff is the number one source of pollution to natural water systems throughout the region, including Puget Sound.

The requirement for jurisdictions to develop such a program is another tool we can use to prevent pollution from entering our public stormwater systems and reaching our streams, rivers, wetlands, lakes, and bays.

There are some local businesses that already hold an Industrial Stormwater General Permit (ISGP), which is also issued by Ecology. These permits are designed to prevent pollution from running off the permittee’s site by providing guidance, according to the type of business they are, and what activities take place on site. For example, the County’s Recycling & Transfer Station has an ISGP that requires staff to sample for certain pollutants associated with transfer stations. The source control program will look at other potential sources of pollution at sites with ISGPs and all potential sources of pollution at sites without an ISGP.

Findings of Fact

SEPA and Chapter 14.08 SCC

The following sections demonstrate the County's compliance with the procedural requirements for legislative actions pursuant to local and State requirements:

1. *Compliance with the State Environmental Policy Act (Chapter 97-11 WAC, SCC 14.08.050, and SCC 16.12):*

- Staff prepared an environmental checklist for the proposed amendments, dated June 21, 2022.
- A Determination of Nonsignificance was issued based on the environmental checklists on June 21, 2022.
- Any comments received prior to the close of the comment period will be presented to the Board of County Commissioners at the scheduled public hearing.

Conclusion – The proposed code amendment will satisfy local and State SEPA requirements at the conclusion of the comment period.

2. *Public Notice and Comments:*

- The County published a Notice of Availability, Public Comment, and SEPA threshold determination in the Skagit Valley Herald on June 23, 2022.
- Any comments received prior to the close of the comment period will be presented to the Board of County Commissioners at the scheduled public hearing.

Conclusion – the County has met the public notice requirements of SCC 14.08.070

Analysis of Changes

The Stormwater Permit includes minimum performance measures. These are specific requirements Stormwater Permit permittees must follow to remain in compliance with federal law. The Source Control Program for the Existing Development chapter of the Stormwater Permit includes the following deadline and minimum performance measures:

1. No later than August 1, 2022 Permittees must adopt and make effective and “ordinance(s), or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources associated with existing land uses and activities (see Appendix 8 to identify pollutant generating sources).”
2. No later than August 1, 2022, Permittees must “establish an inventory that identifies publicly and privately owned institutional, commercial, and industrial sites that have the potential to generate pollutants” to the Permittee’s stormwater system.
3. No later than January 1, 2023, must implement an inspection program for sites identified in the inventory.
4. No later than January 1, 2023, the Permittees must implement a “progressive enforcement policy that requires sites to comply with stormwater requirements within a reasonable time period.” The Stormwater Permit specifies what this needs to look like.

The proposed changes relate to regulations in our unified development code, Title 16. An overview of the changes is provided here, followed by a description of the code sections that are proposed for change.

The proposed code sections to be amended:

- **SCC 14.04.20: Update Definitions.** Definitions are added for "County Stormwater Infrastructure", "Discharge", "Drainage Facility", "Receiving Water", and "Stormwater System" to maintain consistency with the Stormwater Permit and Ecology's stormwater manual definitions.
- **16.32.10: Purpose.** The purpose section is being updated to prohibit discharge of contaminants and comply with the NPDES MS4 Phase II Permit. This is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.015: Applicability.** This is a new section being proposed to specify the limits of regulation in unincorporated areas of Skagit county and supports the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.020: Definitions.** There are 13 new definitions being added. Examples include "discharge", "illicit discharge" and "source control BMP". There are also references to the Ecology's stormwater manual. The new definitions are being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.030: Illicit Discharges Prohibited.** The word "prohibited" is being added to this section. The language is being updated to reference new terms in definitions. This addition is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.040: Illicit Connections Prohibited.** The word "prohibited" is being added to this section title. This word addition is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.050: Allowable discharges.** This new section is being added to specify allowable discharges. This new section is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.060: Conditionally Allowable Discharges.** This new section specifies allowable discharges and describes conditions under which they are allowed. This section is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.070: Exceptions.** This new section is being created to specify exceptions to this section. Examples of exceptions includes dye testing, crop production, commercial livestock operations, and certain forest practices. This new section is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.

- **16.32.080: Administrative Authority.** This new section is being created to delegate “Administrative Authority” to the “Director”. This is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.090: Best Management Practices.** This new section is being created to require BMPs for compliance with this chapter. The language is being added to exempt persons already implementing BMPs due to other local, state, or federal requirements. This is a stormwater permit requirement, and this new section is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.100: Inspections - Entry of Premises.** This addition gives staff the authority to carry out inspections and is supported by the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.110: Hazards.** This new section establishes what constitutes a hazard to public safety and/or health. It is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.120: Education and Technical Assistance.** This new section establishes educational and technical assistance as the first step in achieving compliance. It is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.130: Enforcement.** This new section references the enforcement policies and procedures of SCC 14.44 and is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.140: Criminal Offenses.** This new section is being proposed to reference the criminal violations policies in SCC 14.44.130 and is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.150: Construction Intent.** This new section is being created to clarify the County's intent in establishing this chapter. It is being proposed to support the stormwater permit section S5.C8. Source Control for Existing Development.
- **16.32.160: Non-liability.** This new section created, "Non-liability," to establish non-liability, for the County, when conducting inspections on private property. This section is supported by the stormwater permit section S5.C8. Source Control for Existing Development.

Consistency

Consistency Review (Skagit County Code 14.08)

1. Is the amendment consistent with the vision statements, goals, objectives, and policy directives of the Comprehensive Plan and the does the proposal preserve the integrity of the Comprehensive Plan and assure its systematic execution?

