

## POULSBO DISTRIBUTION SCHEDULE

**ORDINANCE NO. 2009-03**

**SUBJECT: Illicit Discharge Detection and Elimination**

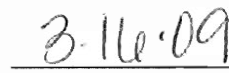
**CONFORM AS TO DATES & SIGNATURES**

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\_\_\_\_\_  
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\_\_\_\_\_  
Date

## ORDINANCE NO. 2009-03

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, PROVIDING FOR THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS OF POULSBO; THE PROTECTION AND ENHANCEMENT OF THE WATER QUALITY OF WATERCOURSES AND WATER BODIES THROUGH THE REGULATION OF NON-STORM WATER DISCHARGES TO THE STORM DRAIN SYSTEM TO THE MAXIMUM EXTENT PRACTICABLE AS REQUIRED BY FEDERAL AND STATE LAW; COMPLIANCE WITH THE REQUIREMENTS OF THE CITY'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT; ADDING A NEW CHAPTER 13.18 TO THE POULSBO MUNICIPAL CODE; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

**WHEREAS**, the City of Poulsbo desires to reduce the public health and economic impacts of illicit discharges to the City's stormwater system and receiving waters, which includes creeks, streams, and Liberty Bay; and

**WHEREAS**, the City of Poulsbo desires to reduce the impact of pollutants on the wildlife and aquatic life associated with the receiving waters; and

**WHEREAS**, the City of Poulsbo is subject to the requirements of the Western Washington Phase II Municipal Stormwater Permit issued by the Washington State Department of Ecology which requires the City to adopt regulations to prohibit certain discharges into the City's stormwater system and encourages additional provisions to protect all surface and groundwater within the City;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Illicit Discharge Detection and Elimination.** A new Chapter 13.18 to be known as "Chapter 13.18 ILLICIT DISCHARGE DETECTION AND ELIMINATION" is hereby added to the Poulsbo Municipal Code to read as follows:

|                   |  |
|-------------------|--|
| Section 13.18.010 | Purpose  |
| Section 13.18.020 | Definitions  |
| Section 13.18.030 | Applicability  |
| Section 13.18.040 | Administration   |
| Section 13.18.050 | Compliance required  |
| Section 13.18.060 | Minimum standards  |
| Section 13.18.070 | Discharge prohibitions   |
| Section 13.18.080 | Suspension of MS4 access   |
| Section 13.18.090 | Industrial or construction activity discharges   |
| Section 13.18.100 | Requirement to prevent, control, and reduce stormwater pollutants by the use of Best Management Practices (BMPs) |
| Section 13.18.110 | Watercourse protection   |
| Section 13.18.120 | Notification of illicit discharges   |

|                   |                              |
|-------------------|------------------------------|
| Section 13.18.130 | Inspection and investigation |
| Section 13.18.140 | Enforcement and penalties    |
| Section 13.18.150 | Appeals                      |
| Section 13.18.160 | Records retention            |
| Section 13.18.170 | Construction-Intent          |

### **13.18.010 Purpose.**

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of Poulsbo and to protect and enhance the water quality of watercourses and water bodies through the regulation of non-storm water discharges to the storm drain system to the maximum extent practicable as required by federal and state law. This Chapter is established in compliance with the Federal Clean Water Act (Title 33 United States Code §1251 et seq.) and the requirements of the City's National Pollutant Discharge Elimination System (NPDES) permit. The objectives of this Chapter are:

- A. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- B. To prohibit illicit connections and discharges to the municipal separate storm sewer system;
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.
- D. To establish enforcement processes and penalties for violations of this Chapter.

### **13.18.020 Definitions.**

The terminology in this Chapter shall have the meanings described as follows:

"AKART" means all known available and reasonable methods of prevention, control, and treatment.

"Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management 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.

"City" means Poulsbo, Washington, or as indicated by the context, the Public Works Director, or other authorized representative of the governmental authority of the City of Poulsbo.

"Director" means the Public Works Director or designee(s).

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

"Discharger" means any individual, association, organization, partnership, firm, corporation, business or other entity discharging stormwater to the municipal storm sewer.

"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 present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Illicit connection" means (1) any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City; or (2) any drain or conveyance connected from a residential, commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the City.

