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June 17, 2011

Municipal Stormwater Permit Comments
WA Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98054-7696

Subject: Preliminary Draft Language for Low Impact Development and Monitoring

To Whom It May Concern:

On behalf of County staff, thank you for the opportunity to comment on the Eastern Washington Phase II Municipal Stormwater Permit (Permit), Preliminary Draft Language. Unfortunately, County staff finds the goals and objectives of this comment period unclear. It appears that the Department of Ecology (Ecology) has used the permit as a starting point for discussion, instead of developing applicable permit language for the permittees to provide constructive comments. The county encourages Ecology to utilize the additional time Engrossed Substitute House Bill 1478 provides to accomplish this task.

To begin, page 1, paragraph 2, states *"We ask that you limit your comments to the LID related requirements."* At the June 8, 2011 listening session Ecology indicated that the monitoring language contained in the Preliminary Draft Language was provided as a starting point of discussion and that the primary permittees and environment groups needed to provide direction to Ecology regarding monitoring language to be included within the next permit cycle. Local jurisdictions have been given a week to provide input to Ecology about preliminary draft monitoring language proposed for the second round of the Permit. This is not an adequate amount of time to clearly and specifically outline and detail applicable comments/concerns/recommendations regarding monitoring. The county understands that in Washington State, the EPA has delegated authority to Ecology to administer the Clean Water Act. It is the responsibility of Ecology to propose permit language, not the local jurisdictions, in order to satisfy EPA regulations included within the Clean Water Act.

MONITORING

Page 2- *"The intent of the S8 preliminary draft language below is to provide a default minimum-level-of-effort ambient monitoring program that will answer the question, "Are receiving waters getting better or worse?", and also fund some effectiveness studies.*

Concern: Is there a need to determine a minimum-level-of-effort? If the question is about water quality of receiving water bodies can be answered with less effort or cost, what benefit is the determination of a "minimum-level-of-effort"? If more effort is required to answer the question, then more effort may need to be expended.

Concern: Utilization of the permit as a mechanism to fund effectiveness studies is inappropriate. Water quality monitoring has been or currently is being conducted by various groups, including the Ecology, USGS, PUD's, and other watershed organizations. It was asked if Ecology could access this existing data for the purpose of evaluating water quality in receiving waters. Ecology indicated that it would be difficult to obtain access to this information. Federal, State and local jurisdictions are all experiencing the effects of the current economic climate (see Engrossed Substitute House Bill 1478), this is a time when steps should be taken by all parties to ensure that duplicate efforts are minimized. Furthermore, if Ecology will have difficulty accessing monitoring data obtained by others, it will be virtually impossible for a local jurisdiction with no authority to obtain this data.

In order for Ecology, and subsequently EPA to review monitoring and evaluate program effectiveness there needs to be consistency in testing parameters and guidelines for monitoring. Deferring the requirement to the local jurisdictions, most of which do not have personnel with qualifications to conduct stormwater testing, is passing the responsibility from the State level to the local level, which is not appropriate nor will it achieve the desired results. Answers to the question "Are receiving waters getting better or worse?" will be based upon inconsistent data.

Recommendation: Ecology should investigate which agencies are conducting monitoring in order to reduce or eliminate duplication in monitoring. Questions such as: Which receiving water bodies are currently being monitored? Who is conducting the monitoring? What is being monitored? Where (specifically) is the monitoring being conducted? How is the monitoring being conducted? When is the monitoring being conducted? all seem like logical questions for Ecology to investigate. This is an opportunity for Ecology to form partnerships with other agencies in order to efficiently and economically evaluate the receiving water bodies for which Ecology is responsible.

Concern: The requirement to obtain coverage under the NPDES Phase II Municipal Stormwater Permit was based upon census population data rather than an identified water quality issue in receiving water bodies. Over the last 5 years various components of the required Stormwater Management Program have been implemented including: Public Outreach, Public Involvement, Illicit Discharge Detection Elimination, Construction Stormwater, Post Construction Stormwater and Good Housekeeping/Pollution Prevention. The effectiveness of the existing measures will be difficult to evaluate utilizing receiving water monitoring data, as there is no baseline from which to measure.