These amendments are consistent with the Comprehensive Plan:

Policy 5A-4.5: Annual evaluations and prioritized recommendations for non-point source pollution control (such as from Watershed Action Plans and Water Quality Management Plans) shall be implemented where found to be feasible and most cost-effective.

Policy 5A-5.3(e)(iii): Storm water runoff, flow rates, flow volumes and pollution caused by site development shall be managed so that detrimental impacts to water resources and property are maintained at predevelopment levels.

Goal 9B: Protect and enhance natural hydrologic features and functions by: maintaining water quality and fish and wildlife habitat; incorporating natural drainage patterns into measures to protect the public from health and safety hazards and property damage; maintaining a sustainable groundwater discharge/recharge budget; and by promoting beneficial uses as well as water resource education and planning efforts.

Goal 9B-1 Reduce risks to public health and safety and the loss of, or damage to public and private property

- Policy 9B-1.1 Solutions – Nonstructural storm water measures should be preferred over structural measures.
- policy 9B-1.3 Planning – Strategies for surface water management should balance engineering, economic, environmental, and social factors in relationship to stated comprehensive planning goals and policies.
- policy 9B-1.8 Natural Drainage – Natural drainage shall be preferred over the use of pipelines or enclosed detention systems, where possible.
- policy 9B-1.9 Best Management Practices – Storm water runoff from impervious surfaces should be treated by utilizing best management practices (treatment BMPs) before the storm water is allowed to enter the natural drainage system, infiltrate into the ground, or enter Puget Sound. Examples of treatment BMPs are, but not limited to: detention ponds, oil/water separators, biofiltration swales and constructed wetlands.
- policy 9B-1.10 Coordination of Regulations: The county shall work with other jurisdictions and agencies toward standardization and monitoring of regulations that affect storm water management.

2. Is the proposal supported by the Capital Facilities Plan (CFP) and other functional Plans?

The subject amendment does not change any elements of the CFP or other functional Plans. The goals and policies of the Capital Facilities Plan are incorporated directly into Chapter 10 of the Comprehensive Plan.

3. Is the proposal consistent with the Growth Management Act (GMA), the Countywide Planning Policies (CPPs), and applicable provisions of the Comprehensive Plan?

The following GMA Planning Goals are applicable:

- Protect the environment and enhance the state’s high quality of life, including air and water quality, and the availability of water.
- Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

The following Countywide Planning Policies are applicable:

- CPP 12.14: Public drainage facilities shall be designed to control both stormwater quantity and quality impacts.

4. Does the proposal bear a substantial relationship to the public general health, safety, morals, or welfare?

The proposal strengthens regulations intended to reduce pollutants in Skagit County stormwater discharges, which will protect the public from health and safety hazards and property damage.

Recommendation

The Department recommends adoption of the proposal. The update is required to stay in compliance with federal law, specifically the Clean Water Act. The current version of the Water Pollution code does not provide the necessary regulations to implement the NPDES mandated source control program. The County will be out of compliance on August 1, 2022, if the code updates are not adopted.

The proposed updates will ensure staff has access to sites the Stormwater Permit requires us to inspect. The Stormwater Permit also requires jurisdictions to prescribe BMPs when pollution, or potential pollution, issues are found. Proposed language cites the Stormwater Manual as the source for guidance on appropriate BMPs, based on the business type, activity, or finding. For example, if the County inspector found a dumpster, with a broken lid, and the container itself leaked, the Stormwater Manual would prescribe a repair to fix the lid and leak. It would also prescribe an operational BMP, requiring employees to keep the lid closed when done discarding materials into the dumpster.

Finally, the Stormwater Permit requires we have a “Progressive Enforcement Policy” to implement enforcement measures the County can utilize to ensure compliance of the new regulations.

SEPA Threshold Determination

Skagit County has determined that this proposal does not have a probable significant impact on the environment. An environmental impact statement is not required under the State Environmental Policy Act, RCW 43.21C.030(2)(c). This determination was made after review of a completed environmental checklist and other information on file with the lead agency and is available upon request and on the project website:

<https://www.skagitcounty.net/Departments/PlanningAndPermit/PollutionCode2022.htm>

Public Comment

Option 1: Email comments are preferred and must be sent to pdscomments@co.skagit.wa.us with the proposal name (“Amendments to Skagit County Code 16.32 Water Pollution”) in the subject line. Include your comments in the body of your email message rather than as attachments.

Option 2: Paper comments must be printed on 8½x11 paper and mailed or delivered to:

Planning and Development Services
Comments on “Amendments to Skagit County Code 16.32 Water Pollution”
1800 Continental Place
Mount Vernon WA 98273

All comments must be received by July 14, 2022, at 4:30pm, and include your full name and mailing address. Comments not meeting these requirements will not be considered.

Option 3: You may also comment in person. The Board of County Commissioners is hosting the public hearing in the Skagit County Commissioners Hearing Room at 1800 Continental Place, Mount Vernon, WA 98273, at 10:30am on July 12, 2022.

If you wish to provide testimony via the online meeting option, please send an email to pdscomments@co.skagit.wa.us, with your name, phone number, and include a request to be added to the speakers list in the body of the email. Public hearing testimony is usually limited to three minutes, so written comments are preferred.

Anyone who plans to attend the public hearing and has special needs or disabilities should contact Planning and Development Services at (360) 416-1320 at least 96 hours before the hearing to discuss and arrange any special accommodations.

For More Information

Please visit the project website at:

<https://www.skagitcounty.net/Departments/PlanningAndPermit/PollutionCode2022.htm>