

**An Ordinance Adopting Amendments to Water Pollution, Skagit County
Code 16.32 and 14.04**

Whereas, a portion of the County is subject to the Western Washington Phase II Municipal Stormwater National Pollution Discharge Elimination System (NPDES) Permit administered by the Washington State Department of Ecology;

Whereas, the permit requires the County to take various steps to control discharges into its municipal stormwater system, including its roadside ditches and other systems that convey stormwater, by implementing an ordinance or other enforceable mechanism that creates a source control program for pollution generating sources associated with existing land use and activities;

Whereas, the County has long recognized that effective education and implementation of best practices to reduce pollutants from development is essential for the protection of Skagit County waterways;

Whereas, the County issued a SEPA threshold determination of non-significance (DNS) on June 21, 2022, in accordance with the WAC 197-11 and SCC Title 16;

Whereas the County advertised a public comment period on June 23, 2022 and the Board of County Commissioners held a public hearing on July 12, 2022, on the proposed amendments;

Whereas the Board of Commissioners has reviewed the public comments and the Department's recommendation for the amendments;

Now Therefore Be It Ordained by the Board of County Commissioners:

Section 1. The Board of County Commissioner's adopts the amendments to SCC 16.32 and 14.04 as shown in **Attachment 1**.

Witness Our Hands and the Official Seal of Our Office this 24 day of July, 2022.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



ABSENT

Peter Browning, Chair

Ron Wesen

Ron Wesen, Commissioner

Lisa Janicki

Lisa Janicki, Commissioner

Attest:

Amber Engs
Clerk of the Board

Recommended:

Hal H. Hart
Department Head

Approved as to form:

[Signature]
Civil Deputy Prosecuting Attorney

2022 Amendments to Water Pollution Code—DRAFT

Plain text = existing code with no changes
~~Strikethrough~~ = existing code to be deleted
Underlined = new code to be added
~~Double Strikethrough~~ = existing code moved to another location
Double Underline = existing code moved from another location
Italics = Instructions for code reviser/reviewer

Markup DRAFT May 13, 2022

Chapter 14.04 Definitions

Chapter 16.32 Water Pollution

Contents

Chapter 14.04 Definitions	2
14.04.020 Definitions	2
Chapter 16.32 Water Pollution	2
16.32.010 Purpose.	2
16.32.015 Applicability.....	3
16.32.020 Definitions.....	3
16.32.030 Illicit discharges prohibited.....	5
16.32.040 Illicit connections prohibited.	5
16.32.050 Allowable Discharges.	<u>6</u> 5
16.32.060 Conditionally Allowable Discharges.....	6
16.32.070 Exceptions.	7
16.32.080 Administrative Authority	8
16.32.090 Best Management Practices.	8
16.32.100 Inspections—Entry of Premises	9
16.32.110 Hazards.....	<u>10</u> 9
16.32.120 Education and Technical Assistance	10
16.32.130 Enforcement	10
16.32.140 Criminal Offenses.....	<u>11</u> 10
16.32.150 Construction—Intent	<u>11</u> 10
16.32.160 Non-liability.....	<u>11</u> 10

Chapter 14.04 Definitions

14.04.020 Definitions

County's Stormwater Infrastructure: the County's municipal separate storm sewer system (MS4), that is the conveyance, or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, which are owned and operated by Skagit County and designed or used for collecting and conveying stormwater.

Discharge: Runoff leaving a new development or redevelopment via overland flow, built conveyance systems, or infiltration facilities. A hydraulic rate of flow, specifically fluid flow; a volume of fluid passing a point per unit of time, commonly expressed as cubic feet per second, cubic meters per second, gallons per minute, gallons per day, or millions of gallons per day. ~~throw, drain, release, dump, spill, empty, emit, or pour any matter into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to be thrown, drained, released, dumped, spilled, emptied, emitted or poured into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to flow, run, or seep from land into receiving waters, groundwater, a natural drainage system, or a drainage facility.~~

Drainage facility: has the same meaning as "stormwater facility".