"Illicit discharge" means any direct or indirect non-storm water discharge to a municipal separate storm sewer or to surface or ground water that is not composed entirely of storm water, except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and those discharges expressly allowed conditionally by this Chapter.

"Industrial waste" means any liquid, gaseous or solid substance or a combination thereof which is an undesired by-product waste resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, except garbage.

"Municipal separate storm sewer system (MS4)" means a conveyance or system of conveyances which is intended to convey only storm water (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) and which are: (1) owned or operated by the City of Poulsbo; (2) designed or used for collecting or conveying stormwater; (3) are not part of a Publicly Owned Treatment Works (any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned); and (4) are not a combined sewer (a system that collects sanitary sewage and stormwater in a single sewer system).

"National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit" means a permit issued by the Environmental Protection Agency (EPA) or by the Washington State Department of Ecology that authorizes the discharge of pollutants to

waters of the United States, whether the permit is applicable to an individual, group, or general area-wide basis.

"Non-stormwater discharge" means any discharge to the storm drain system that is not composed entirely of storm water.

"Person" means any individual, association, organization, partnership, firm, corporation, business or other entity recognized by law and acting as either the owner or as the owner's agent.

"Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the City, State, or United States, 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 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.

"Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved.

"Sanitary sewer" means a conveyance system which transports sewage and to which storm, surface and ground waters are not intentionally admitted.

"Sewage" means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface and storm water as may be inadvertently present. The admixture of sewage with industrial wastes as defined above or other wastes also shall be considered "Sewage" within the meaning of this definition.

"Storm drainage system or storm drain system" means any publicly-owned facility, including the City's municipal separate storm sewer system, by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

"Storm water" or "stormwater" means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, including snowmelt, during and following precipitation, and resulting from such precipitation.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document which describes the Best Management Practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

"Wastewater" means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

"Watercourse" means a depression formed by runoff moving over the surface of the earth; any natural or artificial channel through which water flows; a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically.

"Waters of the State" means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the State of Washington as defined in RCW 90.48.

#### **13.18.030 Applicability.**

This Chapter shall apply to all water entering the stormwater drainage system and waters of the state within the City's jurisdiction.

#### **13.18.040 Administration.**

The Public Works Director or designee shall administer, implement, and enforce the provisions of this Chapter. The Director shall have the authority to develop and implement procedures to administer and enforce this Chapter.

#### **13.18.050 Compliance required.**

Property owners are responsible for the maintenance, operation and repair of stormwater systems and BMPs within their property. Property owners shall maintain, operate and repair these facilities in compliance with the requirements of this Chapter and the City's adopted codes and manuals.

#### **13.18.060 Minimum Standards.**

The standards set forth herein and promulgated pursuant to this Chapter are minimum standards; therefore, this Chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

#### **13.18.070 Discharge prohibitions.**

A. Prohibition of Illicit Discharges. It is unlawful for any person to throw, drain, or otherwise discharge, or cause or allow others under its control to throw, drain or otherwise discharge any materials other than stormwater into the municipal storm drain system and/or surface and ground waters of the City. Prohibited materials include, but are not limited to, pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards. The commencement, conduct, or continuance of any illicit discharge to the storm drain system is prohibited.

Examples of pollutants include, but are not limited to, the following: trash or debris; solid waste; construction materials; petroleum products including, but not limited to oil, gasoline, grease, fuel oil, heating oil; antifreeze and other automotive products; fixed and mobile vehicle washes; metals in either particulate or dissolved form in excess of naturally occurring amounts; flammable or explosive materials; radioactive materials; batteries; acids, alkalis, or bases; paints, stains, resins, lacquers, or varnishes; degreasers or solvents; drain cleaners; commercial and household cleaning materials; carpet cleaning wastes; pesticides, herbicides, or fertilizers; steam cleaning wastes; laundry waste; soaps, detergents, or ammonia; swimming pool or spa filter backwash (diatomaceous earth); swimming pool cleaning wastewater; chlorine, bromine, and other disinfectants; heated water; chlorinated swimming pool or hot tub water; human and animal wastes; domestic or sanitary sewage; recreational vehicle waste; animal carcasses; food and food wastes; yard waste; bark and other fibrous materials (does not include large woody debris in approved restoration projects); collected lawn clippings, leaves, or branches; wastes associated with building construction; concrete and concrete by-products; silt, sediment, including dirt, sand, and gravel; dyes and ink (except as stated in Poulsbo Municipal Code 13.18.070.B.5); chemicals not normally found in uncontaminated water; any other process-associated discharge except as otherwise allowed in this section; and any hazardous material or waste not listed above.

