

ORDINANCE NO. **10636**

AN ORDINANCE relating to water quality, and regulating pollution of surface, storm, and ground water; repealing Resolution 2005 (part), Resolution 585 (regulations 12 and 13), and K.C.C. 8.12.010-8.12.040; adding new sections, and providing penalties.

PREAMBLE:

Under the provisions of the federal Clean Water Act, 33 U.S.C. 1251 et. seq., King County is required to establish its authority to control the discharge of contaminants. The county council recognizes that clean water enhances the quality of life and has long term economic benefits. The county council intends to protect environmentally sensitive areas and the public benefits derived from clean water, and implement the goals of the Clean Water Act, the state Water Pollution Control Act (Chapter 90.48 RCW), the Puget Sound Water Quality Authority (Chapter 90.70 RCW), the Growth Management Act (Chapter 36.70A RCW), and the county's comprehensive plan. Because water quality issues can not be resolved by independent jurisdictions, the county council directs department directors to work on these issues on a regional basis. The county council also recognizes that by implementing this ordinance, the county will avoid the severe financial penalties established in the Clean Water Act.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Resolution 2005 (part), Resolution 585 (regulations 12 and 13) and K.C.C 8.12.010-8.12.040 are each hereby repealed.

NEW SECTION. SECTION 2. Purpose. The purpose of this chapter is to protect the county's surface and ground water quality by providing minimum requirements for reducing and controlling the discharge of contaminants. The county council recognizes that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, this chapter prohibits the discharge of contaminants into surface and storm water and ground water, and outlines preventive measures to restrict contaminants from entering such waters. These measures include the implementation of best management practices (BMPs) by the residents of King County.

The county council finds this chapter is necessary to protect the health, safety and welfare of the residents of King County and the integrity of the county's resources for the benefit of all by: minimizing

1 or eliminating water quality degradation; preserving and enhancing the  
2 suitability of waters for recreation, fishing, and other beneficial uses;  
3 and preserving and enhancing the aesthetic quality and biotic integrity of  
4 the water. The county council recognizes that implementation of this  
5 chapter is required under the federal Clean Water Act, 33  
6 U.S.C. 1251 et. seq. In meeting the intent of the Clean Water Act the  
7 county council also recognizes the importance of maintaining economic  
8 viability while providing necessary environmental protection and believes  
9 this chapter helps achieve both goals.

10 NEW SECTION. SECTION 3. Definitions. The following definitions  
11 shall apply in the interpretation and enforcement of this chapter:

12 A. "AKART" means an acronym for "all known, available, and reasonable  
13 methods of prevention, control, and treatment." AKART shall represent the  
14 most current methodology that can be reasonably required for preventing,  
15 controlling, or abating the pollutants associated with a discharge. The  
16 concept of AKART applies to both point and nonpoint sources of pollution.

17 B. "Best management practices" or "BMPs" mean the best available and  
18 reasonable physical, structural, managerial, or behavioral activities, that  
19 when used singly or in combination, eliminate or reduce the contamination  
20 of surface and/or ground waters.

21 C. "Chapter" means this chapter and any administrative rules and  
22 regulations adopted to implement this chapter.

23 D. "Clean Water Act" means 33 U.S.C. 1251 et. seq., as amended.

24 E. "County" means the municipality of King County.

25 F. "Director" means the director of the King County department of  
26 public works, other department directors specified in enforcement  
27 procedures established pursuant to this chapter, or any duly authorized  
28 representatives of such directors.

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

1 H. "Drainage facility" means the system that collects, conveys, and  
2 stores surface and storm water runoff. Drainage facilities shall include  
3 but not be limited to all surface and storm water conveyance and  
4 containment facilities including streams, pipelines, channels, ditches,  
5 swamps, lakes, wetlands, closed depressions, infiltration facilities,  
6 retention/detention facilities, erosion/sedimentation control facilities  
7 and other drainage structures and appurtenances, both natural and  
8 artificial.

9 I. "Farm management plan" means a comprehensive site-specific plan  
10 developed by the farm owner in cooperation with the King County  
11 Conservation District taking into consideration the land owners objectives  
12 while protecting water quality and related natural resources.

13 J. "Forest practices" means any activity conducted on or directly  
14 pertaining to forest land and relating to growing, harvesting, or  
15 processing timber, as defined in Chapter 222-16 Washington Administrative  
16 Code.

17 K. "Ground water" means all waters that exist beneath the land surface  
18 or beneath the bed of any stream, lake, or reservoir, or other body of sur-  
19 face water, whatever may be the geological formation or structure in which  
20 such water stands or flows, percolates or otherwise moves.