Receiving waterbody or ~~Receiving~~ receiving waters: Naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, or groundwater, to which a MS4 discharges. ~~means lakes, rivers, ponds, streams, wetlands, brackish or salt waters, portions of Puget Sound, and any other naturally occurring surface waters or watercourses, and groundwater located within the unincorporated county, including those for which the physical beds and boundaries have been altered by human actions. Puget Sound, tidally influenced areas of rivers and streams discharging into Puget Sound where streambank or shoreline erosion will not occur or those rivers, streams, lakes, marine waters, estuaries, wetlands or other bodies of water having been identified as a regional stormwater facility, Water Resource Inventory Area or receiving basin as approved to accept stormwater from a control facility.~~

Stormwater system means all natural and manmade systems that function together or independently to collect, store, purify, discharge, and convey stormwater. Included are all stormwater and drainage facilities as well as natural systems such as streams and creeks and all natural systems which convey, store, infiltrate, or divert stormwater.

Chapter 16.32 Water Pollution

16.32.010 Purpose.

The purpose of this Chapter is to: ~~protect the County's surface and groundwater quality by controlling the discharge of pollutants and comply with the County's NPDES permit.~~

(1) Prohibits illicit discharges ~~Prohibits the discharge of contaminants into surface water, stormwater, or groundwater, and outlines preventive measures to restrict contaminants from entering those waters.~~

(2) Comply with the requirements of the Western Washington Phase II Municipal Stormwater Permit (NPDES Permit) and the most current Stormwater Management Manual for Western Washington (Stormwater Management Manual).

(3) Protect the quality of the County's aquatic resources, including receiving waters, groundwater, and aquatic sediments, from the discharge of contaminants and the adverse impacts of stormwater runoff.

(4) Protect the function and integrity of County's stormwater ~~County drainage~~ infrastructure, including County roads, associated rights-of-way, and drainage facilities.

(5) Reduce, prevent, and ameliorate the adverse impacts of contaminated discharges on public health, safety and welfare.

(6) Protect, maintain, and improve the quality of the County's water resources for fish and wildlife habitat, human recreation and other ecological and aesthetic purposes and beneficial uses.

16.32.015 Applicability

(1) Unless specifically exempted herein, this chapter applies to all discharges that occur in the unincorporated areas of the County.

(2) This chapter applies to the discharge of contaminants to surface water, stormwater, and groundwater requires certain sites and activities to utilize best management practices as set forth in Section 16.32.100 and drainage facility maintenance practices set forth in chapter 14.32 SCC.

16.32.020 Definitions.

(1) The definitions in SCC 14.04.020 apply to this Chapter and are incorporated by reference.

(2) The definitions and acronyms provided in the NPDES Permit apply to this chapter and are incorporated by reference.

(2) For purposes of this chapter, the terms below have the following definitions:

(a) **Connection** means a plumbing or hydraulic connection.

(b) **Contaminant** means a solid, liquid, or gaseous substance that, if discharged to a drainage facility, natural drainage system, receiving waters or groundwater, will alter the physical, chemical, or biological properties thereof to the extent that the discharge will render the facility, system, or water 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. Contaminants may include, but are not limited to, the following: trash or debris; construction materials; petroleum products including but not limited to oil, gasoline, grease, fuel oil or heating oil; antifreeze and other automotive products; metals in either particulate or dissolved form; flammable or explosive materials; radioactive material; batteries; acids, alkalis, or bases; paints, stains, resins, lacquers, or varnishes; degreasers and solvents; drain cleaners; pesticides, herbicides, or fertilizers; steam cleaning wastes; soaps, detergents, or ammonia;

chlorine, bromine, or other disinfectants; heated water; animal wastes; sewage; animal carcasses; food wastes; bark, soils, sediment, rock and other fibrous materials; collected lawn clippings, leaves, or branches; dyes, except as allowed in SCC 16.32.070, and wastewater generated by commercial or industrial activities.

(c) Director means the Director of the Department of Public Works or the Department of Planning and Development Services, as applicable or their respective designee(s), unless otherwise specified.

(d) Discharge means to throw, drain, release, dump, spill, empty, emit, or pour any matter into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to be thrown, drained, released, dumped, spilled, emptied, emitted or poured into receiving waters, groundwater, a natural drainage system, or a drainage facility, or to cause or allow matter to flow, run, or seep from land into receiving waters, groundwater, a natural drainage system, or a drainage facility.

(e) Drainage facility or Stormwater facility means any part of a manmade physical system designed or constructed to collect, treat, convey, store, or control the flow of stormwater. Drainage facilities include, but are not limited to, stormwater conveyance and containment facilities, including pipelines, constructed channels and ditches, infiltration facilities, retention and detention facilities, stormwater treatment facilities, erosion and sedimentation control facilities, and all other drainage structures and appurtenances.

(f) Farm management plan means a comprehensive site-specific plan developed by the farm owner in cooperation with the Skagit Conservation District taking into consideration the responsible party's objectives while protecting water quality and related natural resources.