B. Conditional Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this Chapter if they meet the stated conditions or 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:

1. Discharges from potable water sources, including water line flushing, hyper-chlorinated (>10mg/liter chlorine) water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated 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 system;

2. Discharges from lawn watering and other irrigation runoff; however, these shall be minimized through water conservation efforts;

3. De-chlorinated spa or swimming pool discharges. The discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted and re-oxygenized if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater system. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the storm drainage system;

4. 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;

5. Dye testing with verbal notification to the City a minimum of 24 hours prior to the time of the test.

6. Non-stormwater discharges covered by another 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 storm drain system;

7. Discharges resulting from maintenance, repair, or operation of firefighting equipment and facilities that are not directly associated with public fire fighting, including discharges from public fire fighting training exercises, unless City-approved best management practices are implemented.

8. Other non-stormwater discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed and approved by the City, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

C. Allowable Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this Chapter if they do not contain pollutants or 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.

1. Diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Title 40 of the Code of Federal Regulations: 40 CFR 35.2005(20)), uncontaminated pumped ground water, foundation drains, air conditioning condensation, irrigation water from agricultural sources that is commingled with urban stormwater, springs, water from crawl space pumps, footing drains, flows from riparian habitats and wetlands, and discharges from emergency fire fighting activities in accordance with Section S2, Authorized Discharges, of the City's NPDES permit.

2. Discharges specified in writing by the City as being necessary to protect public health and safety.

3. If a person can demonstrate that there are no additional pollutants being discharged from the premises above the background conditions of the water entering the site, that person shall not be in violation of subsection A of this section.

D. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. 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.

2. Any connection identified by the Director that could convey anything not composed entirely of surface and stormwater directly into municipal drainage facilities is considered an illicit connection and is prohibited with the following exceptions: connections conveying allowable discharges or connections conveying discharges pursuant to an NPDES permit or a State Waste Discharge Permit.

3. Illicit connections must be disconnected and redirected, if warranted, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City.

4. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which is connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer, or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City.

E. Prohibition of Stormwater Discharge to Sanitary Sewer. Stormwater shall not be discharged into the sanitary sewer without written permission to do so from the City of Poulsbo.

F. Prohibition of 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 abandoned objects, articles, or accumulations that may cause or contribute to pollution. Wastes deposited in proper non-leaking waste receptacles for the purposes of collection are exempt from this prohibition.

#### **13.18.080 Suspension of MS4 access.**

A. Suspension due to Illicit Discharges in Emergency Situations. The City may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the public health or welfare, or to the MS4, or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge. The City may terminate a person's MS4 access if such termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its MS4 access. The violator may appeal such termination in accordance with Poulsbo Municipal Code 13.18.140.C.3. No

person shall reinstate MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

### **13.18.090 Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. The City may require proof of compliance with said permit in a form acceptable to the City prior to allowing discharges to the MS4.

### **13.18.100 Requirement to prevent, control, and reduce storm water pollutants by the use of Best Management Practices (BMPs).**

A. General. The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system, watercourses, surface water, or ground water through the use of structural and non-structural BMPs which have been approved by the City for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the State. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

B. BMP descriptions. Approved BMPs are described in the stormwater management manual(s) adopted by the City. The manual(s) describes the types of regulated activities, the types of contaminants generated by each activity, the contaminant's affect on water quality, the required source control BMPs, and the available treatment BMPs. The manual(s) includes information on design, maintenance, and allowable use of additional or alternative BMPs.

C. Priority of BMP implementation. In applying the BMP manual, the Director shall first require the implementation of source control BMPs unless the BMP manual specifically requires treatment BMPs. If source control BMPs (or treatment BMPs if required by the BMP manual) do not prevent contaminants from entering surface and stormwater or groundwater, the Director may require implementation of additional source control BMPs and/or treatment BMPs according to AKART.

