

Chapter 13.26A WATER QUALITY

FINAL DRAFT 6.30.14

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13.26A.005 INTRODUCTION

- A. Purpose. The purpose of this chapter is to protect the county's surface and groundwater quality by providing minimum requirements for reducing and controlling the discharge of contaminants and stormwater flows. The Board of County Commissioners finds this chapter is necessary to protect the health, safety and welfare of the residents of Clark County and the integrity of the county's resources for the benefit of all.
- B. Applicability
1. This chapter applies to the discharge of contaminants to surface water, stormwater and groundwater as set forth in Section [13.26A.025](#) and requires certain sites and activities to utilize best management practices as set forth in Section [13.26A.035](#) and stormwater facility maintenance practices set forth in Section [13.26A.040](#).
 2. The Board of County Commissioners also recognizes that the implementation of successful pollution control practices is most likely through a pollution prevention (water resources) education effort for business owners and the general public. In implementing this chapter, the county will primarily rely on education and technical assistance to show individuals how to implement pollution control practices. Enforcement actions will normally be implemented when education and technical assistance measures are unsuccessful at protecting the public interest or when a person willfully contaminates the water resources of Clark County.
 3. The Board of County Commissioners recognizes that implementation of this chapter is required under the federal Clean Water Act, 33 U.S.C. 1251 et seq. In meeting the intent of the Clean Water Act the Board of County Commissioners also recognizes the importance of maintaining economic viability while providing necessary environmental protection and believes this chapter helps achieve both goals.
 4. The county's Clean Water Program is guided by the requirements of the Washington Department of Ecology's Phase I NPDES Municipal Stormwater Permit that was effective August 1, 2013 and is due to expire August 1, 2018.

(Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

C. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this chapter:

AKART	<p>“AKART” means “all known, available, and reasonable methods of prevention, control, and treatment.” AKART represents the most current methodology that can reasonably be required for preventing, controlling or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution.</p>
Best management practices or BMPs	<p>“Best management practices (BMPs)” are the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices, or structural features approved by Ecology that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.</p>
Chapter	<p>“Chapter” means this chapter and any administrative rules and regulations adopted to implement this chapter.</p>
Clean Water Act	<p>“Clean Water Act” means 33 U.S.C. 1251 et seq., as amended.</p>
Contaminants	<p>“Contaminants” include, but are not limited to, the following:</p> <ol style="list-style-type: none"> 1. Trash or debris; 2. Construction materials; 3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil or heating oil; 4. Antifreeze and other automotive products; 5. Metals in either particulate or dissolved form; 6. Flammable or explosive materials; 7. Radioactive material; 8. Batteries; 9. Acids, alkalis, or bases; 10. Paints, stains, resins, lacquers or varnishes; 11. Degreasers and/or solvents; 12. Drain cleaners; 13. Pesticides, herbicides or fertilizers; 14. Steam cleaning wastes; 15. Soaps, detergents, or ammonia; 16. Swimming pool backwash; 17. Chlorine, bromine, and other disinfectants; 18. Heated water; 19. Domestic animal wastes; 20. Sewage; 21. Recreational vehicle waste;

	<p>22. Animal carcasses, excluding salmonids; 23. Food wastes; 24. Bark and other fibrous materials; 25. Collected lawn clippings, leaves or branches; 26. Silt, sediment, or gravel; 27. Dyes (except as stated in Section 13.26A.025(C)(1)); 28. Chemicals not normally found in uncontaminated water; 29. Swimming pool water; 30. Water discharged during water well disinfection; 31. Potable water; 32. Potable water line flushing; and 33. Any hazardous material or waste not listed above.</p>
Clark County Stormwater Manual	“Clark County Stormwater Manual” means the stormwater manual adopted by Ordinance 2015- xx-xx
County	“County” means the municipality of Clark County, Washington.
Discharge	“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 be thrown, drained, released, dumped, spilled, emptied, emitted or poured into water.
Forest practices	“Forest practices” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting or processing timber, as defined in Chapter 222-16 WAC.
Groundwater	“Groundwater” means water in a saturated zone or stratum beneath the surface of land or below a surface water body (WAC 173-200-020).
NPDES (National Pollutant Discharge Elimination System) permit	“NPDES (National Pollutant Discharge Elimination System) permit” means an authorization, license, or equivalent control document issued by the Environmental Protection Agency or the Washington Department of Ecology to implement the requirements of the NPDES program under the Clean Water Act.
Person	“Person” means an individual, or their agents or assigns; a municipality; political subdivision; government agency; partnership; corporation; business; or any other entity.
Responsible official	“Responsible official” means the Clark County Administrator or

