

X Action
X Discussion
X Information

DATE: May 29, 2009

TO: Environmental Services Commission

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NPDES Code Revision Team¹

SUBJECT: Proposed NPDES² and Non-NPDES Revisions to Bellevue City Codes (BCC)

Comments and Direction Requested

This memorandum summarizes the proposed NPDES and non-NPDES revisions to the Storm & Surface Water Utility Code (Chapter 24.06 BCC) and the Clearing & Grading Code (Chapter 23.76 BCC). Staff is asking for public and Commission comments, and the Commission's recommendation to Council, on the proposed code revisions. In addition to general comments, there are two questions on the proposed revisions that staff are especially interested in hearing comments about, they are:

PR-1. Do you concur with the intent of the proposed escalating enforcement provisions for illicit (non-stormwater) discharges?

PR-2. Do you concur with the intent of the proposed non-NPDES storm code revisions?

Open House and Environmental Services Commission Public Meeting

Bellevue City Council has asked the Environmental Services Commission and the public to comment on proposed revisions to the (1) Storm & Surface Water Utility code and (2) Clearing and Grading code. Revisions to both codes are necessary to comply with the City's NPDES Phase II Municipal Stormwater Permit. In addition, a few other non-NPDES code revisions are proposed.

¹ The core NPDES Code Revision team is Phyllis Varner, Pam Maloney, Tom McFarlane, Joy Ramshur, Lacey Madche, Catherine Drews, Mike Graves, Tom Campbell, Don McQuilliams.

² NPDES means the National Pollutant Discharge Elimination System (33 U.S.C., § 1342), under which the Washington State Department of Ecology issued the Western Washington Phase II Municipal Stormwater Permit, on January 17, 2007. The Phase II permit implements provisions of both federal and state Clean Water Acts. More information on the Phase II permit can be found on the Washington State Department of Ecology's website at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/phaseIIww/wwphiipermit.html>

On June 4, an Open House on the proposed code revisions will be held from 5:30 to 6:30 p.m. in Room 1E-112 of Bellevue City Hall. The Commission is welcome, but not required, to attend the open house. Immediately following the open house, a Public Meeting will be held during the regular Commission meeting (in the same room, starting at 6:30 pm) during which a brief presentation will be made and Commission and public comments received. Members of the public may provide written and oral comments during the open house and/or public meeting.

All comments and the Commission's recommendations will be conveyed to Bellevue City Council for consideration during a study session currently scheduled for July 6, 2009, before the anticipated code adoption August 3.

Proposed Code Revisions

The proposed Storm & Surface Water Utility code revisions are included in Attachment 1. The proposed Clearing and Grading code revisions are included in Attachment 2.

Why are the Codes Being Revised?

The Storm & Surface Water Utility (Storm) and Clearing & Grading codes are being revised to:

1. Comply with mandatory conditions of the NPDES Phase II Municipal Stormwater Permit;
2. Address a few non-NPDES permit related revisions; and
3. Update the codes for consistency with other city codes and standards.

This memorandum provides information and identifies policy issues for the first two categories of proposed revisions. The proposed consistency revisions are not addressed because they are "housekeeping" (non-substantive) code revisions.

1. NPDES Permit Required Code Revisions

The NPDES Permit requires revisions to the Storm & Surface Water Utility code and the Clearing & Grading code for:

- A. New development, redevelopment and construction stormwater management; and
- B. Control of illicit (i.e., non-stormwater) discharges, including escalating enforcement provisions.

NON-DISCRETIONARY NPDES PERMIT CODE REVISIONS

The majority of these NPDES Permit code revisions are non-discretionary. This means municipalities are required to adopt the specific Permit language and requirements in the code revisions in order to comply with the Permit. **Staff is not seeking public input or recommendations for these non-discretionary NPDES Permit code revisions.** The following sections of the proposed code revisions are non-discretionary.

CODES	NON-DISCRETIONARY NPDES CODE REVISIONS
Storm & Surface Water Utility (Attachment 1)	<p>Sections 24.06.</p> <p>015.....Purpose</p> <p>040.....Definitions Section – many are required to be consistent with NPDES Permit definitions</p> <p>045.....Authority of the Utility – several were revised and/or added to comply with the NPDES Permit</p> <p>050.....Connections or Modifications to the Drainage System</p> <p>065.....Minimum Requirements for New Development and Redevelopment</p> <p>125.....Prohibited and Permissible (Illicit) Discharges</p> <p>130.....Code Violations, Enforcement, and Penalties</p>
Clearing and Grading (Attachment 2)	<p>Sections 23.76.</p> <p>005.....Purpose</p> <p>025.....Director’s Authority</p> <p>030.....Definitions Section – many are required to be consistent with NPDES Permit definitions</p> <p>090.....Erosion and sedimentation control</p> <p>160.....Project Inspections – City Access</p> <p>190.....Violations, Penalties</p>

DISCRETIONARY NPDES PERMIT CODE REVISIONS

There are two discretionary NPDES Permit code requirements.