D. Prevention of pollution of surface and groundwater. BMPs shall be applied as required herein, so that when all appropriate combinations of individual BMPs are utilized, pollution of surface or groundwater is prevented. If all BMPs required herein, or by the Director are applied, and pollution still occurs, the discharger shall modify existing practices or apply further water pollution control measures, as specified by the Director. In the absence of implementation of applicable BMPs, the Director shall be authorized to

conclude that individual activities are causing pollution in violation of this article, and shall be authorized to enforce this Chapter accordingly.

#### **13.18.110 Watercourse protection.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

#### **13.18.120 Notification of illicit discharges**

A. Notwithstanding other requirements of law, as soon as any person, including any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, who has information of any known or suspected release of materials which are resulting, or may result in, illicit discharges or pollutants discharging into storm water, the storm drain system, or waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

1. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911) and the Public Works Department (360-779-4078).

2. In the event of a release of non-hazardous materials, said person shall notify the Public Works Department in person or by phone (360-779-4078) or facsimile (360-779-6384) within forty-eight (48) hours after said discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City within three business days of the phone notice.

B. 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 retained in accordance with Poulsbo Municipal Code 13.18.170.

#### **13.18.130 Inspection and investigation.**

##### **A. Authorization.**

1. Whenever implementing the provisions of this Chapter or whenever there is cause to believe that a violation of this Chapter has been or is being committed, the Director is authorized to inspect during regular working hours and at other reasonable times all stormwater facilities within the City of Poulsbo to determine compliance with the provisions of this Chapter.

2. The Director may observe BMPs or examine and/or sample surface and stormwater or groundwater as often as may be necessary to determine compliance with this Chapter. The Director is further authorized, as set forth in subsection B below, to enter in or upon any public or private property for the purpose of inspecting and investigating conditions relating to the pollution of, or the possible pollution of, surface and/or groundwater. Whenever an on-site inspection of a property is made, the findings shall be documented. A copy of the inspection findings shall be furnished to the owner or the person in charge of the property after the conclusion of the investigation.

B. Right-of-entry. The Director is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating any conditions relating to the provisions of this Chapter or any regulation adopted under this Chapter, provided that the City shall first obtain from the owner or person responsible for such premises, permission to enter. If entry is refused, the City shall have recourse to every remedy provided by law to secure entry.

1. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Director.

2. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the facility operator.

3. No person who is the owner or operator of a facility with an NPDES permit to discharge storm water associated with industrial activity shall deny the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Chapter. Unreasonable delays in allowing the City access to a permitted facility is a violation of a stormwater discharge permit and of this Chapter.

C. Obstructing the Director. No person shall obstruct the Director in the performance of his or her official duties in the enforcement of this chapter, including but not limited to:

1. Intentional use of, or threat to use, force to obstruct a person he or she knows, or should reasonably know, is the Director and is performing his or her official duties in the enforcement of storm water system regulations; or

2. Acting in a manner that he or she knows, or should reasonably know, will interfere with or obstruct a person known to be, or who should reasonably be known to be, responsible for the enforcement of storm water system regulations; or

3. Refusing to identify himself or herself and give his or her current address to the Director for the enforcement of this Chapter pursuant to an investigation of a violation upon request by the Director.

D. Inspection requirements. The Director is authorized to develop inspection procedures and requirements for all stormwater facilities in the City of Poulsbo.

1. Prior to making any inspections on private property, the Director shall present identification credentials, state the reason for the inspection, and request entry.

2. If the property, or any building or structure on the property, is unoccupied, the Director shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

3. Unless entry is consented to by the owner or person(s) in control of the property, or portion of the property, or unless conditions are reasonably believed to exist in the opinion of the Director which create immediate danger to public health or safety, the Director shall obtain a search warrant or other remedy, prior to entry, as authorized by the laws of the State of Washington.

4. If, after reasonable effort, the Director is unable to locate the owner or other person(s) having charge or control of the property, and there is reason to believe the condition of the stormwater system creates an immediate danger to public health or safety in the opinion of the Director, the Director may enter.

5. Nothing in this section prevents the Director from inspecting a stormwater system without consent of the property owner or a search warrant, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

E. Monitoring, sampling, and analysis.

1. Whenever the Director determines that any person has violated or is violating the provisions of this Chapter, the Director may require the person responsible for the violation to sample and analyze any discharge, surface water, stormwater, groundwater, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the Director. When the Director has reason to believe that a connection is resulting in an illicit discharge, the Director may sample and analyze the discharge and recover the costs from a person in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the Director may conduct, or may require the person to conduct, ongoing monitoring (including sampling and testing) at the person's expense.

