

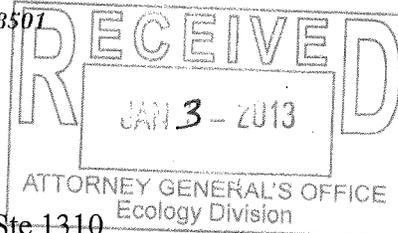


STATE OF WASHINGTON
ENVIRONMENTAL AND LAND USE HEARINGS OFFICE

Mailing Address: PO Box 40903, Olympia, WA 98504-0903

Physical Address: 1111 Israel Rd. SW, Tumwater, WA 98501

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Lori Terry Gregory
Foster Pepper PLLC
1111 Third Ave Ste 3400
Seattle WA 98101-3922

John Ray Nelson
Foster Pepper PLLC
W 422 Riverside Ave Ste 1310
Spokane WA 99201-0302

Bree Urban, Deputy Prosecuting Attorney
Alethea Hart, Deputy Prosecuting Attorney
Snohomish County Prosecuting Attorney
3000 Rockefeller Ave M/S 504
Everett WA 98201-4046

Christine M. Cook
Deputy Prosecuting Attorney
Clark County Prosecuting Attorney's Office
Civil Division
P O Box 5000
Vancouver WA 98666-5000

Joseph B. Rochelle
King County Prosecuting Attorney's Office
516 Third Ave, W400
King County Courthouse
Seattle WA 98104

Ronald Lavigne
Thomas Young
Assistant Attorney General
Ecology Division
P O Box 40117
Olympia WA 98504-0117

James D. Howsley
Jordan Ramis PC
1498 SE Tech Center Pl #380
Vancouver WA 98664

Doug Mosich
Deputy City Attorney
Tacoma City Attorney's Office
747 Market St Rm 1120
Tacoma WA 98402-3767

Theresa R. Wagner
Senior Assistant City Attorney
City of Seattle
P O Box 94769
Seattle WA 98124-4769

Todd D. True
Jan Hasselman
Janette Brimmer
Earthjustice
705 Second Ave, Suite 203
Seattle, WA 98104-1711

Stephen R. Klasinski
Kimberly Frinell
Assistant Attorney General
Transportation & Public Construction Division
PO Box 40113
Olympia WA 98504-0113

Re: **PCHB NOS. 12-093c**
PHASE I MUNICIPAL STORMWATER APPEALS

Dear Parties:

In the Prehearing Order for the appeals of the Phase I NPDES Municipal Stormwater Permit, PCHB No. 12- 093c (Phase I Appeal), the Board stated that it would consolidate with this appeal a number of issues in the appeals of the Phase II NPDES Municipal Stormwater Permit, PCHB No. 12-097c (Phase II Appeal).

The issues in the Phase II Appeal have now been finalized, and the Board has determined that the issues listed below from the Phase II Appeal should be consolidated in the Phase I Appeal. Based on submittals from the parties in the Phase II Appeal, I have indicated which Phase I issues have a degree of overlap, either in whole or in part, with the consolidated issues.

Consolidated Issues from Phase II Appeal

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; and/or
- c. Said provisions impose economic burdens on Coalition members to an extent that renders the provisions impracticable and unreasonable.

Overlap with Phase I Appeal: Issues 3, 5, and 17.

3. Whether Low Impact Development ("LID") provisions contained in Conditions S5, S5.C.1, S5.C.2, S5.C.3, S5.C.4, and/or S5.C.5 of 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 to an extent that renders the provisions impracticable and unreasonable.

Overlap with Phase I Appeal: Issues 3, 5, and 17.

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.

Overlap with Phase I Appeal: Issue 18.

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.

Overlap with Phase I Appeal: Issues 6 and 7.

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.

Overlap with Phase I Appeal: Issues 17 and 23.

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.

Overlap with Phase I Appeal: Issue 4.

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 watershed-scale stormwater plans that are required of the Phase I county permittees.

Overlap with Phase I Appeal: Issues 6 and 7.

As provided in the Pre Hearing Order, I ask that you please review these issues prior to the Board finalizing an order approving the consolidation. In your review, please note the following:

- The consolidation does not require revising the Phase I issues.
- The parties in both the Phase I Appeal and the Phase II Appeal have the option to participate in the briefing and hearing on the consolidated issues. A party in the Phase II Appeal may not participate in any other issues in the Phase I Appeal unless they are also a party in the Phase I Appeal.
- The prehearing and hearing schedule in the Phase I Appeal Prehearing Order will dictate the schedule for the consolidated issues.

- The consolidated issues will be decided by the Board in the Phase I proceeding and will thereafter be binding on all parties in the Phase II appeal. A party is foreclosed from raising the same issue again in the Phase II Appeal proceeding.

If a party in the Phase I Appeal, which is not also a party in the Phase II Appeal, has any objection to the consolidation of any issue, please attempt to resolve the objection by first conferring with the counsel in the Phase II Appeal. If the objection is not resolved, the objecting party must serve and file an objection with the Board by January 11, 2013. An Order of Consolidation will be issued by January 18, 2013. The Order will address any necessary procedural and scheduling requirements and resolve any objections.

Sincerely,



Tom McDonald, Presiding

TM/jb/Phase I
Encl.

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through State Consolidated Mail Services to the parties of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED 1/2/13, at Tumwater, WA