(g) Illicit connection Any infrastructure connection to the MS4 that is not intended, permitted or used for collecting and conveying stormwater or non-stormwater discharges allowed as specified in this Permit (S5.C.5 and S6.D.3). Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the MS4. ~~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.~~

(h) Illicit Discharge means any discharge to the County's Stormwater Infrastructure that is not composed entirely of stormwater or of nonstormwater discharges allowed as specified in this chapter.

(i) Natural drainage system means the physical beds and boundaries of receiving waters, including those natural drainage systems that have been altered by human actions.

(j) **Responsible party** means the person obligated to remediate a particular violation, and includes all of the following persons:

(i) The fee owner of the real property on which the violation exists or occurred.

(ii) The tenant, licensee or other person entitled to use, occupy, or otherwise control the real property on which the violation exists or occurred.

(iii) The person who performed or committed the acts or omissions causing or leading to the violation (if applicable).

(iv) Any other person causing or contributing to an action regulated by this chapter.

(k) **Source control BMPs** means structures, equipment, supplies, or operations intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. Source control BMPs include but are not limited to BMPs described in Volume IV of the Stormwater Management Manual.

(l) **State Waste Discharge Permit** means a permit issued by Ecology in accordance with chapter 173-216 WAC.

(m) **Treatment BMP** means a BMP intended to remove contaminants once they are already introduced into stormwater. Examples of treatment BMPs include oil/water separators, biofiltration swales, and wetponds.

16.32.030 Illicit discharges prohibited.

~~(1) **Illicit Discharges Prohibited**—No person may throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or otherwise discharge into the stormwater system any materials other than stormwater. discharge into discharge any~~ contaminants, as defined in this chapter into the ~~County drainage~~ County's stormwater ~~system~~ infrastructure, surface water, stormwater, or groundwater.

16.32.040 Illicit connections and uses prohibited.

Any connection that could convey anything not composed entirely of surface and stormwater, to surface water, stormwater, groundwater or into the county's drainage system, is considered an illicit connection and is prohibited with the following exceptions:

(a) Connections conveying allowable discharges.

(b) Connections conveying discharges pursuant to an Individual NPDES Permit or a State Waste Discharge Permit.

~~(1) **No person may use the stormwater system, directly or indirectly, to dispose of any solid or liquid matter other than stormwater.**~~

~~(2) **No person may make, allow, use, or allow the continued existence of any connection to the stormwater system that could result in an illicit discharge.**~~

~~(3) Connections to the stormwater system from the interiors of structures are prohibited.~~

~~(4) Connections to the stormwater system for any purpose other than to convey stormwater or groundwater are prohibited and must be eliminated.~~

~~(2)~~ **16.32.050 Allowable Discharges.**

The following types of discharges are not illicit discharges for the purpose of this Chapter unless the Director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater. ~~The following types of discharges are not illicit discharges for the purpose of this Chapter unless the Administrative Official determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:~~

- (a) Diverted stream flows.
- (b) Rising groundwaters.
- (c) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20).
- (d) Uncontaminated pumped groundwater.
- (e) Foundation drains.
- (f) Air conditioning condensation.
- (g) ~~Irrigation~~ Uncontaminated irrigation water from agricultural sources that is commingled with urban stormwater.
- (h) Springs.
- (i) ~~Water~~ Uncontaminated water from crawl space pumps.
- (j) Footing drains.
- (k) Flows from riparian habitats and wetlands.
- (l) Discharges from emergency firefighting activities.
- (m) Non-stormwater discharges covered by a NPDES or State Waste Discharge Permit issued by Ecology or EPA.

~~(3)~~ **16.32.060 Conditionally ~~Allowed~~ Allowable Discharges.**

The following categories of non-stormwater discharges may be allowed only if ~~The regulatory mechanism may allow the following types categories of non-stormwater discharges are not illicit discharges for the purposes of this Chapter only if~~ they meet the stated conditions, ~~unless the Administrative Official determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:~~

- (a) ~~Potable~~ Discharges from potable water sources, including water from line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges must be dechlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically ~~in volumes~~ and velocity ~~velocities~~ controlled to

prevent re-suspension of sediments in the ~~stormwater system~~ County's Stormwater Infrastructure.

(b) ~~Lawn Discharges from lawn~~ watering and other irrigation runoff ~~are permitted but must be minimized~~. These discharges will be minimized through, at a minimum, public education activities and water conservation efforts.