2. The City shall have the right to set up on any facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharge.

3. The City has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. When monitoring is required, the discharger shall sample and analyze any discharge, surface and stormwater, groundwater, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the Director. A copy of the analysis shall be provided to the Director.

### **13.18.140 Enforcement and penalties.**

A. Authorization. The Director is authorized to enforce this Chapter and any permit, order or approval issued pursuant to this Chapter, against any violation or threatened violation thereof.

B. Compliance. The Director shall attain compliance with this Chapter by requiring the implementation of BMPs. The Director may initially rely on education and informational assistance to gain compliance with this Chapter, unless the Director determines a violation poses a hazard to public health, safety, or welfare, endangers any property, or adversely affects the safety and operation of City right-of-way, utilities and/or other property owned or maintained by the City, that should be addressed through immediate penalties. The Director may demand immediate cessation of discharges and assess penalties for violations that are an imminent or substantial danger to the health or welfare of persons or danger to the environment. Enforcement actions shall escalate for non-compliance. Enforcement shall include one or more of the following actions, singly or in combination. The Director may apply whatever enforcement action, or combination of actions, is determined appropriate within the following range of actions, regardless of the position in the range.

1. Written warning with voluntary compliance. May be applied to first time, minor violations. Educational materials and informational assistance will be provided to the violator.

2. Compensatory actions such as community service related to stormwater education or mitigation in lieu of penalty or enforcement proceedings. Requires a formal written agreement between the Director and the violator.

3. Written notice of violation ordering compliance.

4. Civil penalties. Includes daily financial penalty imposed by a judicial authority for each day the violation remains unfixed.

5. Criminal prosecution. Applies to intentional and flagrant violations of this Chapter. Each day discharge continues shall be considered a separate offense which can result in fines and imprisonment.

6. Emergency Cease and Desist order. Applies when this Chapter continues to be violated. Requires immediate compliance with this Chapter by halting operations and/or terminating discharges.

7. Disconnection from the MS4. Applies to illicit connections to MS4, to illicit discharges in emergency situations, or continued failure of the property owner to comply.

C. Notice and Order.

1. Contents. The Director shall have authority to issue to an owner or person responsible for a violation of this chapter an order to maintain or repair a component of a stormwater facility or BMP to bring it into compliance with this Chapter or other City regulations, to remove any illicit connection, to cease any illicit discharge, and to repair or remediate any damages to the environment caused by any such violation. The order shall include the following:

- a. The order identification number; and
- b. The street address, when available, and the tax parcel number of real property and/or description of personal property sufficient for identification of where the violation occurred or is located; and
- c. A description of the specific nature, extent and time of the violation and the damage that has occurred or potential damage that reasonably might occur; and
- d. A notice that the violation or the potential violation cease and desist; and
- e. A statement of the corrective action required to be taken. If the Director has determined that corrective work is required, the order shall require that all required permits be secured, that work physically be commenced, and that the work be completed within such times as the Director determines are reasonable under the circumstances; and
- f. A statement advising that if any required work is not commenced or completed within the times specified, the Director will proceed to cause abatement of the violation and cause the work to be done and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation; and
- g. Any requirements for monitoring, analyses and reporting; and
- h. A statement specifying the amount of any civil penalty assessed as a result of the violation and, if applicable, the conditions on which assessment of such civil penalty is contingent; and
- i. An order to the owner to provide the Director a detailed plan showing drawings and steps that will be taken to achieve compliance within a specific time. The plan is subject to the approval of the Director; and
- j. A statement advising that the order shall become final unless, no later than 10 working days after the notice and order are served, any person aggrieved by the order requests an appeal in accordance with Section 13.18.150 below.

2. Service. Service of the notice and order shall be made upon all persons identified in the notice and order either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested. If the address of any such person cannot reasonably be ascertained, a copy of the notice and order shall be mailed to such person at the address of the location of the violation. The failure of any

such person to receive such notice shall not affect the validity of any proceedings taken under this chapter. Service by certified mail in the manner provided in this section shall be effective on the date of postmark. The notice and order may be, but is not required to be, posted on the subject property.

3. Appeal. Persons to whom the notice and order of the Director is issued may appeal the same within 10 working days of service. The appeal must be in accordance with Section 13.18.150 below.