	his/her appointed designee for the purposes of this chapter.
Source control BMP	“Source control BMP” means a BMP intended to prevent contaminants from entering surface and stormwater and/or groundwater including the modification of processes to eliminate the production or use of contaminants. Source control BMPs can be either structural or nonstructural. Structural source control BMPs involve the construction of a physical structure on-site, or other type of physical modification to a site; for example, building a covered storage area. A nonstructural source control BMP involves the modification or addition of managerial or behavioral practices; for example, using less toxic alternatives to current products or sweeping parking lots.
State waste discharge permit	“State waste discharge permit” means an authorization, license, or equivalent control document issued by the Washington Department of Ecology in accordance with Washington Administrative Code.
Surface water and Stormwater	Water originating from rainfall and other precipitation that is found in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, and wetlands, as well as shallow groundwater (interflow).
Treatment BMP	Treatment BMP” means a BMP intended to remove contaminants once they are already contained in stormwater.

(Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01; amended by Sec. 1 (Att. A § 2) of Ord. 2011-08-08)

13.26A.010 EDUCATION AND TECHNICAL ASSISTANCE

Clark County will provide, upon reasonable request, available technical assistance materials and information to persons required to comply with this chapter. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01; amended by Sec. 1 (Att. A § 2) of Ord. 2011-08-08)

13.26A.025 DISCHARGES INTO CLARK COUNTY WATERS

A. Prohibited Discharges

1. It is unlawful for any person to discharge any contaminants, as defined in Section [13.26A.005.C](#) into surface water, stormwater, or groundwater.
2. Illicit Connections. Any connection that could convey anything not composed entirely of surface water and stormwater, directly to surface water, stormwater, groundwater or into the county’s municipal separate storm sewer system is considered an illicit connection and is prohibited with the following exceptions:
 - a. Connections conveying allowable discharges; or,

- b. Connections conveying discharges pursuant to an NPDES permit or a state waste discharge permit.
- B. Allowable Discharges. The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the responsible official determines that the type of discharge, whether singly or in combination with others, is causing significant contamination of surface and stormwater or groundwater:
1. Uncontaminated water from crawl space pumps or footing drains;
 2. Lawn watering;
 3. Street and sidewalk wash water, water used to control dust, and building washdown that does not include detergents or pollutants;
 4. Swimming pool water if dechlorinated to a concentration of 0.1 parts per million or less, pH adjusted and controlled to prevent erosion and sediment transport. Water temperature shall be controlled to minimize impact to receiving waters. Wastewater and filter backwash are not allowable;
 5. Materials placed as part of an approved habitat restoration or bank stabilization project;
 6. Air conditioning condensation;
 7. Flows from riparian habitats and wetlands;
 8. Springs;
 9. Diverted stream flows;
 10. Rising ground waters;
 11. Uncontaminated ground water infiltration (as defined at CFR 35.2005(20));
 12. Uncontaminated pumped groundwater;
 13. Foundation drains;
 14. Footing drains;
 15. Irrigation water from agricultural sources that is commingled with urban stormwater;
 16. Potable water sources if dechlorinated to a concentration of 0.1 parts per million or less, pH adjusted and controlled to prevent erosion and sediment transport;
 17. Discharges from emergency fire-fighting activities; and
 18. Non-stormwater discharges authorized by another NPDES permit or State Waste Discharge Permit.
- C. Exceptions
1. Dye testing is allowable but requires notification to the responsible official at least one (1) day prior to the date of test. Clark County or a sewer service purveyor is exempt from this requirement.
 2. If a person has properly designed, constructed, implemented and is properly maintaining BMPs, and is carrying out AKART as required by this chapter or through another federal or state regulatory or resource management program, and contaminants continue to enter surface and stormwater or groundwater, then that person shall not be in violation of Section [13.26A.025\(A\)](#).
 3. If a person can demonstrate that there are no additional contaminants being discharged from the site above the background conditions of the water entering the site, then that person shall not be in violation of Section [13.26A.025\(A\)](#).
 4. Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, shall be exempt from this section. The responsible official may specify actions that qualify for this exception in county procedures. The person responsible for emergency response activities should take steps to ensure that the discharges resulting from such activities are minimized to the greatest extent possible. In addition, this person shall evaluate BMPs and the site plan, where

applicable, to restrict recurrence. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01; amended by Sec. 1 (Att. A § 2) of Ord. 2011-08-08)

13.26A.035 BEST MANAGEMENT PRACTICES REQUIREMENTS

A. Best Management Practices

1. Existing development, current activities, and new development activities not covered by the Clark County stormwater and erosion control ordinance ([Chapter 40.386](#)) that are not listed in the exemptions of this subsection are required to apply stormwater quality BMPs listed in the Clark County Stormwater Manual. A BMP not included in this manual may be approved by the responsible official if the proponent demonstrates that it provides equivalent effectiveness for applying AKART. An exemption from the requirement to use BMPs does not provide an exemption allowing prohibited discharges.
2. In applying the Clark County Stormwater Manual for existing development, the responsible official shall first require the implementation of nonstructural source control BMPs. If these are not sufficient to prevent contaminants from entering surface and stormwater or groundwater, the responsible official may require implementation of structural source control BMPs or treatment BMPs, using AKART.

B. Exemptions. The following persons or entities are exempt from the provisions of this section unless the responsible official determines the alternative BMPs to be ineffective at reducing the discharge of contaminants or activities are causing a prohibited discharge:

1. Persons implementing BMPs through another federal or state regulatory or resource management program; provided that the responsible official may perform inspections to ensure compliance with this chapter. If the other program requires the development of a best management practices plan, the person shall make that plan available to Clark County upon request;
2. Persons engaged in the production of crops or livestock for commercial trade; provided, that such persons shall comply with the requirements of [Chapter 40.440](#);
3. Persons engaged in forest practices regulated under WAC Title [222](#), except for Class IV general forest practices as defined under Chapter [222-16](#) WAC; and
4. Persons conducting normal residential activities at property containing a single-family detached dwelling, duplex or triplex and modifications to it on a lot approved for such use, unless the responsible official determines that these activities pose a hazard to public health, safety or welfare; endanger any property; or adversely affect the safety and operation of county right-of-way, utilities, and/or other property owned or maintained by the county. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

13.26A.040 MAINTENANCE OF STORMWATER FACILITIES

- #### **A. Maintenance and Inspection Required.** All public and private drainage facilities shall be inspected and maintained by the owner in accordance with the Clark County Stormwater Manual. The intent is to ensure proper maintenance of pollution control and quantity control facilities to protect surface water and groundwater. The responsible official may require the owner to conduct more frequent inspection and/or maintenance when necessary to assure that facilities function as designed for pollutant control and quantity control. The Clark County Stormwater Manual shall be filed with and available at the County.

- B. Alternative Maintenance Practices. The responsible official may approve a maintenance practice for a stormwater facility not included in the Clark County Stormwater Manual, or as an alternative to the maintenance practices in the Clark County Stormwater Manual if the proponent demonstrates that the proposed maintenance practice provides pollutant controls equivalent to maintenance standards of the Stormwater Management Manual for Western Washington 2012. The responsible official shall update the Clark County Stormwater Manual to include alternative maintenance practices or maintenance practices for facilities not included in the manual before such practices are allowed for general use.
- C. Disposal of Waste from Maintenance Activities. Disposal of waste from maintenance of drainage facilities shall be conducted in accordance with federal, state, and local regulations, including the Minimum Functional Standards for Solid Waste Handling, Chapter [173-304](#) WAC; guidelines for disposal of waste materials; and, where appropriate, Dangerous Waste Regulations, Chapter [173-303](#) WAC.
- D. Exceptions. The responsible official may grant an exception for maintenance requirements that conflict with federal, state, or local environmental regulations such as a Washington Department of Fish and Wildlife Hydrologic Project Approval, a wetland permit, geologically hazardous area requirements, or habitat conservation requirements.
- E. County Maintenance Projects. The responsible official shall prepare a list of stormwater facilities for major maintenance or repair. The list will be updated annually and prioritize projects based on the needs to protect water bodies, protect public safety, prevent catastrophic infrastructure failure, prevent flooding, and protect infrastructure.
- F. Private Maintenance Projects. The responsible official may require that the operator of a privately operated and maintained facility with deferred maintenance complete construction projects to bring the facility into compliance with maintenance standards. The responsible official may approve a work schedule to bring these facilities into compliance with the Clark County Stormwater Manual. This does not relieve the operator from performing routine maintenance and enforcement under provisions of this chapter. (Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01; amended by Sec. 1 (Att. A § 2) of Ord. 2011-08-08)

13.26A.045 ADMINISTRATION

The responsible official is authorized to implement the provisions of this chapter, and will coordinate the implementation and enforcement of this chapter with other Clark County departments. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

13.26A.050 ENFORCEMENT

- A. The responsible official is authorized to carry out enforcement actions pursuant to the enforcement and penalty provisions of Title [32](#).
- B. The responsible official is authorized to make such inspections and take such actions as may be necessary to enforce the provisions of this chapter. Such inspections shall be made in accordance with Title [32](#).
 - 1. The responsible official may enter and inspect property to observe best management practices and maintenance practices, or examine or sample surface and stormwater or groundwater as often as may be necessary to determine compliance with this chapter.

Whenever an inspection of a property is made, the findings shall be recorded and 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 and completion of the inspection findings.

2. When the responsible official has made a determination under subsection (B)(1) of this section that any person is violating this chapter, the responsible official may require the violator to sample and analyze any discharge, surface and stormwater, groundwater and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the responsible official. If the violator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the responsible official.
- C. In addition to any other penalty or method of enforcement, the prosecuting attorney may bring actions for injunctive or other relief to enforce this chapter. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

13.26A.060 HAZARDS

- A. Whenever the responsible official determines that any violation of this chapter poses a hazard to public health, safety or welfare; endangers any property; or adversely affects the safety and operation of county right-of-way, utilities and/or other property owned or maintained by the county; the person holding title to the subject property, and/or other person or agent in control of such property, upon receipt of notice in writing from the responsible official, shall within the period specified therein address the cause of the hazardous situation in conformance with the requirements of this chapter.
- B. Notwithstanding any other provisions of this chapter, whenever it appears to the responsible official that conditions covered by this chapter exist and necessitate immediate action to protect the public health and/or safety, the responsible official is authorized to enter such property, as provided by [Chapter 32.04](#), for the purpose of inspecting and investigating such emergency conditions. The responsible official may without prior notice order the immediate discontinuance of any activity leading to the emergency condition. Failure to comply with such order shall constitute a misdemeanor as specified in Title [32](#). (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

13.26A.070 CRIMINAL PENALTY

Any willful violation of an order issued pursuant to Section [13.26A.050](#) or [13.26A.060](#) for which a criminal penalty is not prescribed by state law is a misdemeanor. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

13.26A.080 CONSTRUCTION—INTENT

- A. This chapter is enacted as an exercise of the county's power to protect and preserve the public health, safety and welfare. Its provisions shall be exempted from the rule of strict construction and shall be liberally construed to give full effect to the objectives and purposes

for which it was enacted. This chapter is not enacted to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter.

- B. 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 county, the department, its officers, employees or agents for any injury or damage resulting from the failure of the person holding title to the property to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the county, department, its officers, employees or agents. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

13.26A.090 EFFECTIVE DATE

(Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; repealed by Sec. 3 (Exh. 2) of Ord. 2009-01-01)

13.26A.100 SEVERABILITY

If any provision of this chapter or its application to any person or property is held invalid, the remainder of the chapter or the application of the provision to other persons or property shall not be affected. (Exh. A of Ord. 1998-11-17; amended by Sec. 3 (Exh. B) of Ord. 2000-07-34; amended by Sec. 3 (Exh. 2) of Ord. 2009-01-01)