"Citizens, business and local government; a community commitment to our future."

October 2, 2014

Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: *NPDES Phase 2 Permit Proposed Revisions*

To Whom It May Concern:

The City of Woodinville would like to thank the Department of Ecology (DOE) for the opportunity to comment on the proposed revisions to the Phase 2 NPDES Permit. The City asks that DOE rescind its decision to allow *Little Bear Creek Basin* to be the subject of the Watershed Study and direct Snohomish County to choose one of the original specified basins or propose a new alternative basin as allowed. The *Little Bear Creek Basin* does not meet the criteria for granting a different basin to study as outlined in Section S5.C.4.C.i(4) Criteria within the Phase 1 Permit. The criteria reads: *"is targeted to accept significant population growth and associated development."*

There is only sufficient land with both the Urban Growth Area (UGA) and the *Little Bear Creek Basin* to support an increased population of about 2,000 persons. This is not "significant" growth by any reasonable measure for a drainage basin of over 9,000 acres in size. The decision to designate *Little Bear Creek Basin* for the watershed study appears to be arbitrary and capricious, did not ascertain the true facts about future growth in the basin, and other affected parties were not notified or consulted before this decision was made.

There are only four Phase 1 Permittees in Western Washington required to perform watershed-scale stormwater studies. Two of the basins selected have areas within the basins that are in incorporated cities. Woodinville, by geological happenstance, happens to have areas within two basins that are slated for the study by adjoining counties, King and Snohomish. Woodinville is the only city in Western Washington that is required to participate in the basin studies to this level. Estimated costs to Woodinville for these studies by the Phase 1 Permittees is in the range of $380,000 to $550,000 over the next two years. The City only collects about $1,200,000 per year to fully operate, maintain, and improve its stormwater system. For the City to absorb this unexpected cost, it is entirely unreasonable. Woodinville is the smallest city affected by these basin studies and if financial participation is required, it will experience the highest per capita cost on any governmental agency in Western Washington.

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The proposed requirements of the Permit is setting up a system that will lead to conflict between agencies about when, how, required level of effort, and approval process for the basin studies. The Permit does not identify a method to resolve conflicts if there are disagreements between the two parties involved with the basin studies. These requirements need to be thought through and redone to address these issues and how conflicts are to be resolved.

Additionally, the City requests that the DOE extend the deadline to complete the basin studies to the end of the permit period. There is a need to reset the entire process for selection of the basin to be studied if different from the ones originally stated in the permit and sufficient time to complete the study that meets permit requirements and not some artificial, inadequate timeframe.

Sincerely,

Thomas E. Hansen, P.E.
Public Works Director

cc: Correspondence File

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MEMORANDUM

BY HAND DELIVERY

DATE: October 1, 2014

TO: Department of Ecology

FROM: Greg A. Rubstello

RE: Proposed Phase I and Phase II Stormwater General Permit Modifications

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These Comments are made on behalf of my client, the City of Woodinville, Washington

1. The singling out of selected counties in the Phase I General Permit to meet extensive watershed scale stormwater planning process requirements in **S5.C.5.c.v.** along with a limited number of Phase II Permittees now proposed to be required to meet those same requirement in S5.C.4.g is both arbitrary and capricious and contrary to the purpose of general permits as provided for in the enabling legislation and administrative rules allowing for general as opposed to individual stormwater permits.

2. New Footnote 3 added to the Phase I Permit at **S5.C5.c.i** recording Ecology's closed door determination and approval of Snohomish County's proposed selection of Little Bear Creek as an alternative watershed mistakenly states that Little Bear Creek meets the four qualifying criteria for an alternative watershed selection. Ecology was provided no data or substantive evidence by Snohomish County upon which Ecology could reasonably determine that the watershed basin IS TARGETED TO ACCEPT SIGNIFICANT POPULATION GROWTH AND ASSOCIATED DEVELOPMENT. There was reason that Little Bear Creek was removed as a watershed that could be selected by Snohomish County in the August 1, 2013 Permit and that reason was that Little Bear Creek did not meet the selection criteria..

    a. Interestingly, Snohomish County proposed selection of the watershed within the boundaries of Snohomish County. Ecology's approval requires selection of the entire watershed including the small portion in King County and within the jurisdictional boundaries of the City of Woodinville on the basis that the stated objective of

watershed-scale stormwater planning would not be achieved unless it includes the entire stream system. This decision again appears arbitrary and capricious in that as Ecology itself notes in proposed footnote 3 it has allowed King County and Pierce County to choose to do planning on subsets of watersheds listed in the Permit.

3. The requirements for the watershed planning process in Phase I: S5.C.5.c.v and Phase II: S5.C.4.g are unreasonable, arbitrary and capricious and beyond the scope Ecology's authority in regulating what goes into and out of municipal stormwater systems. For years Ecology has held to the position that with the technology based treatment standard of AKART, water quality data from the receiving waters was irrelevant to determining the permit requirements for point source discharges. Who cares how many invertebrates exist in the receiving water, the municipality must do all known, available, and reasonable methods of prevention, treatment and control regardless of the data. Now, all of the sudden this data is relevant and required.

    a. I ask, what is the nexus to identifying and implementing all known, available, and reasonable methods of prevention, treatment and control? Does not AKART already require such technology base requirements and standards be implemented? Ecology is the regulator, tell us what they are. LID requirement are now in the permit because they are a known, available, and reasonable method of prevention, treatment and control. The proposed permit modeling requirements lack a sufficient nexus and are arbitrary and capricious requirements.

4. The Phase I permit requirements in S5.C.5.c.ii requiring the counties to convene a lead a documented waterscale stormwater planning process and the Phase II permit requirements in S5.C.5.c.v for participation of a phase II permittee if all or part of its coverage area under the permit is in a watershed selected by a Phase I County are inadequate to provide for a legal and knowing compliant process. They should be void for their vagueness. No requirement for interlocal agreements as contemplated by the PCHB in their March 2014 findings and conclusion is provided for in the regulations. Phase II permittees are given no opportunity to participate in alternative watershed selection evaluation. What if a phase I county and one or more Phase II permittees cannot agree on importing study, modeling or other planning process issues requiring their cooperation? There is no dispute resolution mechanisim. Just telling permittees to go play well with one another, is insufficient, vague and make for unreasonable permit requirements.

5. Finally,the concerns expressed by the counties regarding their ability to fully comply with the watershed-scale requirements of the 2013 Phase I Permit outside of their jurisdictions which the PCHB found to be "valid concerns" are now shared by the Phase II Permittees proposed to be required to fully participate in the cost sharing of watershed-scale planning as proposed by the permit amendments.

6. Thank you for the opportunity to make these comments. I will followup by written comment by the 6th.

GAR: