



## Comments to Ecology on Preliminary Draft NPDES Phase II Municipal Stormwater Permits

June 17, 2011

### **Issue: Requirement to adopt Low-Impact Development (LID) standards for new and redeveloped private and public projects. (Western WA)**

There needs to be more discussion around the need to require, rather than promote, new LID standards. Some contend that a 2009 ruling by the state's Pollution Control Hearings Board (PCHB) requires the new LID standards. Others interpret the PCHB's ruling differently.

Phase II NPDES cities come in all shapes and sizes. Topography, soil types, and other features vary widely among them. LID is still a relatively new approach to managing stormwater, and there are many outstanding questions about its effective use under varying conditions. Cities with difficult soils and/or topography are especially concerned about what it will mean to require LID "where feasible" in local development codes.

This requirement would apply to projects of all sizes and require evaluation of not only development standards for new homes and businesses, but also street design and width standards and other complicated and potentially controversial requirements. Controversy could lead to expensive and contentious ordinance adoption processes at the local level.

Requiring LID may mean that developers are discouraged from building in urban centers and will look to large areas outside of the urban core. This conflicts with the goals of many cities and the state's Growth Management Act (GMA) and needs more discussion.

The proposed deadline to adopt these new code changes is December 2015. Given the potential controversy cited above, this deadline may be too ambitious and leave some local jurisdictions vulnerable to appeal. A lot of education about LID is still needed for city officials, for the development community and for the public – what it is, how it works, how much it costs, and so on.

Adoption of amendments to local development codes can be challenged under the GMA. This NPDES permit is issued under the federal Clean Water Act (CWA), which also allows for third-party challenges. Cities could be subject to litigation under both the CWA and the GMA. Legal exposure issues and solutions need further discussion.

The proposal requires cities to develop and maintain a program to inspect and maintain LID facilities. This requirement needs more careful consideration – how it would be both funded and performed (on public and private lands). It may be unrealistic to expect local jurisdictions to have the resources and support of elected officials to inspect and enforce the maintenance of LID measures, especially those on private property.

What qualifies as appropriate LID development standards and inspection/maintenance programs? How is this decided, and by whom? The proposal suggests that Ecology will update guidance manuals and rely on materials being separately developed by the Puget Sound Partnership. More discussions are needed on this. There may well be other credible sources for models, and cities need the discretion to decide what will work for their particular conditions.

**Issue: Requirement to assess water quality impacts in cities if more than 80 acres are annexed and/or impervious surfaces are increased by five percent or more. (Western WA)**

We question the need for and utility of this proposed requirement. All but a few Phase II NPDES cities are located in fully-planning GMA counties. Annexation may not occur unless the area is located within an urban growth area (UGA), areas planned for urbanization. Requiring cities to conduct and defend analyses of decisions to annex 80 acres or more in a watershed doesn't make sense. The area has already been deemed appropriate for urban development. Any new or redeveloped property within the UGA would have to meet LID standards (if required or adopted locally, as discussed above).

Similarly, if LID becomes a requirement, efforts to mitigate flows from impervious surfaces will already be in place. What will be accomplished with potentially expensive watershed analysis?

**Issue: New monitoring requirements**

Monitoring of some sort makes sense to ensure that permit requirements are effective in managing stormwater flows and associated pollutants. However, there needs to be serious discussion about whether the state, rather than the permittees, should be required to pay for this monitoring effort.

AWC has been pleased with Ecology's efforts to use the Stormwater Monitoring Workgroup as a forum to tackle the complex issues surrounding stormwater monitoring in the Puget Sound areas. We encourage the use of this collaborative process in other areas of the state as well. Ecology needs to dedicate adequate resources to the non-Puget Sound jurisdictions to seek input on the potential for regional monitoring for southwestern and eastern WA.