D. Civil Infraction. Conduct made unlawful by this Chapter shall constitute a Class One civil infraction and is subject to enforcement and fines as provided in Chapter 13.01 Poulsbo Municipal Code and chapter 7.80 RCW.

E. Civil Penalty

1. In addition to any civil infraction fine, criminal penalty, or other available sanction or remedial procedure, any person engaging in conduct made unlawful by this chapter shall be subject to a civil penalty in the amount of \$1,000 per day for each violation from the date set for compliance until the date of compliance.

2. Payment of a monetary penalty pursuant to this Chapter does not relieve the person of the duty to correct the violation.

3. All civil penalties recovered during the enforcement of this Chapter shall be deposited into a fund which shall be used by the City for the protection of surface and storm water or ground water as set forth in this Chapter, through education or enhanced implementation.

F. Criminal prosecution. Any person that has violated or continues to violate this Chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed \$1,000 per violation per day, or by imprisonment for a period of time not to exceed 90 days, or both.

G. Recovery of Costs Incurred by the City. In addition to any costs for enforcement under this Chapter, any person violating any of the provisions of this Chapter shall be liable to the City for any expense, loss, or damage caused by such violation or discharge, including but not limited to the costs for bringing the City back into compliance with its NPDES permit associated with any violation of these regulations, and any fines levied for violations of the City's NPDES permit.

H. Violations deemed a public nuisance. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

I. Summary abatement.

1. Whenever any violation of this Chapter causes or creates a condition, the continued existence of which constitutes, in the opinion of the Director, an immediate



threat to the public health, safety or welfare or to the environment, the Director may summarily and without prior notice, at the cost of the owner, abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

2. Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including labor and materials, legal expenses, administrative costs, and interest. Persons to whom the assessment of costs of abatement is issued may appeal the same within 10 working days of service. The appeal must be in accordance with Section 13.18.150 below. If the amount due is not paid within a timely manner as determined by the decision of the City or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

The owner shall pay the abatement costs in not more than 12 equal payments. Such costs shall accrue interest at the rate of 12 percent per annum or the rate charged to the City for obtaining the funds necessary to abate, whichever interest is greater.

J. Injunctive relief. In addition to any other remedy provided by this Chapter or the Poulsbo 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 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.

K. Remedies not exclusive. The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the City to seek cumulative remedies.

### **13.18.150 Appeals.**

A. The Director's notice and order or assessment of costs of abatement may be appealed to the City Council by persons to whom the notice and order or assessment of costs of abatement is issued. An appeal shall be considered timely if, but only if, it is filed in writing with the Director within 10 working days of service, and the appeal fee adopted by the City Council is paid in full. In addition to the appeal fee, if the Director determines that the services of an independent consultant are reasonably necessary in adjudicating the appeal, the appellant shall make an initial cash deposit to pay for an independent review as the same may be reasonably required by the Director. The initial deposit, which is only an estimate of the consultant's costs, shall be paid in advance of the hearing. If it is determined during any point in the appeal process that the initial deposit is insufficient to cover all reasonable consultant's costs, the appellant shall be required to make an additional deposit in an amount sufficient to cover the same. Any portion of the deposit that is not used to cover all reasonable consultant's costs shall be refunded to the appellant. The amount of the deposit shall be at least \$500 but not more than \$1500, and it shall be determined by the Director based upon a good faith estimate of permissible costs. The appellant shall be given equal access to any report prepared by the consultant.

B. The Director shall accept appeals that meet the requirements of this section and shall schedule such appeals for consideration by the City Council. The City Council hearing shall be scheduled within 60 days after the appeal is accepted. The Director shall reject any appeal that fails to meet the filing and submittal requirements of this section. The appeal fee shall be refunded in the event the Director rejects the appeal or in the event that the appellant files a statement with the Director withdrawing the appeal at least 15 calendar days before the scheduled hearing. In all other cases, the appeal fee shall be nonrefundable.

C. The written appeal shall contain all of the following information and attachments:

1. A copy of the notice and order or assessment of costs of abatement being appealed;
2. The name of the property owner and, if applicable, the owner's agent;
3. The name and signature of each appellant and a statement showing that each is entitled to file the appeal under subsection A of this section; and
4. A statement of appeal identifying each issue in the notice and order or assessment of costs of abatement that the appellant wishes to appeal, the reasons why each issue is in error as a matter of fact and/or law, and evidence relied upon.