21 L. "National Pollutant Discharge Elimination System" or "NPDES" means  
22 the national program for controlling pollutants from point source discharges  
23 directly into waters of the U.S. under the Clean Water Act.

24 M. "National Pollutant Discharge Elimination System permit" means an  
25 authorization, license, or equivalent control document issued by the  
26 Environmental Protection Agency or the Washington State Department of  
27 Ecology to implement the requirements of the NPDES program.

28 N. "Person" means an individual, their agents or assigns; municipality;  
29 political subdivision; government agency; partnership; corporation;  
30 business; or any other entity.

31 O. "Source control BMP" means a BMP intended to prevent contaminants  
32 from entering surface and storm water and/or ground water including the

1 modification of processes to eliminate the production or use of  
2 contaminants. Source control BMPs can be either structural or non-  
3 structural. Structural source control BMPs involve the construction of a  
4 physical structure on site, or other type of physical modification to a  
5 site; for example, building a covered storage area. A non-structural  
6 source control BMP involves the modification or addition of managerial or  
7 behavioral practices; for example, using less toxic alternatives to current  
8 products or sweeping parking lots.

9 P. "State Waste Discharge Permit" means an authorization, license, or  
10 equivalent control document issued by the Washington State Department of  
11 Ecology in accordance with Chapter 173-216 Washington Administrative Code.

12 Q. "Storm Water BMP Manual" or "manual" means the manual (and  
13 supporting documents as appropriate) describing best management practices,  
14 design, maintenance, procedures, and guidance which has been approved by  
15 King County council.

16 R. "Surface and storm water" means water originating from rainfall  
17 and other precipitation that is found in drainage facilities, rivers,  
18 streams, springs, seeps, ponds, lakes and wetlands as well as shallow  
19 ground water.

20 S. "Treatment BMP" means a BMP intended to remove contaminants once  
21 they are already contained in storm water. Examples of treatment BMPs  
22 include: oil/water separators, biofiltration swales, and wet-settling  
23 basins.

24 NEW SECTION. SECTION 4. Discharges Into King County Waters.

25 A. Prohibited discharges.

26 1. It is unlawful for any person to discharge any contaminants into  
27 surface and storm water, ground water, or Puget Sound. Contaminants  
28 include, but are not limited, to the following:

- 29 a. trash or debris;  
30 b. construction materials;  
31 c. petroleum products including but not limited to oil, gasoline,  
32 grease, fuel oil, heating oil;

- 1 d. antifreeze and other automotive products;
- 2 e. metals in either particulate or dissolved form;
- 3 f. flammable or explosive materials;
- 4 g. radioactive material;
- 5 h. batteries;
- 6 i. acids, alkalis, or bases;
- 7 j. paints, stains, resins, lacquers, or varnishes;
- 8 k. degreasers and/or solvents;
- 9 l. drain cleaners;
- 10 m. pesticides, herbicides, or fertilizers;
- 11 n. steam cleaning wastes;
- 12 o. soaps, detergents, or ammonia;
- 13 p. swimming pool backwash (diatomaceous earth);
- 14 q. chlorine, bromine, and other disinfectants;
- 15 r. heated water;
- 16 s. domestic animal wastes;
- 17 t. sewage;
- 18 u. recreational vehicle waste;
- 19 v. animal carcasses;
- 20 w. food wastes;
- 21 x. bark and other fibrous materials;
- 22 y. collected lawn clippings, leaves, or branches;
- 23 z. silt, sediment, or gravel;
- 24 aa. dyes (except as stated in subsection C.1. of this section);
- 25 bb. chemicals, not normally found in uncontaminated water;
- 26 cc. any hazardous material or waste, not listed above.

27 2. Illicit connections. Any connection, identified by the director,  
28 that could convey anything not composed entirely of surface and storm water  
29 directly to surface and storm water or ground water is considered an  
30 illicit connection and is prohibited with the following exceptions: con-  
31 nections conveying allowable discharges, connections conveying discharges

1 pursuant to an NPDES permit (other than an NPDES storm water permit) or a  
2 State Waste Discharge Permit, and connections conveying effluent from  
3 onsite sewage disposal systems to subsurface soils.