(c) Dechlorinated swimming pool, spa, and hot tub discharges.

(i) These discharges must be dechlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted and reoxygenized, if necessary, and ~~in volumes volumetrically~~ and ~~velocities velocity~~ controlled to prevent re-suspension of sediments in the ~~stormwater system~~ County's Stormwater Infrastructure. Discharges must be thermally controlled to prevent an increase in temperature of the receiving water.

(ii) Swimming pool cleaning wastewater and filter backwash may not be discharged to the County's Stormwater Infrastructure.

(d) Street and sidewalk wash water, water used to control dust and routine external building wash-down that does not use detergents, ~~are permitted if~~

(i) The County shall reduce these discharges through, at a minimum, public education activities and/or water conservation efforts.

(ii) To avoid washing pollutants into the County's Stormwater Infrastructure, Permittees must minimize the amount of street wash and dust control water used, ~~is minimized~~. ~~At active construction sites, street sweeping must be performed prior to washing the street.~~

(e) Other non-stormwater discharges. The discharges must be in compliance with the requirements of a ~~stormwater~~ stormwater pollution prevention plan (~~SWPPP~~) reviewed ~~and approved~~ by the County Permittee which addresses control of such discharges ~~by applying AKART to prevent pollutants from entering surface or groundwater.~~

(4) 14.32.070 Exemptions Exceptions.

~~(a) The following discharges are exempt from the provisions of this Section:~~

~~(i) The regulated effluent from any commercial or municipal facility holding a valid State or Federal wastewater discharge permit or NPDES stormwater permit.~~

~~(ii) Acts of God or nature not compounded by human negligence.~~

~~(iii) Properly operating on-site domestic sewage systems.~~

~~(iv) Discharges from agricultural activities that are compliant with SCC 14.24.120.~~

(1) Dye testing is allowable but requires notification to Skagit County Public Works Stormwater Management at least one working day prior to the date of the test.

(a) The Skagit County Public Health Department is exempt from this requirement.

(b) Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this Chapter to avoid an imminent threat to public health or safety, are exempt from this Section. The party responsible for emergency response activities must:

(i) take steps to ensure that the discharges resulting from such activities are minimized to the greatest extent possible; and

(ii) evaluate BMPs and the site plan, where applicable, to prevent reoccurrence.

(2) Persons engaged in the production of crops or livestock for commercial trade; provided, that such persons must comply with the requirements of SCC 14.24.120 and are fully implementing agricultural BMPs in accordance with a farm management plan to prevent illicit discharges.

(3) Persons engaged in forest practices regulated under Title 222 WAC, except for Class IV general forest practices as defined under Chapter 222-16 WAC.

(4) Persons conducting normal residential activities at property containing a single-family detached dwelling, duplex or triplex and modifications to it on a lot approved for such use, unless the Director determines that these activities create an illicit discharge or pose a hazard to public health, safety or welfare; endanger any property; or adversely affect the safety and operation of county right-of-way, utilities, and/or other property owned or maintained by the county.

(b5) A person does not commit an illicit discharge if:

(i) That ~~that~~ person has properly designed, constructed, implemented and is maintaining BMPs and is carrying out AKART ~~as required by SCC Chapter 14.32, even if pollutants continue to enter surface and stormwater or groundwater; or~~

(ii) That ~~person can demonstrate that there are no additional pollutants being discharged from the site above the background conditions of the water entering the site.~~

16.32.080 Administrative Authority

The Director is authorized to implement and enforce the provisions of this Chapter. The Director will coordinate the implementation and enforcement of this Chapter with other departments of Skagit County government.

(5)16.32.090 Best Management Practices-(BMPs).

(a2) Compliance with this Chapter must be achieved through the use of best management practices (BMPs) described in the Stormwater Management Manual or as described below.

(b2) BMPs must be applied to any ~~business or residential~~ activity that might result in illicit discharges.

(a) In applying the Stormwater Management Manual, the ~~Administrative Official~~Director must first require the implementation of source control BMPs.

(b) If ~~these source control BMPs~~ are not sufficient to prevent pollutants from entering stormwater, the ~~Administrative Official~~ Director may require implementation of treatment BMPs as set forth in AKART ~~(all known, available, and reasonable methods of prevention and treatment technology).~~

(3) Any person implementing BMPs through another federal, state, or local program will not be required to implement the BMPs prescribed in the eCounty's Stormwater Management Manual, unless the director determines that the other program's BMPs are ineffective at reducing the discharge of contaminants or not being implemented. If the other program requires the development of a stormwater pollution prevention plan or other BMP plan, the person must make the plan available to Skagit County upon request. Other federal, state, and local programs include, but following:

1. General Permit, or individual NPDES Permit; or state waste discharge permit from the Washington sState Department of Ecology or the United States Environmental Protection Agency.

