



August 26, 2010

Mr. Bill Moore, Program Development Services Section (bmoo461@ecy.wa.gov)
Mr. Ed O'Brien, Municipal Unit (eobr461@ecy.wa.gov)
Water Quality Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Bellevue's Comments on Ecology's August 2010 LID Proposal

Dear Mr. Moore and Mr. O'Brien,

The City of Bellevue appreciates the opportunity to review and comment on Ecology's initial draft of "Proposed Requirements and Timelines to Update Development Codes to Incorporate Low Impact Development (LID)" for the next NPDES municipal stormwater permits.

Bellevue also appreciates Ecology's recognition that municipal permittees' current stormwater investments are delivering results and that it will be a significant challenge for municipalities to maintain these current stormwater investments given the declining economic capacity of both local and state governments.¹

It is in fact a challenge right now for local municipalities to maintain the current stormwater investments. For example, Bellevue is currently developing its 2011-2012 budgets and facing over 20 million in revenue shortfall. Economic forecasts do not anticipate improvement in conditions for the next several years. Local municipalities need to weigh any proposed new or expanded stormwater investments in the next NPDES permit against other competing governmental needs. New or expanded stormwater investments must, therefore, be reasonable and practical.

It is in this context that Bellevue is providing comments on Ecology's three-part LID proposal, consisting of:

1. Development codes – adopt LID measures into local codes beyond stormwater (land use, transportation, fire) by December 1, 2014; and
2. Basin scale requirements – require basin studies and mitigation measures for significant water quality and hydrologic impacts resulting from land use actions that significantly increase density or expand an urban growth boundary by August 2012; and
3. Site and subdivision scale requirements – adopt proposed LID performance standard and mandatory LID lists (to work in combination with the conventional stormwater management methods, i.e., forested predevelopment duration flow control required by the current permit) for new development and redevelopment projects by December 1, 2014.

Bellevue's comments focus on providing regulatory clarity and consideration of local conditions.

¹ Comments from July 30, 2010 Ecology's Preliminary Thinking for the Reissuance of the Municipal Stormwater Permits document, recognizes importance of continuing state grants to support local stormwater investments.

COMMENTS

- Ecology’s proposal outlines a “LID Standards approach” with insufficient detail to assess the application, costs and potential benefits or impacts of the proposal. Therefore, the following comments are preliminary and intended to assist Ecology in considering the ramifications of the proposal.
- Bellevue is a Phase II municipality and these comments are directed to conditions for LID Standards that would be included in the Phase II municipal stormwater permit.
- The Phase II permit is a general permit and permit conditions must be set at a point that can be reasonably achieved by all jurisdictions.
- The Program proposal must provide:
 - Regulatory certainty for permit holders;
 - Clearly defined guidelines for implementation of the land use controls;
 - Appreciation for local regulatory authority and local conditions;
 - Acknowledgement of process requirements and time restraints for adoption and implementation of local land use controls;
 - Opportunities for coordination with other state entities, including but not limited to the Washington State Department of Commerce, and consistency with the Growth Management Act (GMA). For example, it is not clear that the “public interest” test referred to by Ecology is compatible with the “balancing test” used in the GMA planning process.
- Ecology proposes to apply the LID requirements equally to both Phase I and II municipal permittees. This is unreasonable and impracticable for a number of reasons, including but not limited to:
 - Environmental Protection Agency recognizes the differences between Phase I and Phase II permittees and requires different conditions of Phase II permittees in its rules;
 - Washington State Pollution Control Hearing Board (PCHB) concluded that there are sufficient distinctions between Phase I and Phase II permittees in terms of available resources and experience in administering a municipal stormwater management program to justify different requirements between the two Permits.
- Bellevue requests that Ecology apply different LID Standards to Phase I and II permits. For example, the proposed basin-scale LID requirement is a new, untested proposal with many, many details to be worked out. Bellevue suggests requiring it as a pilot project condition for Phase I permits only. This approach would recognize the:
 - Differences between Phase I and II permits;
 - Untested nature of the proposal;
 - Need to develop the implementation details and provide a public review process; and
 - Appeal orders that require Phase I permits to identify areas for future basin planning LID opportunities but did not specify that requirement for Phase II permits.
- Phase II municipalities recently adopted and are currently implementing Ecology’s 2005 Stormwater Technical Manual. More time is needed to fully assess the impacts of the stormwater regulations before Ecology requires new and additional regulations.

- The proposal outlines a LID Standards approach which has insufficient detail to assess its engineering and practical application and does not include a cost-benefit analysis. This work needs to be done and it is assumed it would be done as part of a 2005 Ecology Stormwater Manual update process which allows for a significant public review process. An example of an appropriate cost analysis is the one done by Herrera for the 2001 Ecology Stormwater Manual located at <http://www.ecy.wa.gov/programs/wq/stormwater/cotrpt.pdf>.
- City of Bellevue engineering staff has a number of concerns and detailed questions about the proposal. Due to the short turnaround time, these are not included in this letter. We would welcome the opportunity to meet and discuss these with you and your staff at your earliest convenience.

Thank you for your consideration of these comments. If you would like to discuss the comments, please contact Phyllis Varner, NPDES Permit Coordinator, at 425-452-7683 or pvarner@bellevuewa.gov.

Sincerely,

Denny Vidmar
Director
Bellevue Utilities