On April 20 (following Commission and public review and comment), the Bellevue City Council provided direction on the first of these two discretionary requirements. City Council directed staff to prepare codes and standards requiring the 2005 Ecology³ Manual stormwater standards for all new development, redevelopment and construction projects (versus the option of adopting the 2005 Ecology Manual for projects disturbing one or more acres and retaining the current 1992 Ecology standards for projects disturbing less than one acre). Accordingly, the proposed Storm and Surface Water Utility and Clearing & Grading code revisions require the 2005 Ecology Manual stormwater standards for all new development, redevelopment and construction projects.

³ Ecology means Washington State Department of Ecology

The second discretionary NPDES Permit code requirement involves revising codes to include “escalating enforcement procedures and actions” for illicit (non-stormwater) discharge code provisions. The Permit does not mandate a specific escalating enforcement approach and/or procedures and actions to address illicit discharges. It allows municipalities to define the escalating enforcement procedures and actions.

The City currently uses an escalating enforcement approach (toolbox). The proposed escalating enforcement approach for illicit discharges builds on this approach. The foundation of the approach is education and preventative correction actions. However, if there is an active illicit discharge violation, enforcement can escalate to correction notices, stop work orders or Notices of Violation (NOV). Two significant changes are proposed to make escalating enforcement procedures and actions effective and efficient:

1. Issuance of a Notice of Violation results in a mandatory \$1,000 per day fine, imposed by the Hearing Examiner, until the violation is addressed.
2. The Code Compliance staff of the city’s Development Services Department will process all Notices of Violations for citywide consistency and process efficiencies.

The intent of having the ability to issue a Notice of Violation with a significant , mandatory fine per day is to:

- Provide an effective incentive to responsible parties to comply during the early steps of the enforcement process. Responsible parties would still have the opportunity to enter into a binding Voluntary Correction Agreement after a NOV has been issued to minimize cumulative fines associated with the NOV.

The Voluntary Correction Agreement, per Bellevue City Code 1.18.030, is a contract between the city and the person responsible for the violation, under which the person agrees to abate the violation within a specified time and according to specified conditions. The responsible person agrees to pay a specified penalty without appeal if they do not comply with the Agreement. Voluntary correction agreements can be entered into at any point in the enforcement process.

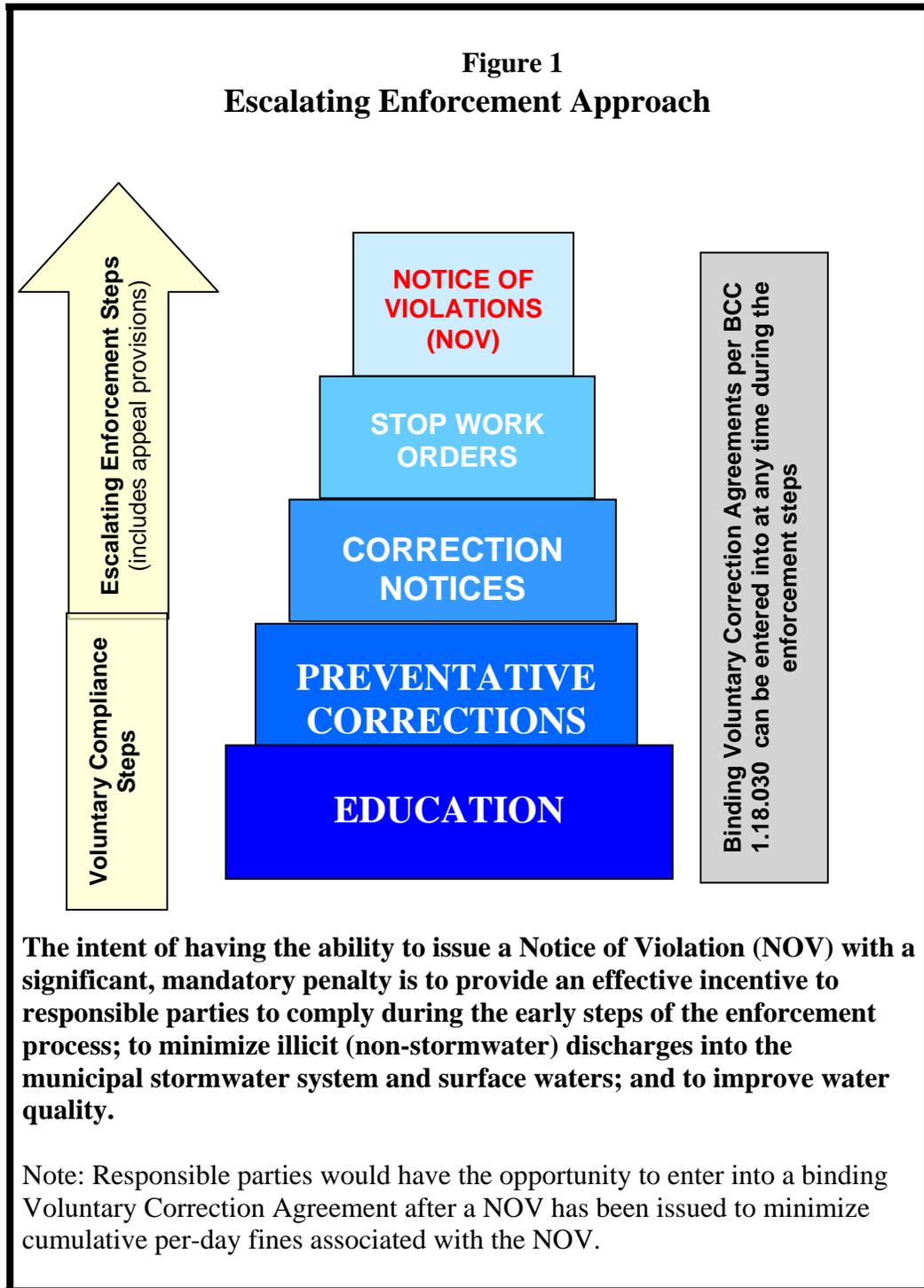
- Minimize illicit (non-stormwater) discharges into the municipal stormwater system, surface waters and improve water quality.

The proposed code revisions supporting the escalating enforcement approach are:

- Storm and Surface Water Utility Code, Section 24.06.130 Code Violations, Enforcement, and Penalties; and
- Clearing and Grading Code, Section 23.76.190 Violations, Penalties

The figure below summarizes the proposed escalating enforcement approach. Attachment 3 contains a table outlining the application of the proposed approach to illicit discharges originating from construction projects (development permit activities) and from existing development such as business, industrial and residential properties.

PR-1 Do you concur with the intent of the proposed escalating enforcement provisions for illicit (non-stormwater) discharges?



The intent of having the ability to issue a Notice of Violation (NOV) with a significant, mandatory penalty is to provide an effective incentive to responsible parties to comply during the early steps of the enforcement process; to minimize illicit (non-stormwater) discharges into the municipal stormwater system and surface waters; and to improve water quality.

Note: Responsible parties would have the opportunity to enter into a binding Voluntary Correction Agreement after a NOV has been issued to minimize cumulative per-day fines associated with the NOV.

2. Non-NPDES Permit Code Revisions

Storm and Surface Water Utility Code

A few proposed substantive code revisions are not driven directly by the NPDES Permit. These include:

- a. Extending the Utility Director's authority to enter into agreements with property owners to allow voluntary contribution of funds toward construction of drainage facilities. 24.06.045(O)
- b. Specifying that the Utility Director has authority to pursue civil enforcement actions for violations of the Storm Code. 24.06.045(P)&(Q)
- c. Stating the Utility Director's authority to administer an inspection program for detection and elimination of illicit discharges. 24.06.045(R)
- d. Extending the permit expiration period from one to two years, and specifying the length of pending applications as one year (it was previously undefined). 24.06.060 (B)
- e. Proposing the same escalating enforcement approach, process and provisions for all violations of the Storm and Surface Water Code. 24.06.130

PR-2. Do you concur with the intent of the proposed non-NPDES storm code revisions?

Clearing and Grading Code Revisions

The non-NPDES Permit Clearing and Grading code revisions are not required to go through a public review process. However, a courtesy briefing on these revisions will be provided to the Commission and the public during the Public Meeting. Additional revisions to the Clearing and Grading Code include revisions to be consistent with the city's critical area ordinances (mandated by Washington's Growth Management Act, Chapter 36.70B RCW), assure consistency with the Land Use Code, and for updating definitions.

Summary and Next Steps

These codes are working drafts. The next steps are to clarify and/or correct technical inconsistencies or conflicts within and between the two codes and other city codes. In addition, staff will consider and may revise the draft codes in response to public comments and the Commission's comments and recommendations. The comments received from the public and the Commission and the Commission's recommendations will be conveyed to City Council with the next draft of the proposed code revisions at the July 6 City Council Study Session. Council is expected to adopt the code amendments at the Council's August 3 Regular Meeting. The NPDES Permit compliance deadline for adopting these code revisions is August 15, 2009.