4 B. Allowable discharges. The following types of discharges shall  
5 not be considered prohibited discharges for the purpose of this chapter  
6 unless the director of public works determines that the type of discharge,  
7 whether singly or in combination with others, is causing significant  
8 contamination of surface and storm water or ground water:

- 9 1. potable water;
- 10 2. potable water line flushing;
- 11 3. uncontaminated water from crawl space pumps or footing drains;
- 12 4. lawn watering;
- 13 5. residential car and boat washing;
- 14 6. dechlorinated swimming pool water;
- 15 7. materials placed as part of an approved habitat restoration or  
16 bank stabilization project;
- 17 8. natural uncontaminated surface water or ground water;
- 18 9. flows from riparian habitats and wetlands;
- 19 10. the following discharges from boats: engine exhaust,  
20 cooling waters, effluent from sinks, showers and laundry  
21 facilities and treated sewage from Type I and Type II marine  
22 sanitation devices; and
- 23 11. other types of discharges as determined by the director of  
24 public works.

25 C. Exceptions.

26 1. Dye testing is allowable but requires verbal notification to  
27 the King County surface water management division at least one day prior to  
28 the date of test. The King County health department is exempt from this  
29 requirement.

30 2. If a person has properly designed, constructed, implemented and  
31 is maintaining BMPs, and is carrying out AKART as required by this chapter  
32 and in the Storm Water BMP Manual, and contaminants continue to enter  
33 surface and storm water or ground water; or the person can demonstrate that  
34 there is no additional contaminants being discharged from the site above  
35 the background conditions of the water entering the site; that person shall  
36 not be in violation of subsection A of this section. The said person

1 however, is still liable for prohibited discharges through illicit  
2 connections, dumping, spills, improper maintenance of BMPs, or other dis-  
3 charges that allow contaminants to enter surface and storm water or ground  
4 water.

5 3. Emergency response activities or other actions that must be  
6 undertaken immediately or within a time too short to allow full compliance  
7 with this chapter, to avoid an imminent threat to public health or safety,  
8 shall be exempt from this section. The director of public works may  
9 specify actions that qualify for this exception in county procedures. The  
10 person responsible for emergency response activities should take steps to  
11 ensure that the discharges resulting from such activities are minimized to  
12 the greatest extent possible. In addition, this person shall evaluate BMPs  
13 and the site plan, where applicable, to restrict recurrence.

14 NEW SECTION. SECTION 5. Best Management Practices.

15 A. Best management practices.

16 1. The King County surface water management division shall develop  
17 a Storm Water Best Management Practices Manual and present this manual to  
18 the King County council for approval. The manual shall present BMPs and  
19 procedures for existing facilities and activities and for new development  
20 activities not covered by the King County Surface Water Design Manual. At  
21 a minimum, the manual shall describe the types of regulated activities; the  
22 types of contaminants generated by each activity, and the contaminant's  
23 effect on water quality; the required source control BMPs and available  
24 treatment BMPs, including information on design and maintenance; experimen-  
25 tal BMPs; and a schedule for BMP implementation.

26 2. In applying the BMP manual the director shall first require the  
27 implementation of source control BMPs. If these are not sufficient to pre-  
28 vent contaminants from entering surface and storm water or ground water,  
29 the director may require implementation of treatment BMPs, according to  
30 AKART. The King County surface water management division will provide,  
31 upon reasonable request, available technical assistance materials and  
32 information, and information on outside financial assistance options to

1 persons required to comply with this chapter.

2 B. Exemptions.

3 1. Persons implementing BMPs through another federal, state, or  
4 local program will not be required to implement the BMPs prescribed in the  
5 county's manual, unless the director determines the alternative BMPs to be  
6 ineffective at reducing the discharge or contaminants. If the other pro-  
7 gram requires the development of a plan, the person shall make their plan  
8 available to King County upon request. Persons who qualify for exemptions  
9 include, but are not limited to, persons who are:

10 a. Required to obtain a general or individual NPDES permit for  
11 storm water discharges from the Washington State Department of Ecology;

12 b. Implementing and maintaining, as scheduled, a King County  
13 Conservation District-approved farm management plan;

14 c. Permitted under a Washington State Department of Ecology NPDES  
15 general or individual permit for commercial dairy operations;

16 d. Implementing BMPs in compliance with K.C.C. 21A.30 -  
17 Development Standards: Animals, Home Occupation, Home Industry;

18 e. Implementing BMPs in compliance with the management program of  
19 the county's municipal NPDES permit;

20 f. Engaged in forest practices, with the exception of Class IV,  
21 and Class IVA Special general forest practices. This section will apply to  
22 Class IV general forest practices on lands platted after January 1, 1960,  
23 or on lands being converted to another use, or where the activity is taking  
24 place in areas designated by the Washington State Department of Natural  
25 Resources as "lands with a likelihood of future conversion."; or

26 g. Identified by the director of public works as being exempt  
27 from this section.

