



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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Seattle, Washington 98101-3140

JUN 30 2010

Reply To: OWW-135

Mr. Kelly Susewind, P.E., P.G. Manager
Water Quality Program
Department of Ecology
Post Office Box 47696
Olympia, Washington 98504-7696

Dear Mr. Susewind:

The purpose of this letter is to provide EPA's comments on Washington Department of Ecology's (Ecology) April 21, 2010, proposed permit modification of the Phase I Municipal Stormwater General Permit (Phase I Permit). These comments are specific to Ecology's proposal to modify Appendix 10 of the Phase I Permit to determine that Clark County's Alternative Flow Control Program and associated ordinances, with conditions, is equivalent to the Phase 1 Permit flow control requirements for new development and redevelopment. EPA has three concerns with this element of the proposed permit modification, which are discussed below along with our recommendations to address the concerns.

EPA's first concern with Clark County's Alternative Flow Control Program is that, without additional conditions, it appears that it will result in less overall stormwater flow control. Clark County has a well established stormwater capital improvement program to meet the Phase I Permit's structural stormwater control ("retrofit") program requirement (S5.C.6). This program, which was established in 2000 with Clark County's Clean Water Fee, generates approximately \$2.7 million annually for stormwater improvement projects according to Clark County's 2007-2012 Stormwater Capital Improvement Program Report. EPA is concerned that Clark County will reduce the level of investment directed toward the structural stormwater program in order to fund projects counted toward the mitigation program to offset the deficiency in Clark County flow requirements for new development and redevelopment. If this were to occur, the net amount of stormwater improvement in Clark County would be less because there would be the same level of stormwater improvement projects (i.e., roughly \$2.7 million annually), but there would be less stormwater flow control at new development and redevelopment projects than if the Phase I Permit requirements were met.

EPA recognizes that the Phase I Permit does not quantitatively define the minimum investment level or amount of retrofits for the structural stormwater control program due in part to the complexities in defining such a level for multiple jurisdictions covered under the permit. However, the lack of such specificity should not be

used to significantly reduce long standing investment toward the structural stormwater control requirement in order to establish a mitigation program to partially meet the requirements for new development and redevelopment.

To prevent this scenario from occurring, EPA recommends that the following conditions be added to Appendix 10: 1) stormwater flow benefits acquired through projects implemented by Clark County to meet the structural stormwater program requirements of the Phase I Permit (S5.C.6) cannot be included in Clark County's Alternative Flow Control Program; and 2) implementation of Clark County's Flow Alternative Control Program cannot appreciably reduce Clark County's structural stormwater program.

EPA's second concern is in regards to the start date for which new development and redevelopment projects in Clark County need to be mitigated. The Phase I Permit requires Clark County and other Phase I jurisdictions to adopt an ordinance, which includes the new development and redevelopment flow control requirements, no later than August 16, 2008. The proposed Phase I Permit modification, however, stipulates that Clark County only must mitigate new development and redevelopment projects after April 13, 2009. EPA believes it is important for jurisdictions to take the deadlines in the permit seriously. Providing a nine month extension for one of Phase I Permit's most important provisions sends a signal to other jurisdictions that they can violate permit conditions and negotiate provisions that effectively extend the deadlines. Further, effectively delaying the new development and redevelopment requirement provides less cumulative flow control over the term of the permit relative to the Phase I Permit requirements. EPA, therefore, recommends that Ecology add a condition to Appendix 10 stipulating that all projects after August 16, 2008 must be mitigated.

EPA's third concern is the potential use of flow control credits obtained from state or federally funded projects to be counted in the mitigation program to offset the deficiency of flow control at new development and redevelopment projects. Clark County's Flow Alternative Control Program, unless funded by a newly established development fee which does not appear to be the case, generally transfers some of the costs of meeting the Phase I Permit's flow control requirements from new project developers and owners to the public. If Clark County wishes to absorb these costs, it can do so, as long as it does not come at the expense of the structural stormwater control program as discussed above. EPA, however, recommends that limited state and federal stormwater funds be prioritized toward improving water quality in all-ready developed areas as opposed to subsidizing new development projects to meet the Phase I permit flow control requirements.

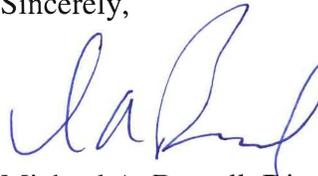
To address this concern, Ecology could add a condition to Appendix 10 indicating projects funded with state or federal funds cannot be included in Clark County's Flow Alternative Control Program. Alternatively, Ecology could add a condition to Appendix 10 indicated that when Clark County submits a project proposal for state or federal funding that will be used in full or in part to generate flow credits as part of Clark County's Alternative Flow Control Program; it must clearly identify this purpose in the

project proposal. This would allow Ecology to consider the project's net environmental benefit (i.e., after subtracting the flow control benefit associated with mitigating other development sites) when reviewing these proposals.

As you are aware, stormwater impacts to salmon bearing streams is a significant limiting factor to the recovery of ESA listed salmon in western Washington and stormwater runoff is the main source of pollutant loadings into the Puget Sound. EPA believes mitigating urban and urbanizing stormwater impacts will require a three prong approach: 1) state of the art methods to minimize the impacts from new development, 2) gradual improvement of baseline conditions as redevelopment occurs, and 3) enhanced investment in retrofit projects to reduce stormwater impact from developed land. Without the additional conditions recommended above, EPA is concerned Clark County's Alternative Flow Control Program will weaken one element of this approach (retrofits) to meet the objectives and requirements of another (redevelopment). Further, if Clark County's Program is deemed equivalent, other jurisdictions in western Washington could adopt a similar program, which has the potential to reduce the overall level of effort toward stormwater improvement if retrofit projects funded by ongoing local programs or with state and federal funds are used to mitigate impacts from development and redevelopment.

Thank you for your consideration of our comments. If you have any questions or concerns, please feel free to call me at (206) 553-4198, or John Palmer of my staff at (206) 553-6521.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael A. Bussell".

Michael A. Bussell, Director
Office of Water and Watersheds

cc: Steven Landino, NMFS