



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 12/27/23
Department: Public Works

Title: Mercury Total Maximum Daily Load (TMDL) Compliance: Enforcement of Prohibited Pollutants

Agenda Planning Date: 12/21/23 Management Update/Work Session Date: 11/21/23 Audio/Visual aids [checked]

Time Required: 15 Minutes Contact: Roxanne Toepfer Phone: (503) 365-3127

Requested Action: First reading of the draft Turbidity and Mercury-Contaminated Stormwater Discharge Ordinance of Marion County

Issue, Description & Background: DEQ has updated Mercury TMDL requirements for the Willamette Basin. DEQ's Willamette Basin Mercury TMDL has county-level requirements to decrease mercury loading in waterways. DEQ requires these strategies to be incorporated into county TMDL implementation plans. MC Env. Services has drafted an ordinance to meet DEQ's requirements, focusing exclusively on sediment and erosion issues (turbidity) and mercury-related wastes outside Stormwater Management Area.

Financial Impacts: None

Impacts to Department & External Agencies: Marion County will expand authoritative enforcement capabilities from within the boundaries of the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System to countywide for all mercury-contaminated stormwater discharges which include sediment, erosion, and turbid waters.

List of attachments: Draft Ordinance

Presenter: Matt Knudsen and Scott Norris

Department Head Signature: [Handwritten Signature]

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

An ordinance reducing turbidity in)
stormwater and prohibiting mercury)
contaminated discharges to the public)
stormwater drainage.)
)

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. TITLE

This ordinance shall be known as the turbidity and mercury-contaminated stormwater discharge ordinance of Marion County.

SECTION 2. PURPOSE

The purpose of this ordinance is to reduce turbid runoff in stormwater discharges and to prohibit mercury-contaminated discharges to the public stormwater drainage, surface water systems, or waterways.

SECTION 3. DEFINITIONS

For the purposes of this ordinance, the following words shall have the following meanings:

"Agricultural activities" means those activities over which the Oregon Department of Agriculture has enforcement authority.

"Bank" means that portion of a waterway that is exposed from the ordinary high-water mark (OHWM) and extends upland.

"BMP" means best management practices.

"Construction activity" means activities that require a National Pollution Discharge Elimination System construction permit. These activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

"Director" means the director of public works or the director's designee.

"Hazardous materials" means any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise mismanaged.

"Illicit discharge" means any direct or indirect non-stormwater discharge to the public stormwater drainage, surface water systems, or waterways, except as exempted in section 8 of this ordinance. "Illicit discharge" as used in this ordinance shall have the same meaning as the term "illegal dumping" as used by the Department of Environmental Quality.

"Industrial activity" means activities which require an NPDES industrial permit.

"Mercury-Contaminated Discharge" means any discharge to the public stormwater drainage, surface water systems, or waterways that contains mercury contaminants.

"Contaminate" means something that contaminates or carries contamination.

"Discharge" means release of stormwater to the public stormwater drainage, surface water systems, or waterways.

"National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit" means general, group, and individual stormwater discharge permits that regulate facilities defined in federal NPDES regulations and regulated through the Oregon Department of Environmental Quality.

"Non-stormwater discharge" means any discharge to the public stormwater drainage, surface water systems, or waterways that is not composed entirely of stormwater.

"Ordinary high-water mark" (OHWM) means the line on the bank or shore to which the high water ordinarily rises in the average runoff year. The OHWM excludes exceptionally high-water levels caused by large flood events such as the five-year or 100-year events.

“Owner” means a person who is the sole fee simple owner of the real property, all joint owners whose interests add up to a fee simple interest in the property, or the owner of an equitable interest in the property pursuant to a land sales contract.

“Person responsible” or “responsible person” means the equitable or legal owner of the subject property, a lessee, tenant or person in possession of the property, or the person or persons directly or indirectly responsible for an act.

“Pollutant” means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, that may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

“Pollution” means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any water of the state that either by itself or in connection with any other substance present can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wildlife, fish, other aquatic life or the habitat thereof.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Public storm drainage and surface water system” means natural or manmade drainage courses for the conveyance of surface water.