28 2. Persons conducting normal single family residential activities  
29 will not be required to implement the BMPs prescribed in the county's  
30 manual, unless the director determines that these activities pose a hazard  
31 to public health, safety, or welfare; endanger any property; or adversely  
32 affect the safety and operation of county right-of-way, utilities, and/or



1 other property owned or maintained by the county. The county council  
2 intends to consider the application of BMPs to single family residential  
3 activities after completion of the Storm Water BMP Manual.

4 NEW SECTION. SECTION 6. Administration. The director is authorized  
5 to implement the provisions of this chapter. The director of public works  
6 is authorized to promulgate and adopt administrative rules and regulations  
7 under the procedures specified in K.C.C. 2.98 for the purpose of implement-  
8 ing and enforcing the provisions of this chapter. The director of public  
9 works will coordinate the implementation and enforcement of this chapter  
10 with other departments of King County government.

11 NEW SECTION. SECTION 7. Enforcement.

12 A. The director is authorized to carry out enforcement actions  
13 pursuant to the enforcement and penalty provisions of K.C.C. Title 23 and  
14 other enforcement provisions adopted by rule under the procedures of  
15 K.C.C. 2.98. The director is authorized to enforce against prohibited  
16 discharges resulting from illicit connections and intentional acts, such as  
17 dumping, immediately upon the effective date of this ordinance. The direc-  
18 tor will be authorized to enforce against all other prohibited discharges  
19 upon the effective date of the Storm Water BMP Manual.

20 B. The director shall gain compliance with this chapter by requiring  
21 the implementation of BMPs and, when necessary, AKART. The director shall  
22 initially rely on education and informational assistance as much as  
23 possible to gain compliance with this chapter, unless the director deter-  
24 mines a violation is a result of a flagrant act that should be addressed  
25 through immediate penalties or poses a hazard as defined in the Hazards  
26 section.

27 C. The director of public works, in consultation with other  
28 departments of King County government, shall develop and implement  
29 additional enforcement procedures. These procedures shall indicate how the  
30 county will investigate and respond to reports or instances of noncompli-  
31 ance with this chapter and shall identify by title the official(s)  
32 responsible for implementing the enforcement procedures.

1 D. The director is authorized to make such inspections and take such  
2 actions as may be required to enforce the provisions of this chapter. Such  
3 inspections shall be made in accordance with K.C.C. 23.08.040.

4 1. The director may observe best management practices or examine or  
5 sample surface and storm water or ground water as often as may be necessary  
6 to determine compliance with this chapter. Whenever an inspection of a  
7 property is made, the findings shall be recorded and a copy of the  
8 inspection report shall be furnished to the owner or the person in charge  
9 of the property after the conclusion of the investigation and completion of  
10 the inspection report.

11 2. When the director has reason to believe that any person is  
12 violating this chapter, the director may require the violator to sample and  
13 analyze any discharge, surface and storm water, ground water, and/or  
14 sediment, in accordance with sampling and analytical procedures or require-  
15 ments determined by the director. If the violator is required to complete  
16 this sampling and analysis, a copy of the analysis shall be provided to the  
17 King County surface water management division.

18 E. In addition to any other penalty or method of enforcement, the  
19 prosecuting attorney may bring actions for injunctive or other relief to  
20 enforce this chapter.

21 NEW SECTION. SECTION 8. Hazards. Whenever the director determines  
22 that any violation of this chapter poses a hazard to public health, safety,  
23 or welfare; endangers any property; or adversely affects the safety and  
24 operation of county right-of-way, utilities, and/or other property owned or  
25 maintained by the county; the person holding title to the subject property,  
26 and/or other person or agent in control of said property, upon receipt of  
27 notice in writing from the director shall within the period specified  
28 therein address the cause of the hazardous situation in conformance with  
29 the requirements of this chapter.

30 Notwithstanding any other provisions of this chapter, whenever it  
31 appears to the director that conditions covered by this chapter exist  
32 requiring immediate action to protect the public health and/or safety, the

1 director is authorized to enter at all times in or upon any such property,  
2 public or private, for the purpose of inspecting and investigating such  
3 emergency conditions. The director may without prior notice order the  
4 immediate discontinuance of any activity leading to the emergency  
5 condition. Failure to comply with such order shall constitute a misde-  
6 meanor as specified in K.C.C. 23.08.080.

7 NEW SECTION. SECTION 9. Criminal Penalty. Any willful violation of  
8 an order issued pursuant to Section 7 or Section 8 of this ordinance for  
9 which a criminal penalty is not prescribed by state law is a misdemeanor.

10 NEW SECTION. SECTION 10. Civil Penalties for Water Quality. The  
11 enforcement provisions for water quality are intended to encourage compli-  
12 ance with this ordinance. To achieve this, violators will be required to  
13 take corrective action and comply with the requirements of this chapter,  
14 and may be required to pay a civil penalty for the redress of ecological,  
15 recreational, and economic values lost or damaged due to their unlawful  
16 action.

17 A. The provisions in this section are in addition to and not in  
18 lieu of any other penalty, sanction or right of action provided by law.

19 B. Any person in violation of this chapter shall be subject to  
20 civil penalties assessed as follows:

21 1. an amount reasonably determined by the director to be  
22 equivalent to the economic benefit the violator derives from the violation  
23 as measured by: the greater of the resulting increase in market value of  
24 the property or business value received by the violator, or savings of con-  
25 struction or retrofitting costs realized by the violator performing any act  
26 in violation of this chapter; and

27 2. an amount, not to exceed \$25,000, that is reasonably based  
28 upon the nature and gravity of the violation and the cost to the county of  
29 enforcing this chapter against the violator.

30 C. Any person who, through an act of commission or omission, aids or  
31 abets in a violation shall be considered to have committed the violation  
32 for the purposes of the civil penalty.

1           D. Each violator is jointly and severally liable for a violation of  
2 this chapter. The director may take enforcement action, in whole or in  
3 part, against any violator. The decisions whether to take enforcement  
4 action, what type of action to take, and which person to take action  
5 against, are all entirely within the director's discretion. Factors to be  
6 used in taking such enforcement actions shall be:

- 7           1. Awareness of the violation;
- 8           2. Ability to correct the violation;
- 9           3. Cooperations with government agencies;
- 10          4. Degree of impact or potential threat to water or sediment  
11 quality, human health, or the environment.

12           In the event more than one person is determined to have violated  
13 the provisions of this chapter, all applicable civil penalties may be  
14 imposed against each person, and recoverable damages, costs, and expenses  
15 may be allocated among the persons on any equitable basis. Factors that  
16 may be considered in determining an equitable allocation include:

- 17          1. Awareness of the violation;
- 18          2. Ability to correct the violation;
- 19          3. Ability to pay damages, costs, and expenses;
- 20          4. Cooperation with government agencies;
- 21          5. Degree of impact or potential threat to water or sediment  
22 quality, human health, or the environment.

23           E. Penalties may be reduced based upon one or more of the following  
24 mitigating factors:

- 25          1. The person responded to county attempts to contact the person  
26 and cooperated with efforts to correct the violation;
- 27          2. The person showed due diligence and/or substantial progress in  
28 correcting the violation; or
- 29          3. An unknown person was the primary cause of the violation.

30           Payment of a monetary penalty pursuant to this chapter does not  
31 relieve the person of the duty to correct the violation.

32           F. All civil penalties recovered during the enforcement of this  
33 chapter under K.C.C. Title 23 shall be deposited into a fund of the  
34 division taking the enforcement action and shall be used for the protection  
35 of surface and storm water or ground water as set forth in this chapter,  
36 through education or enhanced implementation.

37           NEW SECTION. SECTION 11. Construction-Intent. This chapter is  
38 enacted as an exercise of the county's power to protect and preserve the

1 public health, safety and welfare. Its provisions shall be exempted from  
2 the rule of strict construction and shall be liberally construed to give  
3 full effect to the objectives and purposes for which it was enacted. This  
4 chapter is not enacted to create or otherwise establish or designate any  
5 particular class or group of persons who will or should be especially  
6 protected or benefited by the terms of this chapter.

7 The primary obligation of compliance with this chapter is placed upon  
8 the person holding title to the property. Nothing contained in this  
9 chapter is intended to be or shall be construed to create or form a basis  
10 for liability for the county, the department, its officers, employees or  
11 agents for any injury or damage resulting from the failure of the person  
12 holding title to the property to comply with the provisions of this  
13 chapter, or by reason or in consequence of any act or omission in connec-  
14 tion with the implementation or enforcement of this chapter by the county,  
15 department, its officers, employees or agents.

16 NEW SECTION. SECTION 12. Effective Date. The effective date of this  
17 Ordinance shall be November 26, 1992.

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NEW SECTION. SECTION 13. 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.

INTRODUCED AND READ for the first time this 21<sup>st</sup> day of September, 1992

PASSED this 16<sup>th</sup> day of November, 1992.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Audrey Gruzel  
Chair

ATTEST:

Gerald A. Paterson  
Clerk of the Council

APPROVED this 25<sup>th</sup> day of November, 1992.

Jim Hill  
King County Executive

Attachments:  
None