

# **Regional Stormwater Illicit Discharge MODEL Ordinance**



**For:**

**Yakima County**

**City of Yakima**

**City of Union Gap**

**City of Sunnyside**

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**1. General Provisions**

*(General provision purpose statements are not specifically required by the NPDES permit, however their inclusion is useful to clarify the purpose of the ordinance)*

**1.1. Purpose**

1.1.1. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of [JURISDICTION] through the regulation of non-storm water discharges to the regulated Municipal Separate Storm Sewer System (MS4) and public Underground Injection Control (UIC) wells to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the MS4 or public UICs in order to comply with requirements of the Eastern Washington Phase II Municipal Stormwater Permit process and Washington Department of Ecology’s *Guidance for UIC Wells that Manage Stormwater*. The objectives of this ordinance are: *(Center for Watershed Protection Model Ordinance)*

1.1.1.1. To regulate the contribution of pollutants to the regulated municipal separate storm sewer system (MS4) and public UIC wells. *(Center for Watershed Protection Model Ordinance)*

1.1.1.2. To prohibit illicit connections and discharges to the regulated municipal separate storm sewer system and public UIC wells. *(Center for Watershed Protection Model Ordinance)*

1.1.1.3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance *(Center for Watershed Protection Model Ordinance)*

### **1.2. Applicability.**

1.2.1. This ordinance shall apply to all water or pollutants entering the municipal separate storm sewer system (MS4) and public UIC wells generated on any developed and undeveloped lands unless explicitly exempted by the **[STORMWATER AUTHORITY]**. *(Center for Watershed Protection Model Ordinance) (“or pollutants” added to clarify that solid wastes are also prohibited from the MS4 or public UIC; see definition of pollutant)*

### **1.3. Authority**

*(General provision authority, compatibility, severability, and liability statements are not specifically required by the NPDES permit, however their inclusion is customary for stand alone ordinances)*

1.3.1. This ordinance is adopted pursuant to authority conferred by and in accordance with the provisions of the State of Washington Water Pollution Control Law Chapter 90.48, Revised Code of Washington, and the Federal Water Pollution Control Act (the Clean Water Act) Title 33 United States Code, Section 1251 et seq. *(Center for Watershed Protection Model ordinance)*

### **1.4. Compatibility with Other Permit and Ordinance Requirements**

1.4.1. This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence. *(Center for Watershed Protection Model ordinance)*

### **1.5. Severability**

1.5.1. If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or

clause of this ordinance. (Center for Watershed Protection Model ordinance)

### 1.6. Liability

- 1.6.1. The requirements of this ordinance are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters. (Center for Watershed Protection Model ordinance)

### 1.7. Authority Designated.

- 1.7.1. The [POSITION TITLE] of the [JURISDICTION] [DEPARTMENT] is hereby authorized and designated as the Official responsible for the enforcement and administration of this Title. The [POSITION TITLE] may designate employees within his division to act on his behalf. The use of the terms “Stormwater Authority,” “Administrative Authority,” “Code Official,” “Authority Having Jurisdiction” and similar such terms as contained in this ordinance and in the codes and standards adopted by reference under this ordinance shall be construed as referring to the [POSITION TITLE] of the [JURISDICTION] [DEPARTMENT] and their designees. (adopted from existing County Building Code 13.04.010)

## 2. Definitions.

- 2.1. This chapter provides definitions for the terms and phrases used in this title. Where any of these definitions conflict with definitions used in other titles of the [JURISDICTION] code, the definitions in this chapter shall prevail for the purpose of this title. (existing County Code, 15A.02.010)
- 2.1.1. “**Best Management Practices**” or “**BMPs**” are the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by Ecology that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to receiving waters. (WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms)
- 2.1.2. “**Clean Water Act**” or “**CWA**” means the federal Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended in Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 *et. seq.* (WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms)
- 2.1.3. “**Construction Activity**” means clearing, grading and/or excavation. These activities are required to NPDES permit coverage in accordance with 40 CFR 122.26. (WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms)
- 2.1.4. “**Discharge**” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to [JURISDICTION]