~~16.32.040 Illicit connections and uses.~~

~~(1) No person may use the stormwater system, directly or indirectly, to dispose of any solid or liquid matter other than stormwater.~~

~~(2) No person may make, allow, use, or allow the continued existence of any connection to the stormwater system that could result in an illicit discharge.~~

~~(3) Connections to the stormwater system from the interiors of structures are prohibited.~~

~~(4) Connections to the stormwater system for any purpose other than to convey stormwater or groundwater are prohibited and must be eliminated. (Ord. O20150006 § 2 (Att. A))~~

16.32.050-100 Inspections—Entry of Premises and enforcement.

~~The Administrative Official is authorized to carry out inspection and enforcement actions pursuant to SCC Chapter 14.44, Enforcement/Penalties~~ (1) The Director may enter the premises at all reasonable times to inspect or perform any duty imposed by this chapter:

(a) if necessary to make an inspection to enforce any provision of this chapter;

(b) to monitor for proper implementation of BMPs; or

(c) the Director has reasonable cause to believe that violations of this chapter are occurring; provided that if the premises are occupied, the Director shall first make a reasonable effort to locate the owner or other person in control of any building, structure, property or portion thereof and seek permission for entry, or the Director must first obtain entry to the premises as provided per SCC 16.32.100(2).

(2) Prior to entry the Director must obtain a search warrant as authorized by the laws of the state of Washington unless:

(a) entry is consented to by the owner or other person in control of any building, structure, property, or portion thereof; or

(b) conditions are believed to exist which create a threat of immediate and substantial harm.

(3) for purposes of this Chapter, "violation" means the occurrence of any of the following:

(a) Discharge of a contaminant into a drainage facility, natural drainage system, receiving water, or groundwater;

(b) Failure to implement standards or best management practices required by this chapter; or

(c) Failure to comply with any requirement established in this chapter.

16.32.110 Hazards

(1) The Director may determine that any violation of this chapter constitutes a hazard if the violation:

(a) ~~1.~~ Poses a threat to public health, safety, or welfare;

(b) ~~2.~~ Endangers any property; or

(c) ~~3.~~ Adversely affects the safety and operation of any County right of way, utilities, or other property owned or maintained by the County.

(2) Upon determining that a violation constitutes a hazard, the Director shall immediately notify the responsible party and shall provide a ~~verbo~~written determination of the hazard that specifies the date by which the hazard must be corrected.

(3) Upon receipt of the Director's written hazard determination, the responsible party must correct the hazard by the date specified.

(4) Notwithstanding any other provisions of this chapter, upon reasonable belief that any of the conditions described in SCC 16.32.110(1) (~~Hazards~~) exist, and as otherwise allowed under the law, the Director may enter at all times in or upon any public or private property for the purpose of investigating the existence of a hazard.

(5) The director may without prior notice require the immediate discontinuance of any violation causing the hazard. Failure to comply will constitute a willful violation of this chapter.

16.32.120 Education and Technical Assistance

The County will use education as a first step toward achieving compliance with this chapter and offer any and all responsible parties ~~property owners~~ the opportunity to correct violations before imposing fines. The County will provide, upon reasonable request, available technical assistance materials and information, and information on outside financial assistance options to persons required to comply with this chapter.

16.32.130 Enforcement

Enforcement of this chapter will be achieved using procedures set in SCC 14.44. When enforcing this statute, the primary obligation for compliance shall primarily be on the party responsible for the act or omission leading to the violation.

16.32.140 Criminal Offenses

Criminal violations of this chapter are defined in SCC 14.44.130.

16.32.150 Construction—Intent

This chapter is enacted as an exercise of the County's power to protect and preserve the public health, safety, and welfare. Its provision shall be exempted from the rule of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. This chapter is not enacted to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter.

16.32.160 Non-liability

The ~~primary~~ ultimate obligation of compliance with this chapter is placed upon the person holding title to the property. Nothing contained in this chapter is intended to be or shall be construed to create or form a basis for liability for the County, the department, its officers, employees, or agents for any injury or damage resulting from the failure of the person holding title to the property to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the County, department, its officers, employees or agents.