Concern: Within Eastern Washington there are a variety of factors impacting the water quality of receiving water bodies: including but not limited to industrial activities (permitted and un-permitted), agricultural activities, irrigation water, and naturally occurring chemicals and processes.

Recommendation: As required under the current permit cycle, local jurisdictions have proposed various means of evaluating the effectiveness of the implemented stormwater management programs.

Current permit language S8 C. 1. states: All Cities, Towns and Counties shall prepare to participate in the implementation of a future comprehensive long-term monitoring program. The monitoring program will include three components: stormwater monitoring, Targeted Stormwater Management Program (SWMP) effectiveness monitoring, and runoff treatment Best Management Practice (BMP) effectiveness monitoring. Stormwater monitoring is intended to characterize stormwater runoff quantity and quality at a limited number of locations in a manner that allows analysis of loadings and changes in conditions over time and generalization across the permittees' jurisdictions. SWMP effectiveness monitoring is intended to improve stormwater management efforts by evaluating issues that significantly affect the success of or confidence in stormwater controls. BMP effectiveness monitoring is intended to evaluate the effectiveness and operation and maintenance requirements of runoff treatment BMPs by characterizing effluent characteristics and pollutant removal. The monitoring program could include long-term monitoring and may include short-term studies. The monitoring program would be used to support the adaptive management process and lead to refinements of the SWMP.

As required, permittees submitted a plan for monitoring program effectiveness. The Wenatchee Valley proposed monitoring measures targeting stormwater program effectiveness. This plan included the following questions:

1. *How many charity car wash events were conducted in compliance with local regulations using the charity car wash kits?*
2. *How much sediment/debris was removed during the last year from catch basins?*
3. *Does the implementation of construction site best management practices reduce operations and maintenance expenses for local jurisdictions?*
4. *How many automotive businesses implemented stormwater BMPs in the last year?*

It is unclear why a stormwater program effectiveness plan was required by Ecology if it was not intended to be utilized and implemented. Language within the current Permit identifies three monitoring components and the intended outcome of each. This is not the case with the proposed draft language. It is time to look at the big picture. What are the goals and how are we going to achieve these goals? It should be understood that this will be an incremental process.

If additional or expanded stormwater effectiveness monitoring is required beyond what was identified during the first permit cycle, it is recommended that Ecology initiate a stakeholder group similar to that which was under taken during development of the Eastern Washington Model Program, the Stormwater Management Manual for Eastern Washington and initial development and issuance of the NPDES Phase II Municipal Stormwater Permit. This process should be headed by Ecology, the responsible authority for development of permit language, not the local jurisdictions or associated stakeholder groups. Once this process has been completed, if necessary an update to the permit language could be issued.

Page 3, S8. Monitoring: Measures proposed under Section A.1 and 2 are reasonable and effective measures for implementation.

Concern: Formation and administration proposed under Section B, in particular the Eastern Washington Regional Stormwater Monitoring Program (EWRSM) are not clearly defined. Formation, participation, and funding of a EWRSM has not been outlined by Ecology.

The ability of local jurisdictions to form, participate, and fund such a program may be limited by legal issues associated with potential funding sources, which is typically going to be stormwater utility funds assessed to the local citizens. Utilizing stormwater utility fees collected at the local level to financially support studies conducted outside of the utility service area, let alone outside of the jurisdiction will not only be unpopular with the citizens (creating more distrust regarding government regulations) and the local governing body but will require analysis by legal counsel.

Concern: Section C.1 notes that all primary permittees shall participate in a process with other stakeholders to develop a EWRSM. Diverting the responsibility to the Eastern Washington permittees will be ineffective. Ultimately the EWRSM is subject to acceptance by Ecology. Similar to development of the first round of the Municipal Stormwater Permit and the Model Stormwater Management Program, it is recommended that Ecology and/or a consultant team working for Ecology lead the stakeholder process. The primary permittees should be stakeholders along with other interested parties, including secondary permittees and the environmental and development communities.

Concern: Section C.3 identifies minimum costs associated with monitoring (\$390,000). It is unclear how Ecology can produce realistic costs associated with implementation of the monitoring program when the program has not been developed. Specifying minimum costs associated with monitoring within the permit document itself appears premature.