UIC wells, waters of the State or the MS4 (*Town of Freeport, ME Non-Storm Water Discharge Ordinance*)(*few ordinances define “discharge” without using the word discharge in the definition*)

2.1.5. “**Hazardous Materials**” means those wastes designated by 40 CFR Part 261, and regulated by the EPA.(*WA Dept. of Ecology, NPDES Wastewater Discharge General Permit for the Fresh Fruit Packing Industry, Glossary*)

2.1.6. “**Illicit Discharge**” means any discharge to a municipal separate storm sewer or public UIC that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer)(*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms*)

2.1.7. “**Illicit Connection(s)**” means a connection defined as either of the following:(*Center for Watershed Protection Model Ordinance*)

2.1.7.1.Any drain or conveyance, but not limited to same, whether on the surface or subsurface, which allows an illicit discharge, including non-storm water discharge , sewage, process wastewater, and wash water to enter the MS4 or a public UIC and any connections to the MS4 or public UIC system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the [STORMWATER AUTHORITY] or,(*Center for Watershed Protection Model Ordinance*)

2.1.7.2.Any drain or conveyance connected from a commercial or industrial land use to the MS4 or a public UIC which has not been documented in plans, maps, or equivalent records and approved by the [STORMWATER AUTHORITY].(*Center for Watershed Protection Model Ordinance*)

2.1.8. “**Industrial Activity**” means manufacturing, processing or raw materials storage areas at an industrial plant. These activities are required to obtain NPDES permit coverage in accordance with 40 CFR 122.26. (*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms*)

2.1.9. “**Municipal Separate Storm Sewer System**” or “**MS4**” means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii)

designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms*). In the County, the MS4 is that portion regulated by the Eastern Washington Phase II Municipal Stormwater Permit.

- 2.1.10. **“National Pollutant Discharge Elimination System”** or **“NPDES”** means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology. (*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms*)
- 2.1.11. **“Non-Storm Water Discharge”** means any discharge to the MS4 or public UIC that is not composed entirely of storm water. (*Center for Watershed Protection Model Ordinance*)
- 2.1.12. **“Person”** means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent. (*Center for Watershed Protection Model Ordinance*)
- 2.1.13. **“Pollutant”** means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, domestic sewage sludge (biosolids), munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste. This term does not include sewage from vessels within the meaning of section 312 of the CWA, nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the CWA. (*WA Dept. of Ecology Construction Stormwater General Permit, Definitions And Acronyms*)
- 2.1.14. **“Pollution”** means contamination or other alteration of the physical, chemical, or biological properties of waters of the state; including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life. (*WA Dept. of Ecology Construction Stormwater General Permit, Definitions And Acronyms*)
- 2.1.15. **“Premise(s)”** means any building, lot, parcel of land, or portion of land whether improved or unimproved including any structures thereon, adjacent sidewalks and parking strips. (*Center for Watershed Protection*)

*Model Ordinance*)(“any structures thereon” added from *International Property Maintenance Code, 2006*)

2.1.16. “**Process Wastewater**” means any water which, during manufacturing or processing, comes into direct contact or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. (*WA Dept. of Ecology Industrial Stormwater General Permit, Appendix 2, Definitions*)

2.1.17. “**Public**” as used in this chapter shall mean any real property, or interest therein, belonging to the [JURISDICTION] or a trust or authority of which the [JURISDICTION] is a beneficiary. Public development shall also include private development whenever all or a portion thereof will eventually be dedicated or provided for ownership, operation and/or maintenance to the [JURISDICTION] or a public trust or authority of which the [JURISDICTION] is a beneficiary. (*adopted from Oklahoma City Code, 13-400(g) – Public Property*)

2.1.18. “**Stormwater**” means runoff during and following precipitation and snowmelt events, including surface runoff, drainage and interflow. (*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms*)

2.1.19. “**Underground Injection Control**” or “**UIC**” or “**UIC well**” means a manmade sub-surface fluid distribution system designed to discharge fluids into the ground and consists of an assemblage of perforated pipes, drain tiles, or other similar mechanisms, or a dug hole that is deeper than the largest surface dimension. (*Washington Department of Ecology “Guidance for UIC Wells That Manage Stormwater, Dec. 2006*) A public UIC is one owned, operated, and maintained by [JURISDICTION] and includes the collection system of catch basins, pipes, ditches, or other public infrastructure that collects and conveys stormwater to the UIC.

