



CITY OF SNOHOMISH

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June 16, 2011

Municipal Stormwater Permit Comments
WA Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7696

RE: Preliminary Draft Language for the Western Washington Phase II Municipal Stormwater General Permit

Ladies and Gentlemen:

The City of Snohomish has reviewed the preliminary draft language for the Western Washington Phase II Municipal Stormwater General Permit that was made available for review and comment on May 16, 2011. The City concurs with the following major issues of concern that were identified at the June 2, 2011, NPDES Permit Coordinators forum meeting held in Bellevue:

1. Public Review Process on Draft Language and Technical Manuals

Comment: During recent public meetings Ecology staff have identified their intent to run a concurrent public review process for the Draft Permit Language and the Technical Manuals adopted within it (i.e. guidebook for integrating LID into local codes, LID technical guidance manual, Western Washington Hydrologic Model, 2012 Ecology Stormwater Manual etc). A ninety day public review process does not allow the majority of Phase II permittees adequate time to review and comment on these complex documents.

Recommendation: The public review process for the draft permit language and the technical manuals should be run separately, not concurrently. This can be accomplished by changing the issuance date of the 2013 permit to July of 2013, making the effective date of the permit August of 2013.

2. Technical/Guidance Manuals Adopted by Reference in Permit

Location: Preliminary Draft Permit Language and Appendix 1

Comment: The revised technical/guidance manuals for stormwater and LID facilities are not available and must contain clear standards for design, inspection and maintenance to be useful and effective. Requiring LID facilities without documented standards is counter-productive and would place too great a burden on permittees. If it is Ecology's position that LID facilities are proven stormwater facilities, then clear standards for design, inspection and maintenance of said facilities should be included in the technical documents adopted by reference within the permit. Further, the economic impacts of these manuals should be thoroughly evaluated before they are adopted to fully understand the financial impact to both the public and private sectors.

Recommendation: Delay issuance of technical manuals until clear standards for design, inspection and maintenance are included and said documents have been evaluated for economic impacts.

3. Timelines for Code Updates & Technical Manuals

Location: Prelim Draft Language Pg. 2 Sect. 4a

Comment: The draft permit language identifies a deadline of December 31, 2015 for adoption of the updated codes and technical manuals, as well as implementation of inspection and maintenance programs. This timeline only allows 2.5 years from the effective date of the permit to effect these changes, which are significant in nature and will require significant time for policy development and staff training. This timeline is insufficient to address this requirement.

Recommendation: Extend the timeline for adoption and implementation of codes and technical manuals to 4 years from the effective date of the 2013 permit.

4. Elimination of One Acre Threshold

Location: Several locations in Preliminary Draft Language and Revisions to Appendix 1

Comment: Elimination of the one acre threshold will place a tremendous financial burden on those “small projects”, such as single family construction and small road projects, which are only subject to Minimum Requirements 1-5 in Appendix 1, while offering little to no environmental benefits. Existing BMPs, such as soil amendments, full dispersion and infiltration, identified within the stormwater manuals already meet the goals of LID without specifically requiring rain gardens or pervious paving.

Recommendation: Retain the one acre threshold within the Phase II Permit or allow greater flexibility for small projects (projects only subject to Minimum Requirements 1-5). For example BMPs listed in Minimum Requirement 5 (MR 5) should be a’la carte, as described in the 2009 King County Surface Water Design Manual.

5. Rain Garden and MR5 BMPs

Location: Appendix 1 Revisions - Definitions and MR 5, Pgs 22-24

Comment: The draft language is silent on post construction inspection requirements for rain gardens and other treatment and flow control BMPs identified in MR5

Recommendation: Clearly identify that rain gardens and other treatment and flow control BMPs identified in MR 5 are BMPs, not facilities and as such do not require annual post construction inspection.

6. Accessibility of Treatment and Flow Control Facilities for Inspection and Maintenance

Location: Appendix 1 Minimum Requirement (MR) 6 & 7, Pgs 25-31

Comment: Locations for treatment and flow control facilities as described in MR 6 & 7 must be readily accessible (i.e. in common areas or tracts with access from the right-of-way), especially in residential developments, to allow for annual inspection and maintenance. Allowing many small facilities outside of common area tracts, such as backyard bioretention will make inspection, maintenance and enforcement infeasible.

Recommendation: Allow permittees to restrict the locations of treatment and flow control facilities to accessible locations. This could be done through language in MR 6 & 7 and/or in the Feasibility Criteria section.