“Stormwater” means stormwater runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater management area” means an area designated as a stormwater management area by the Oregon Department of Environmental Quality.

“Turbid” or “turbidity” means thick or opaque with or as if with roiled sediment; having sediment or foreign particles stirred up or suspended; muddy.

“Waters of the state” means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

“Waterway” means a body of water (whether natural or manmade) that periodically or continuously contains waters of the state and has a definite bed and banks that serve to confine the water.

SECTION 4. APPLICABILITY

This ordinance applies to all water entering the public stormwater drainage, surface water systems, or waterways generated on any developed and undeveloped lands in the unincorporated areas of Marion County.

SECTION 5. REGULATION OF AGRICULTURAL ACTIVITIES

Marion County shall not enforce the terms of this ordinance against agricultural activities regulated by the Oregon Department of Agriculture.

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ORDINANCE NO. _____

SECTION 6. REGULATION OF FORESTRY-RELATED PRACTICES

Marion County shall not enforce the terms of this ordinance against forestry-related activities regulated by the Oregon Department of Forestry.

SECTION 7. ULTIMATE RESPONSIBILITY OF PROPERTY OWNER

The standards set forth in this ordinance are minimum standards. This ordinance does not mean or imply that compliance with this ordinance by any person will ensure that there will be no turbid storm runoff or mercury-contaminated discharges into waters of the state by a responsible person. The property owner is ultimately responsible for all conditions on or created by the owner's property. This ordinance shall not create liability on the part of Marion County, or any agent or employee of Marion County, for any damages that result from a responsible person's or property owner's reliance on this ordinance, or any administrative decision lawfully made under this ordinance.

SECTION 8. PROHIBITION OF TURBID DISCHARGES

A. No person shall discharge or cause to be discharged into the public stormwater drainage, surface water systems, or waterways, any turbid fluid or liquid, including, but not limited to, stormwater containing any sediment or mercury-contaminated discharges that can cause or contribute to a violation of DEQ and/or other applicable water quality standards. The commencement, conduct, or continuance of turbid or mercury-contaminated discharges to the public stormwater drainage, surface water systems, or waterways is prohibited except as set forth in this section.

B. The prohibition set forth in subsection (A) of this section shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the Oregon Department of Environmental Quality 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

Marion County has granted written approval for any discharge to the public stormwater drainage, surface water systems, or waterways.

SECTION 9. MERCURY WASTE DISPOSAL PROHIBITIONS

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the public stormwater drainage, surface water systems, or waterways, any mercury or mercury-contaminated refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Mercury wastes deposited in proper waste receptacles for the purposes of collection are exempt from this prohibition.

SECTION 10. DISCHARGES IN VIOLATION OF INDUSTRIAL OR CONSTRUCTION ACTIVITY NPDES STORMWATER DISCHARGE PERMIT

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of the permit. Failure to comply with all provisions shall constitute a violation of this ordinance. Proof of compliance with the permit may be required in a form acceptable to the director prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

SECTION 11. WATERWAY PROTECTION

Every person responsible for property through which a waterway passes shall maintain and stabilize that portion of the waterway that is within the responsible person's property lines to protect against erosion and degradation of the waterway originating from the property which creates turbidity or results in a mercury-contaminated discharge. "Maintain" and "stabilize" as used in this section means keeping that portion of the waterway that is within the property lines free of trash,

debris, excessive vegetation, and other obstacles that would pollute, contaminate, or retard the flow of water through the waterway in a way that creates turbidity or a mercury-contaminated discharge. "Maintain" also includes the maintenance of existing privately owned structures within or adjacent to a waterway, so that the structures will not create turbidity or a mercury-contaminated discharge. "Erosion" as used in this section includes the removal of bank vegetation that will result in bare slopes subject to erosion which result in turbidity or a mercury-contaminated discharge. This ordinance shall not be interpreted to restrict a person responsible for property from enhancing or establishing the planting of riparian buffers or to perform maintenance within those areas.

SECTION 12. NATURAL OCCURRENCE OF EROSION

Erosion, or the release of mercury-contaminated wastes or discharges, where it occurs naturally, such as the result of fire-caused damage or other natural reasons, is excluded from the provisions of this ordinance.