2.1.20. “**Waters of the State**” includes those waters as defined as “waters of the United States” in 40 CFR 122.2 within the geographic boundaries of Washington State and “waters of the state” as defined in Chapter 90.48 RCW which includes: lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses within the jurisdiction of the State of Washington. (*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, Definitions And Acronyms*)

### 3. *Discharge Prohibitions.*

#### 3.1. *Prohibition of Illicit Discharges.*

3.1.1. No person shall discharge or cause to be discharged into the MS4 or a public UIC any materials, including but not limited to pollutants or waters containing any pollutants other than storm water. (*Center for Watershed Protection Model Ordinance*)(*modified*)

3.1.2. The commencement, conduct or continuance of any illicit discharge to the MS4 or a public UIC is prohibited except as described as follows: (*Center for Watershed Protection Model Ordinance*)

3.1.2.1. The following discharges are exempt and shall only be illicit discharges if the [JURISDICTION] has reason to consider that the discharge, whether singly or in combination with others, may cause or contribute to a violation of the [JURISDICTION's] NPDES stormwater permit, may cause the [JURISDICTION] to violate Ecology's UIC rules, or is causing or contributing to a water quality or flooding problem (*City of Seattle Stormwater Ordinance*) In such cases, it shall be the responsibility of the discharger to provide evidence that the discharge is not illicit and complies with the following:

3.1.2.1.1. Discharges resulting from emergency fire fighting activities.  
(*Moved from definitions to exemptions*).

3.1.2.1.2. Diverted stream flows;

3.1.2.1.3. Rising ground waters;

3.1.2.1.4. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));

3.1.2.1.5. Uncontaminated pumped ground water;

3.1.2.1.6. Foundation drains;

3.1.2.1.7. Air conditioning condensation;

3.1.2.1.8. Irrigation water from agricultural sources that is commingled with urban stormwater;

3.1.2.1.9. Springs;

3.1.2.1.10. Water from crawl space pumps;

3.1.2.1.11. Footing drains; and

3.1.2.1.12. Flows from riparian habitats and wetlands.

3.1.2.1.13. Discharges from lawn watering and other irrigation runoff.

3.1.2.2. The following discharges are not exempt from discharge prohibitions established by this ordinance: (*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, S5.B.3*)

3.1.2.2.1. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water.

3.1.2.2.1.1. Planned discharges from potable water sources may be discharged to the MS4 or public UIC provided they are dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity



controlled to prevent resuspension of sediments in the MS4 or public UIC.

3.1.2.2.2. Swimming pool discharges.

3.1.2.2.2.1. Discharges from swimming pools may be discharged to the MS4 or public UIC provided that they are dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4 or public UIC.

3.1.2.2.2.2. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4 or public UIC.

3.1.2.2.3. Street and sidewalk wash water containing detergents, water used to control dust containing detergents, and routine external building wash down containing detergents.

3.1.2.2.3.1. Street and sidewalk wash water, water used to control dust, and routine external building wash down water may be discharged to the MS4 or public UIC provided:

3.1.2.2.3.1.1. It does not contain detergents.

3.1.2.2.3.1.2. Streets and sidewalks are swept and material removed prior to washing.

3.1.2.2.3.1.3. At active construction sites, street sweeping shall be performed prior to washing the street.

3.1.2.3. Discharges specified in writing by the Washington State Department of Ecology as being a significant source of pollutants to waters of the state are prohibited. (*WA Dept. of Ecology, E. WA Phase II Municipal Stormwater Permit, S5.B.3.b.vi*)

3.1.3. Dye testing is an allowable discharge, but requires a verbal notification to the [STORMWATER AUTHORITY] prior to the time of the test. (*Center for Watershed Protection Model Ordinance*)

3.1.4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, 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 from the [STORMWATER AUTHORITY] for any discharge to the MS4 or public UIC. (*Center for Watershed Protection Model Ordinance*)