7. Feasibility Criteria for Pervious Paving

Location: Appendix 1 Revisions, Pg. 36 item B

Comment: There are still many concerns and unanswered questions related to the broad use of pervious paving techniques in public roads and high travel areas, including, but not limited to: 1) Long term durability, especially at intersections; 2) Spill containment and clean up and resulting

traffic impacts; 3) Maintenance, repair and tracking of these assets; and 4) Durability and maintenance when subjected to snow and ice treatments (i.e. sand, gravel, salt brine etc.).

Recommendation: Provide permittees the flexibility they need to limit the use of pervious paving as described in the following sample language:

Pervious paving is considered infeasible in the following areas until further studies and pilot programs have resolved questions of durability, maintenance, spill containment and cleanup:

- within travel ways of roads identified as arterials and collectors;
- within intersections and within 50 foot approaches of said intersections;
- within areas with documented history of recurring spills;
- within sport/play courts where it would be unsafe, or the quality of play would be affected, or a standard of development for that type of court set by a recognized organization would not be met
- within areas where attaining structural load requirements make the project cost prohibitive

[Note: Pervious paving techniques are generally considered feasible in residential areas, parking areas outside of travel paths, sidewalks, and separated bike lanes.]

8. Performance Standards for LID Facilities

Location: Appendix 1 Pg. 24 – Low Impact Development Performance Standard

Comment: Flow regime performance standards identified in Appendix 1 for LID, specifically 8% of the 2-year peak flow to 50% of the 2-year peak flow, are unattainable and will set permittees and developers up for failure.

Recommendation: Flow regime performance standards should be equivalent to, but no stricter than Level 2 (Conservation Area) Flow Control as identified in 2009 King County Surface Water Design Manual Section 1.2.3.

9. Definition of Receiving Waters

Location: Appendix 1 – Pg.6

Comment: The revised definition of “Receiving Waters” has been expanded to include infiltration into groundwater, in essence saying soils that can infiltrate are receiving waters. Soils are not receiving waters.

Recommendation: Remove the new language added to this definition.

10. Maximum Extent Practicable (MEP) vs. Maximum Extent Feasible (MEF)

Location: Preliminary Draft Permit Language – Pg 3, item iv.(1)

Comment: This language requires code updates to incorporate LID principles and BMPs to MEP, while language used later in Appendix 1 requires LID to MEF. These are two very different standards and inconsistency in their use will likely cause problems for both the permittees and the state. Further, the Pollution Control Hearings Board clearly identified that LID be used where feasible, therefore MEF is the appropriate standard.

Recommendation: Make all references to development and implementation of LID principles and BMPs be to MEF within both the revised permit language and Appendix 1.

11. Watershed Planning Requirements

Location: Preliminary Draft Permit Language Pgs. 8-10, item g

Comment: Watershed planning requirements are land use and long range planning requirements, which should be addressed through zoning and comprehensive planning updates.

Recommendation: Watershed planning requirements should be eliminated from permit and addressed through planning updates such as GMA comprehensive plan updates.

Additional Comments for the Consideration of the Forum

1. Encourage LID Rather Than Mandating It

Location: Preliminary Draft Permit Language and Appendix 1

Comment: Mandating LID through permit requirements will be overly financially burdensome to small developments and small public projects given the additional costs of site assessment and soils analysis previously not required on small projects. Further, these additional costs will result in little to no net benefit in comparison to existing flow control BMPs identified in MR 5 of the King County 2009 Surface Water Design Manual. Lastly, mandating these requirements may result in resentment from the development community and an emphasis in finding exemptions within the proposed feasibility criteria.

Recommendation: LID should be encouraged and incentivized rather than required, especially for projects only subject to MR 1-5. The LID code updates should be focused on encouraging the use of LID by emphasizing potential benefits and providing incentives for their use.

Although the City concurs with the above listed major issues of concern, the City also requests a one month public comment period extension. In consideration that the Department of Ecology has not issued the complete document, but rather parts of the complete document, extending the deadline would give the Phase II permit holders the opportunity to further discuss the draft permit language and submit additional comments and recommendations to the Department of Ecology.

Thank you for the opportunity to review the preliminary draft document and submit these comments and also for consideration of a possible one month review extension.

Sincerely,



Larry Bauman
City Manager

cc: Tim Heydon, Director of Public Works
Steve Schuller, City Engineer
Max Selin, Stormwater Program Manager
Project File