D. The City Council, under its quasi-judicial authority, shall hear the appeal in an open record hearing. At least ten business days before the hearing, notice of the same shall be mailed to parties who are entitled to notice of the decision. The notice of hearing does not need to be posted or published. The appeal shall be limited to those issues raised in subsection (C)(4), and shall be similar in format as other quasi-judicial matters that may from time to time come before the City Council.

E. At least ten business days before the hearing, the appellant shall submit, as part of the record, a report to the City Council containing a statement of the issues and applicable laws, discussion and analysis, proposed findings of fact and conclusions of law, and copies of any pertinent document referenced therein. The burden shall be on the City to support the order of the Director by a preponderance of the evidence. Reports, if any, prepared by the independent consultant referenced above in subsection (A) shall be part of the record. The City Council shall decide as follows, based upon the record made during the course of the public hearing:

1. Uphold the order or assessment of costs of abatement of the Director in its entirety; or
2. Uphold the order or assessment of costs of abatement of the Director in part and reverse the order or assessment of costs of abatement in part; or
3. Reverse the order or assessment of costs of abatement of the Director in its entirety.

F. The City Council shall issue a final decision on the appeal supported by written findings and conclusions within 10 business days of the hearing. The decision shall also include venue information and limitations on filing judicial appeal(s) of the decision. The Director shall serve a copy of the final decision to the appellant and other parties of record. Service shall be in the same manner as set forth in Section 13.18.140(C)(2).

#### **13.18.160 Records retention.**

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall retain an on-site written record of the discharge and the actions taken to prevent its occurrence. Such records shall be kept and maintained on a permanent basis from the effective date of this Chapter. The record shall include books, documents, memoranda, reports, and correspondence relating to any operation, maintenance, monitoring, sampling, and chemical analysis associated with the discharge and all records which pertain to matters which are the subject of any enforcement or litigation activities brought by the Director pursuant to this Chapter. Copies of any or all records shall be provided to the Director upon his request.

#### **13.18.170 Construction - Intent.**

This Chapter is enacted as an exercise of the City's power to protect and preserve public health, safety, and welfare. Its provisions 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. The primary 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 City, its officers, employees or agents for any injury or damage resulting from the failure of the person holding title to the property (owner of record) to comply with the provisions of this Chapter, or by reason or in consequence of any act or omission, to act in connection with the implementation or enforcement of this Chapter by the City, its officers, employees, or agents.

**Section 2. Severability.** If any section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby.

**Section 3. Effective Date.** This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:



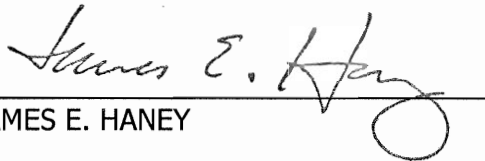
MAYOR, KATHRYN H. QUADE

ATTEST/AUTHENTICATED:



CITY CLERK, JILL A. BOLTZ

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY   
JAMES E. HANEY

FILED WITH THE CITY CLERK: 02/12/2009  
PASSED BY THE CITY COUNCIL: 03/04/2009  
PUBLISHED: 03/13/2009  
EFFECTIVE DATE: 03/18/2009  
ORDINANCE NO. 2009-03

## **SUMMARY OF ORDINANCE NO. 2009-03**

of the City of Poulsbo, Washington

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On the 4th day of March, 2009, the City Council of the City of Poulsbo passed Ordinance No. 2009-03. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, PROVIDING FOR THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS OF POULSBO; THE PROTECTION AND ENHANCEMENT OF THE WATER QUALITY OF WATERCOURSES AND WATER BODIES THROUGH THE REGULATION OF NON-STORM WATER DISCHARGES TO THE STORM DRAIN SYSTEM TO THE MAXIMUM EXTENT PRACTICABLE AS REQUIRED BY FEDERAL AND STATE LAW; COMPLIANCE WITH THE REQUIREMENTS OF THE CITY'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT; ADDING A NEW CHAPTER 13.18 TO THE POULSBO MUNICIPAL CODE; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 10th day of March, 2009.

  
CITY CLERK, JILL A. BOLTZ