3.2. **Prohibition of Illicit Connections.** (*Center for Watershed Protection Model Ordinance*)

- 3.2.1. The construction, use, maintenance or continued existence of illicit connections to the MS4 or public UIC is prohibited. *(Center for Watershed Protection Model Ordinance)*
- 3.2.2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. *(Center for Watershed Protection Model Ordinance)*
- 3.2.3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or public UIC, or allows such a connection to continue. *(Center for Watershed Protection Model Ordinance)*

**3.3. *Suspension due to Illicit Discharges in Emergency Situations*** *(Center for Watershed Protection Model Ordinance)*

- 3.3.1. The [STORMWATER AUTHORITY] may, without prior notice, suspend MS4 or public UIC discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, either illicit, or which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or public UIC or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the [STORMWATER AUTHORITY] may take such steps as deemed necessary to prevent or minimize damage to the MS4, the public UIC or to minimize danger to persons. *(Center for Watershed Protection Model Ordinance)*

**3.4. *Suspension due to the Detection of Illicit Discharge or Illicit Connection*** *(Center for Watershed Protection Model Ordinance)*

- 3.4.1. Any person discharging, or connected, to the MS4 or public UIC in violation of this ordinance may have their MS4 or public UIC access terminated if such termination would abate or reduce an illicit discharge or connection. The [STORMWATER AUTHORITY] will notify a violator of the proposed termination of its MS4 or public UIC access. Persons must respond within 15 days of said notification to propose a voluntary correction in accordance with Section 6.4.7 of this ordinance. *(Center for Watershed Protection Model Ordinance)*
- 3.4.2. A person commits a violation of this ordinance if the person reinstates MS4 or public UIC access to premises terminated pursuant to this Section, without the prior approval of the [STORMWATER AUTHORITY]. *(Center for Watershed Protection Model Ordinance)*

**4. *Right of Entry.***

- 4.1. When necessary to perform any of his duties under this ordinance or to investigate upon reasonable cause or complaint the existence or occurrence of a violation of this ordinance, the [STORMWATER AUTHORITY] may enter onto property to inspect the same or to perform any duty imposed or authorized

by this ordinance. Provided, that if such property be occupied and not a public place he shall first present proper credentials and request entry; and if such property is unoccupied, he shall first make a reasonable effort to locate the owners or other persons having charge or control of the property and request entry. If such entry is refused, the [STORMWATER AUTHORITY] shall have recourse to every remedy provided by law to secure entry. The right of entry authorized for this section extends to any employee, officer, or person that accompanies the [STORMWATER AUTHORITY] or his authorized representatives. All permits and approvals issued under the provisions of this ordinance are hereby conditioned on free access by the [STORMWATER AUTHORITY] to the property involved during any period of construction, improvement, or change, for inspections to assure compliance with this ordinance and any conditions of approval for such permit or approval. The [STORMWATER AUTHORITY] may enter onto private property during any such period of construction, improvement, or change being done pursuant to a permit or approval for such purposes. Provided, that if the property is occupied he shall first notify the occupant prior to entry. *(City of Yakima Municipal Code, as modified in response to comments)*

4.2. If the [STORMWATER AUTHORITY] has been refused access to any part of the premises from which water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the [STORMWATER AUTHORITY] may seek issuance of a search warrant from any court of competent jurisdiction. *(Center for Watershed Protection Model Ordinance)*

## 5. Notification Of Spills.

*(No requirement in the Municipal NPDES permit for the IDDE ordinance to require notification, HOWEVER, municipal permittees must notify Ecology, so it follows that spill notification to the permittees is appropriate)*

5.1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water or the MS4 or public UIC, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the [STORMWATER AUTHORITY] in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the [STORMWATER AUTHORITY] within three business days of the phone notice. *(Center for*

*Watershed Protection Model Ordinance)(modified to remove record-keeping requirement by discharger since NPDES permittee must also keep records)*