SECTION 13. REQUIREMENT TO MONITOR AND ANALYZE

The director may require by written notice to the property owner that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to turbid runoff or mercury-contaminated discharges to the public stormwater drainage, surface water systems, or waterways, to undertake at the owner's expense any monitoring and analyses and furnish any reports to the director as deemed necessary to determine compliance with this ordinance.

SECTION 14. ILLICIT DISCHARGE PROCEDURE

Notwithstanding any 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 turbid runoff or mercury-contaminated discharges into the public stormwater drainage, surface water systems, or waterways from the facility,

the person shall take all necessary steps to ensure the discovery, containment, and cleanup of the release. Upon discovery of any turbid runoff or mercury-contaminated discharges, the responsible person shall immediately notify the director.

SECTION 15. AUTHORITY TO INSPECT

When the director determines it is necessary to inspect to enforce any provision of this ordinance, the director may enter those premises to inspect them and to inspect and copy records related to stormwater compliance. The director shall provide a written request to enter and inspect the premises by delivering the request to a responsible person or by posting the request at a conspicuous location on the premises. If a responsible person refuses entry or fails to respond to the request, the director may seek a warrant or other assistance from any court of competent jurisdiction in obtaining entry.

SECTION 16. AUTHORITY TO CONDUCT SAMPLING AND/OR TESTING

During any inspection pursuant to this ordinance, the director may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

SECTION 17. REQUIREMENT TO ELIMINATE TURBID RUNOFF OR MERCURY-CONTAMINATED DISCHARGES

Notwithstanding the requirements of section 21 of this ordinance, the director may require by written notice that a person responsible for turbid or mercury-contaminated discharges immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illicit discharges. Failure to comply with the requirements of the notice within the time stated shall constitute a violation of this ordinance.

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SECTION 18. REQUIREMENT TO REMEDIATE

Whenever the director finds that turbid or mercury-contaminated discharges are taking place, or have occurred, that will result in or has resulted in pollution of stormwater to the public stormwater drainage, surface water systems, or waterways, the director may require by written notice to the property owner that the pollution be remediated, and the affected property restored within a specified time. Failure to comply with the requirements of the notice within the time stated shall constitute a violation of this ordinance.

SECTION 19. NOTICE OF VIOLATION

A. Whenever the director finds that a person has violated a provision of this ordinance, the director may order compliance by written notice of violation to the property owner. The notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of turbid or mercury-contaminated discharges;
3. The cessation of all violating discharges, practices, or operations;
4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
5. The implementation of source control or treatment BMPs supplied by the director.

B. The notice shall:

1. Describe the property by street address or tax lot number;
2. Describe the nature of the violation;
3. State by a date certain when the property owner must correct the violation in a manner acceptable to the director;
4. Inform the owner that if the violation is not corrected the county shall either complete the repairs, pursue abatement or cite the owner, as appropriate;

5. Inform the property owner that if the county performs the necessary abatement or repairs, the county will bill the property owner for the costs;
6. Include an estimate of the costs anticipated for the county to cause abatement or repair for the correction of the violation;
7. Inform the property owner that failure to pay the County for its costs to correct the violation will result in filing of a lien on the property; and
8. Inform the property owner of the rights spelled out in sections 23 and 24 of this ordinance, including the right to a hearing, and individuals the property owner may contact for additional information.

C. The notice shall be served on the property owner by personal service consistent with ORCP 7D(2)(a).

SECTION 20. ABATEMENT AND/OR REPAIR OF VIOLATION

If the property owner has not corrected the violation as directed within the time allowed in the notice given pursuant to section 19 of this ordinance, the director may take all measures necessary to abate the violation and/or restore the property. The director or persons authorized by the director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court issued warrant.

SECTION 21. EMERGENCY ABATEMENT

The director is authorized to require immediate abatement of any violation of this ordinance that constitutes an immediate threat to the health, safety, or well-being of the public. The director or persons authorized by the director may enter upon property to abate and/or restore the property upon obtaining consent of the property owner or through a court issued warrant.

SECTION 22. COLLECTION OF COSTS

A. The county may collect all costs associated with the repair or abatement of a violation, or both, from the property owner.