LOW IMPACT DEVELOPMENT

There are inconsistencies in the definition of Low Impact Development, even within associated State and Federal NPDES Phase II Stormwater documents and programs.

The Stormwater Management Manual for Eastern Washington (Ecology 2004) defines Low Impact Development (LID) as "LID is an evolving approach to land development and stormwater management using the natural features of a site and specially designed BMP's to manage stormwater. LID involves assessing and understanding the site, protecting native vegetation and soils, and minimizing and managing stormwater at the source. LID practices appropriate for a variety of development types."

The Eastern Washington Phase II Municipal Stormwater Permit (issued: January 17, 2007, modified: June 17, 2009) defines Low Impact Development as: "a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasized conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions."

The EPA web-site defines Low Impact Development as: "an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bio retention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed. Applied on a broad scale, LID can maintain or restore

a watershed's hydrologic and ecological functions. LID has been characterized as a sustainable stormwater practice by the Water Environment Research Foundation and others."

In order for implementation of LID to be effective, a clear definition must be established, along with identification of the environmental goals. The question should be asked if the goal is to address water quality or water quantity. This will define the applicability and effectiveness of LID techniques in Eastern Washington.

Upon clarification of the LID definition, it must be acknowledged that LID involves more than simply the infiltration of stormwater, including but not limited to; zoning, planning, and building aspects of development. It is anticipated that any LID requirements that are required within the Permit which has an impact on development, may require extensive public process and environmental review. Implementation will take considerable time.

Concern: On June 3, 2011, an Ecology sponsored workshop was held in Pullman titled *"LID in Eastern Washington? Of course! Learn how to reduce barriers to LID implementation, what LID practices are appropriate for Eastern WA climate, regulatory drivers, site planning and BMPs."* Based on the title of this workshop, it was anticipated that we would leave with an understanding of the potential for LID in Eastern Washington. What was actually presented at the workshop was heavily weighted towards Western Washington. Presenters at the workshop solicited input from the participants regarding how these Western Washington techniques could be implemented in Eastern Washington. The workshop appeared to be more of an information gathering session for use in future research on applicability of LID in Eastern Washington. In fact a representative from the Washington Stormwater Center indicated after the session that there is very little information on Eastern Washington LID (cold climate considerations and semi-arid conditions combined). It was discussed that Yakima County is currently wrapping up a LID manual funded via an Ecology grant. It was noted that even upon completion, the manual will be "lacking".

Recommendation: Ecology, through a stakeholder process, developed the Stormwater Management Manual for Eastern Washington (SWMMEW) to provide a standard, uniform tool box of Stormwater Best Management Practices and recommendations for Eastern Washington permittees to utilize for compliance with the requirements of the Permit. A specific Eastern Washington Manual was developed by Ecology rather than simply referring to the Western Washington Stormwater Manual. LID should be addressed in a similar manner. If LID is to be required under the next round of permits, Ecology should dedicate resources to update the SWMMEW to include techniques and best management practices for LID in Eastern Washington.

Recommendation: Prior to requiring implementation of LID techniques for treatment or flow control, the effectiveness of LID in Eastern Washington must be demonstrated and documented. Such documentation must include cost of implementation, cost of long term operation and maintenance, and the longevity associated with each practice. Acceptance of a particular LID technique by a permittee may be limited by the ability to provide for long term operation and maintenance of the practice or facility.

Concern: Ecology has required permittees to undertake long-term inspection and tracking of post-construction best management practices (BMPs), it is assumed that this will be the case with LID as well. Inspection of post construction BMPs are to be performed by "qualified personnel", it is assumed this would also be required with LID. Because information

on Eastern Washington LID is limited or non-existent, a determination of "qualified personnel" would be nearly impossible.

The goal of protecting water quality in Washington State and specifically the Wenatchee Valley is shared by many. Regardless of economic conditions implementation of regulations to achieve this goal must be done in a fiscally responsible manner. We believe that this objective can be achieved through a coordinated effort with all parties involved, if sufficient time is taken to identify goals and plan for success.

The county appreciates the opportunity to comment on the preliminary draft permit language. County staff is committed to continuing to work with Ecology as well as the numerous stakeholders with interest in stormwater issues to develop and implement a comprehensive stormwater program.

Sincerely,



Jennifer Lange, PE
Assistant County Engineer