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November 9, 2012

VIA FACSIMILE and U.S. Mail

The Honorable Joan M. Marchioro
Administrative Appeals Judge
Environmental and Land Use Hearings Office
P. O. Box 40903
Olympia, WA 98504-0903

Re: *Coalition of Governmental Entities and King County v. Ecology*
PCHB Nos. 12-097c

Dear Judge Marchioro:

In accordance with your letter to counsel dated October 4, 2012, please find enclosed Phase II Coalition and King County's Consolidated List of Issues. As instructed by the Scheduling Order, the Coalition and King County submitted its proposed consolidated list of issues to Ecology on October 30, 2012. We received comments from Ecology on November 8th, but were not able to reach full agreement on all of the issues in the attached list. Accordingly, we expect that Ecology will be separately filing some objections to the enclosed Issue List.

Very truly yours,

FOSTER PEPPER PLLC

A handwritten signature in cursive script, appearing to read 'Lori Terry Gregory'.

Lori Terry Gregory
John Ray Nelson

cc: *Via E-Mail and U.S. Mail*

Ronald L. Lavigne, Attorney for Ecology (w/ enclosure)
Thomas Young, Attorney for Ecology (w/ enclosures)
Jan Hasselman, Attorney for Puget Soundkeeper Alliance (w/ enclosure)
Janette Brimmer, Attorney for Puget Soundkeeper Alliance (w/ enclosure)
Joseph B. Rochelle, Attorney for King County (w/ enclosure)
Stephen Klasinski, Attorney for WSDOT (w/ enclosure)
Kimberly Frinell, Attorney for WSDOT (w/ enclosure)

Phase II Coalition and King County's Consolidated List of Issues

1. Whether Permit Condition S1.A.2 and the definition of urbanized area is unreasonable, unjust, unlawful, and/or impracticable.
2. Whether Special Condition S5.C.4 of the 2013-18 Phase II NPDES Municipal Stormwater Permit for Western Washington (the "Permit"), and references in those conditions to Appendix 1 and the 2012 Stormwater Management Manual for Western Washington ("the Manual") contain requirements that are unlawful, unjust, unreasonable, and/or impracticable for one or more of the following reasons:
 - a. Said provisions interfere or conflict with land use planning, the Growth Management Act (chapter 36.70A RCW), vesting, and/or other governmental functions;
 - b. Said provisions impose burdensome and unreasonable new requirements;
 - c. Said provisions adversely affect the economic health of Coalition members and their communities; and/or
 - d. Said provisions impose economic burdens on Coalition members.
3. Whether certain Low Impact Development ("LID") provisions contained in the Permit, Appendix 1, the Manual, and/or documents referenced by or incorporated into the Permit, Appendix 1 and/or the Manual, are unlawful, unjust, unreasonable, and/or impracticable for one or more of the following reasons:
 - a. The provisions interfere and/or conflict with land use planning, the Growth Management Act (chapter 36.70A RCW), vesting, and/or other governmental functions;
 - b. Said provisions impose burdensome and unreasonable new requirements;
 - c. Said provisions rely on unproven technologies with potentially unintended consequences;
 - d. Said provisions adversely affect the economic health of Coalition members and their communities; and/or
 - e. Said provisions impose economic burdens on Coalition members.
4. Whether the LID performance standard referenced in the Permit, Appendix 1 and/or the Manual, which adds control of flow durations between 8% of the 2-year storm and 50% of the 2-year storm to the existing flow control standard (control between 50% of the 2-year to the 50-year flow) on the basis that this requirement for management stormwater is unreasonable, unjust, unlawful, impracticable, and/or economically burdensome.
5. Whether provisions in the Permit, Appendix 1, and corresponding references to the Manual are unreasonable, unjust, unlawful, and/or impracticable with regard to provisions that apply to the use of porous pavement for roadway projects.
6. Whether the LID provisions in the Permit and Appendix 1, and references in the Permit and Appendix 1 to the Manual are unlawful, unjust, unreasonable, and/or impracticable because Ecology failed to conduct a sufficient economic evaluation, cost-benefit analysis, or otherwise failed to adequately evaluate and consider the economic and/or environmental impacts and costs of these requirements on Coalition members, their citizens, and/or businesses.

7. Whether Permit Condition S5.C.3.c.i, which requires permittees to field screen 40% of their municipal separate storm sewer system by December 31, 2017 and 12% of their municipal separate storm sewer system each year thereafter, is vague and ambiguous, unreasonable, unjust, unlawful, and/or impracticable.
8. Whether eliminating the one-acre threshold in Permit Condition S5.C.4 is unreasonable, unjust, unlawful and/or impracticable.
9. Whether the provisions in Permit Condition S5.C.4.g, which require participation in watershed-scale stormwater planning led by a Phase I County under the Phase I Municipal Stormwater Permit, are unreasonable, unjust, unlawful, and/or impracticable.
10. Whether provisions in Permit Condition S5.C.5 regarding catch basin inspections is unreasonable, unjust, unlawful, and/or impracticable.
11. Whether Permit Condition S8A that requires reporting of stormwater-related studies conducted by the permittee and stormwater-related investigations conducted by other entities reported to permittee is vague and ambiguous, unreasonable, unjust, unlawful, and/or impracticable.
12. Whether Permit Condition S8 is vague and ambiguous, unreasonable, unjust, unlawful and/or impracticable for one or more of the following reasons:
 - a. Said condition does not describe the regional stormwater monitoring plan;
 - b. Said condition does not state how the data and information collected by Ecology will be used; and/or
 - c. Said condition does not state what happens when there is a surplus or debt in funding.
13. Whether the Permit definitions of “outfall,” “receiving waters,” “municipal separate storm sewer system,” and “MS4” are unreasonable, unjust, unlawful, and/or impracticable.
14. Whether the inclusion of “interflow” in the Permit definition of “stormwater” is unreasonable, unjust, unlawful, and/or impracticable.
15. Whether Ecology acted unreasonably, unjustly, or unlawfully by failing to conduct a sufficient economic analysis or cost-benefit analysis, or by otherwise failing to adequately evaluate and consider the economic impacts and/or costs of the Permit on the regulated community, including Coalition members, their citizens, and businesses that are impacted and affected by the Permit.
16. Whether provisions in the Permit and Appendix 1 that reference the Manual are unreasonable, unjust, unlawful and/or impracticable because there was no opportunity for meaningful review and comment afforded Coalition members because the draft Permit and draft Manual were issued at the same time and, in certain instances, referenced future guidance that was not drafted or available for review.

17. Whether provisions in the Permit that require the use of Ecology documents and a Manual, which Ecology characterizes as guidance, are unreasonable, unjust, unlawful, and/or impracticable when those documents and Manual are used in the Permit as regulatory requirements with no reasonable, feasible, or practicable alternatives available to permittees, the community, or businesses that are also regulated or affected by the Permit's requirements.

18. Whether Special Condition S5.C.4.g. of the Permit is unreasonable, unlawful, inequitable, and inconsistent with the responsibilities placed on Phase I county permittees by the Phase I Permit, because it does not require Phase II permittees to equitably and on a pro-rata basis share in the Phase I county jurisdictions' costs of, and efforts in, developing the watershed-scale stormwater plans that are required of the Phase I county permittees.