## **6. Violations, Enforcement and Penalties**

### **6.1. Violations**

6.1.1. Any person, firm, or corporation violating any of the provisions of this Title, including the provisions of the various Codes adopted by reference therein, or failing to comply therewith, or violating or failing to comply with any order issued or made pursuant to its provisions shall severally and for each and every violation and non-compliance respectively be guilty of a misdemeanor ([JURISDICTION code [GENERAL PENALTY section]) *(for the County, the appropriate section is 1.24)* or shall be subject to a civil infraction as provided for by Chapter 7.80 RCW or any other remedy provided by law. Any person so convicted of a misdemeanor shall be punished for each offense by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. *(existing County code, 13.25.010)*

### **6.2. Continued Violations.**

6.2.1. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue. Any person, firm, or corporation shall be required to correct such violations or defects. Each week after notice of violation to such person, firm, or corporation shall constitute a separate offense unless time for correction is otherwise expressly extended in writing by the official enforcing this title. Provided, that where the authorized official has ordered any work or occupancy stopped or has revoked or suspended any permit or certificate, each and every day that such work or occupancy continues or is permitted to continue shall constitute a separate offense.*(existing County code, 13.25.020)*

### **6.3. Persons Liable.**

6.3.1. The owner, lessee, or tenant of any building, structure, premises, or part thereof, and any architect, engineer, builder, contractor, employee, agent, or other person who commits, authorizes, participates in, assists in, or who maintains after notice, a violation of this Title may each be found guilty of a separate offense and suffer the penalties provided in this Chapter.*(existing County code, 13.25.040)*

### **6.4. Civil Infractions**

*(existing County code, 13.25.050)*

6.4.1. This chapter shall apply to the enforcement of [JURISDICTION] ordinances and codes, including those related to stormwater quantity, stormwater quality, environmental health and safety, and quality of life, which specifically reference this chapter or the ordinance codified in this chapter and those ordinances which provide that the [JURISDICTION] [STORMWATER AUTHORITY] official is charged with enforcement of those ordinances.

- 6.4.2. Violations of the applicable codes shall be corrected under the provisions of this chapter, in coordination with existing ordinance and code provisions.
- 6.4.3. Only an authorized official may enforce the provisions of this chapter. For purposes of this chapter, an authorized official is defined as any one of the following:
- 6.4.3.1. The **[JURISDICTION]** **[LAW ENFORCEMENT]** and his or her authorized representatives shall have the authority to enforce the provisions of this chapter;
- 6.4.3.2. The **[JURISDICTION]** building official and his or her authorized representatives shall have the authority to enforce the provisions of this chapter;
- 6.4.3.3. The **[JURISDICTION]** **[STORMWATER AUTHORITY]** and his or her authorized representatives shall have the authority to enforce the provisions of this chapter;
- 6.4.4. The **[JURISDICTION]** prosecuting attorney shall have authority to enforce the provisions of this chapter and may pursue any legal proceedings necessary to enforce the provisions of this chapter; and
- 6.4.5. The **[GOVERNING BOARD OF JURISDICTION]** may designate other persons to administer the provisions of this chapter.
- 6.4.6. An authorized official may investigate alleged or apparent violations of this chapter. In the performance of that investigation, an authorized official may enter upon any land and make examinations and surveys, provided that such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof. Upon request of the authorized official, the person allegedly or apparently in violation of this chapter is required to provide reasonable information identifying themselves.
- 6.4.7. Whenever an authorized official determines that a violation has occurred or is occurring, he or she may pursue reasonable attempts to secure voluntary corrections, failing which he or she may issue a notice of infraction. An authorized official may issue a notice of infraction if the authorized official reasonably believes that the provisions of this chapter have been violated. A notice of infraction may be served either by:
- 6.4.7.1. The authorized official serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or
- 6.4.7.2. The authorized official filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address.
- 6.4.8. A notice of infraction shall be filed in district court within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. Yakima

County District Court shall have **[JURISDICTION]** to hear and determine these matters.

- 6.4.9. A person who receives a notice of infraction shall respond to the notice as provided in this section within fifteen days of the date the notice was served.
- 6.4.10. If the person named in the notice of infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response order shall be furnished to the authorized official. Failure to contest the determination and the payment of the fine does not release the person named in the notice of the infraction from their obligation to comply with the Notice or Order of the authorized official.
- 6.4.11. If the person determined to have committed the civil infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of the hearing, except by agreement.
- 6.4.12. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified in the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of the hearing, except by agreement.
- 6.4.13. The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction, and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing if any person issued a notice of civil infraction fails to respond.
- 6.4.14. Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction; provided, that a written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by appearance of counsel.

- 6.4.15. A person who willfully fails to pay a monetary penalty or to perform community service as required by a court under this chapter may be found in civil contempt of court after notice and hearing.
- 6.4.16. A person subject to proceedings under this chapter may appear or be represented by counsel but not at public expense.
- 6.4.17. The prosecuting attorney representing the [JURISDICTION] may, but need not, appear in any proceedings under this chapter, notwithstanding any statute or court rule to the contrary.
- 6.4.18. A hearing held to contest the determination that an infraction has been committed shall be without a jury.
- 6.4.19. The court may consider the notice of infraction and any sworn statements submitted by the authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized representative who has issued and served the notice, and has the right to present evidence and examine witnesses present in court.
- 6.4.20. The burden of proof is on the [JURISDICTION] to establish the commission of the infraction by a preponderance of evidence.
- 6.4.21. After consideration of the evidence and argument, the court shall determine whether the infraction was committed.
- 6.4.22. An appeal from the court's determination or order shall be to the Superior Court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).
- 6.4.23. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.
- 6.4.24. After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.
- 6.4.25. There shall be no appeal from the court's determination or order.
- 6.4.26. A person found to have committed a civil infraction shall be assessed a monetary penalty. All violations of this chapter shall be denominated Class I civil infractions. The maximum penalty and default amount for a Class I civil infraction shall be two hundred fifty dollars, not including statutory assessments.
- 6.4.27. Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time, the court may grant an extension of the period of time in which the penalty may be

paid. If the penalty is not paid on or before the time established for payments the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay. The court shall also notify the department of the failure to pay the penalty, and the department shall not issue the person any future permits for any work until the monetary penalty has been paid.

### **6.5. Violation – Civil Remedies**

*(existing County code, 13.25.060)*

6.5.1. In addition to any criminal proceedings brought to enforce this Title and in addition to any fine or imprisonment provided for therein, continuing violations of this Title may be enjoined or ordered abated in a civil proceeding for injunction or for abatement. For purposes of abatement actions, such violations are declared to be public nuisances. Any person, firm, or corporation violating the provisions of this Title shall be liable for all costs of such proceedings, including reasonable attorney's fees and expenses of abatement. The provisions of this subsection are in addition to any other remedies available at law or equity.

6.5.2. The Prosecuting Attorney's Office on behalf of the [JURISDICTON] and the public may pursue civil remedies to enforce compliance with the provisions of the Title. A private person directly affected by a violation of this Title may pursue civil remedies to enforce compliance with its provisions or to recover damages for its violation.

### **6.6. Appeals**

*(Included to provide relief for applicants; need to check with legal)*

6.6.1. The decisions or orders of the [STORMWATER AUTHORITY] or [JURISDICTION] shall be final. Further relief shall be to a court of competent jurisdiction. *(Center for Watershed Protection Model ordinance)*

### **6.7. Remedies Not Exclusive**

*(Included to ensure that other enforcement options are clearly available to other agencies)*

6.7.1. The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law. *(Center for Watershed Protection Model ordinance)*

## **7. Injunctive Relief**

7.1. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the [STORMWATER AUTHORITY] may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. *(Center for Watershed Protection Model Ordinance)*



## 8. **Compensatory Action**

- 8.1. In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the [STORMWATER AUTHORITY] may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. (*Center for Watershed Protection Model Ordinance*)
- 8.2. The [STORMWATER AUTHORITY] may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses. (*Center for Watershed Protection Model Ordinance*)

## 9. **Effective Date**

*(The NPDES permit does not require an effective date in the ordinance; included here for clarity and provide flexibility in adoption by multiple jurisdictions)*

- 8.1.1. The ordinance codified in this chapter shall go into effect within [JURISDICTION] on August 16, 2009. (*existing County code, 12.09.210*)