B. The county shall keep detailed records of all costs associated with the abatement or repair due to a violation of this ordinance.

C. Upon completion of the abatement or repair of the violation by the county, a notice of final costs shall be served to the owner by personal service consistent with ORCP 7D(2)(a). Payment must be made within 30 days from the date of the notice of final costs. The notice must contain the following:

1. The total cost of repair or abatement, or both;
2. A statement that the total cost may be filed as a lien with the county clerk unless paid within 60 days from the date of the hearings officer's order described in section 25 of this ordinance; and
3. A statement that the owner may contest the charges at a hearing that will be scheduled on the matter pursuant to section 24 of this ordinance.

SECTION 23. HEARING REQUEST

A property owner who is served with a notice of violation as described in section 19 of this ordinance may request a hearing before the Marion County hearings officer. Hearing requests must be filed in writing with the Marion County hearings officer within five business days from the date the notice was served.

SECTION 24. HEARING ON NOTICE OF VIOLATION

A. Upon receiving a written request for a hearing pursuant to section 23 of this ordinance, the hearings officer shall set a time and place for a hearing that shall be no more than seven days from the date of filing of the hearing request, or as soon as practicable. The hearings officer shall notify the person requesting a hearing of the time and date of the hearing. The director shall appear and present evidence pertinent to the alleged violation and its abatement or repair. The owner of the property may also present evidence before the hearings officer pertinent to the alleged violation and its abatement or repair. The county shall have the burden of

proving by a preponderance of the evidence that a violation exists and must be abated or repaired.

B. Failure of the person requesting the hearing to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter.

C. After the hearing, the hearings officer shall issue an order containing findings as to whether the alleged violation does in fact exist, the extent to which the violation exists and (if abatement or repair is required) shall set a date for abatement or repair to be accomplished by the owner. The hearings officer's order shall be issued within 10 days of the date of the hearing or as soon as practicable.

D. The decision of the hearings officer is final. Appeal shall be only by writ of review under ORS Chapter 34.

SECTION 25. HEARING ON FINAL COSTS

A. At the time the notice of final costs is sent to the property owner as described in section 22 of this ordinance, a copy shall also be sent to the hearings officer. The hearings officer shall set a time and place for a hearing that shall be no more than seven days from the date of receipt of the notice of final costs by the hearings officer, or as soon as practicable. The hearings officer shall notify the property owner and the director of the time and date of the hearing. The only issue at the hearing shall be the reasonableness of the cost of abatement or repairs.

B. Failure of the property owner to appear shall constitute a waiver of the right to present evidence at the hearing or thereafter.

C. After the hearing, the hearings officer shall issue an order within 10 days of the date of the hearing, or as soon as practicable, detailing the amount of the final costs that the owner must pay, if any. The hearings officer's order shall also indicate that the final costs must be paid within 30 days and if they are not paid within 60 days, the county may record a lien in the county clerk lien record.

D. The hearings officer's order of determination shall be final and binding. Appeal shall be only by writ of review under ORS Chapter 34.

SECTION 26. LIEN RECORD FILING

If final costs are not paid within 60 days of the hearings officer's order requiring payment of final costs, the enforcement officer shall record a lien with the Marion County Clerk or any other county clerk of this state. The total amount of final costs shall be recorded as a lien in the county clerk lien record. The lien provided for herein shall be foreclosed in the manner prescribed by state law for the enforcement of liens. Nothing in this section precludes the county from taking other action to collect the final costs.

SECTION 27. PENALTIES

A. Any person who is cited for a violation of this ordinance shall be subject to a fine of not more than \$500.00 for a noncontinuing violation and a fine of not more than \$1,000 for a continuing violation.

B. Each day that this ordinance is violated shall constitute a separate violation.

SECTION 28. ENFORCEMENT

The provisions of this ordinance are enforceable pursuant to Chapter 1.25 MCC.

SECTION 29. OTHER REMEDIES

The provisions of this ordinance are in addition to and not in lieu of any other procedures and remedies provided by law including equitable relief and damages.

SECTION 30. SEVERABILITY

Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, that decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

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ORDINANCE NO. _____

Adopted this _____ day of _____ 20____.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary