



PUBLIC WORKS

June 16, 2011

Ms. Harriet Beale
Municipal Stormwater Permit Comments
Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

RE: City of Everett comments on draft NPDES stormwater permit items

Dear Ms. Beale:

We appreciate the opportunity to submit comments on the draft Phase II permit LID, monitoring and contract language developed by Ecology. We recognize that this is a preliminary draft, and that Ecology had no obligation to release this document for public comment at this time. We also acknowledge that Ecology is committed to producing the best permit possible, and that they recognize that feedback from affected entities at this time could further that goal.

Monitoring

We commend Ecology for closely following the recommendations of the Stormwater Work Group (SWG) in striving for a viable regional monitoring program that will provide consistent data and effectiveness measures, as well as save money, and all linked to assessing changes in the health of Puget Sound and waterbodies in Southwest Washington. Ecology's full participation in the hard work of developing the program over the last 3 years has led to greater understanding among all the caucuses participating, and greatly increases the potential for success and adaptation.

S8.C--This section requires payment into a collective fund, and describes Ecology's role as administrator. This should be beefed up somewhat, as local caucus members of the SWG are constantly fielding questions and responding to comments from jurisdictions intimating that Ecology is taking their money, that it will disappear, that it will be diverted to other uses, etc. A clearer statement of Ecology's role as a contractor to the municipalities may help allay some of those fears. A good explanation in the upcoming Fact Sheet, explaining how this all happened, is warranted.

S8.C.1 and note to reviewers—A payment due date of August 2013 may still be problematic for some jurisdictions, as many submit budgets earlier in the year. If the permit is issued in July 2012, but does not take effect until 2013, can Ecology compel jurisdictions to budget when it is not in effect (and the temporary permit is)? Ecology has stated no changes to the one year permit to be issued in July 2012

for Phase II jurisdictions, but if the intent is for monitoring payment to begin in 2013, this needs to be stated in the one year permit.

As far as payment due dates, since permit fee payments are split, and this is a larger payment, it should also be split into 2 payments, and be staggered a couple of months away from permit fee payments to allow for cash flow issues for smaller jurisdictions.

S8.C.2 Payment amount options—At this time, we think option 2 is the best of the three presented, due to the inclusion of SW Washington permittees in a fair manner, and inclusion of a justifiable baseline that makes it similar to some grant programs. The costs per year, however, need to be evened out to be the same each year, to make local budgeting easier. Yes, this means some money sitting in the fund waiting for future distribution, but it is not so much as to be a huge problem, and it will be protected via the contract.

Opt-out option as per dialog box on last page—Everett is committed to the regional monitoring effort, as demonstrated by staff participation in the Monitoring Consortium and the SWG. First and foremost, the regional monitoring effort must succeed. If having an opt out option puts undue strain on already taxed resources at Ecology, and/or jeopardizes the success of the regional program, then we would be against it. That said, there may be options for opt out for effectiveness monitoring only, with sideboards such as were discussed at the SWG meeting. Some examples were: projects still fitting into the regional framework and having to pass muster with SWG or the subcommittee being formed to help administer the program and ensuring that the effectiveness monetary amount does not grow so small as to be ineffective (and Ecology stated that the \$1.5 million/year amount was predicated on all jurisdictions participating—if too many pull out, then the amount will logically have to go up for all other jurisdictions). We are certainly willing to review and comment on proposals developed by jurisdictions wishing to opt out, but these need to be serious proposals by jurisdictions who are knowledgeable on monitoring.

Draft Funding Agreement

We were pleasantly surprised to see a draft agreement. Simplicity is good, but it will need some rounding out and questions answered with regard to standard contract language. We plan on having our attorneys look at it and comment, and will make that available to Ecology. One item that may need modification: there is no severability clause, and there may need to be one, albeit modified from the standard, since we would not want Ecology to be able to terminate us on notice, which could quickly lead to non-compliance with permit conditions. The same thing would apply if we terminated them, still non-compliance for us. The real challenge will be getting lawyers from over 100 jurisdictions to authorize signature without individually tweaking it.

One question relating to contracting projects perhaps needs to be pondered now. It is understood that, with proper permit language, handing a check to Ecology for monitoring absolves the jurisdiction from Clean Water Act liability for monitoring. Does this liability transfer to the entity, jurisdiction, or contractor that accepts the work? Or does the liability then rest with Ecology? This would be important to know before contracting to do the work. Please recall that this was part of the reason Ecology became the only viable alternative to administer these regional monitoring funds.

Low Impact Development

While releasing this section at this time is good in terms of enabling us to see a bit of where Ecology is planning to go with this, it is by no means the entire picture, since the impact of the proposed language

will only really be known once the updates to the Manual are made. The implementation details and specific design criteria will be important in fully analyzing the impacts of the proposed changes.

Definitions in Appendix 1—Many of the definitions refer to the 2012 Manual, which does not yet exist, so we cannot comment on it. Others, having read the explanations in the Explanatory Notes, are still confusing, such as vegetated roofs, impervious surfaces, and permeable pavements all lumped under the definition of “hard surfaces”. Including groundwater under the definition of receiving waters also is contrary to what is trying to be accomplished. If the discharge through a pervious pavement is considered going to groundwater (instead of to soil), then wouldn’t that argue that pervious pavement is unsuitable for use where spills are expected (which is every single roadway), because they would discharge to “groundwater”, and there was no possibility for spill control?? The indicated changes to definitions should be rolled back to previous definitions, and reconsidered with more input.

Timeline for update of ordinances and Manual 4.a. page 2—The date of December 31, 2015 noted in the draft language is not long enough, and Ecology should recognize that based on the actual amount of time taken in the current permit cycle. These changes will be even more detailed and onerous. It takes a huge amount of staff resources and time to delve into and change all affected codes, especially with the legislative process that entails. With the current economic situation and limited resources available to us all, this date needs to be shifted to at least late 2016.

Program vs. equivalent requirements 4.a.i. page 2—In the current Phase II permit, we were allowed to adopt the Minimum Requirements, technical thresholds and definitions in Appendix 1 of the Ecology Manual or an equivalent approved under Phase 1. The language presented in this section seems to indicate that Ecology will be approving programs for Phase 1 jurisdictions in this permit. How would a Phase II jurisdiction adopt the entirety of an approved Phase 1 program, when so many procedural items for each jurisdiction are different? Leave the language as it was in the current permit, allowing us to select a Phase 1 Manual to customize to local procedures. Same comment for number ii. Where “equivalent” has been changed to “program”.

MEP or MEF—We have always struggled with what MEP really means with regard to the Clean Water Act and implementation of our programs. MEF came into play with the PCHB ruling regarding use of LID. The two should not be used interchangeably. Please change MEP to MEF in all of Appendix 1. 4.b.iv. and 4.c—These two items appear to say the same thing regarding responsibility for maintenance of permitted development sites. Eliminate or consolidate. The problem may lie in language for requirements that we have already done, but understand that it would still need to be present for any new Phase II permittees Ecology would bring in.

LID and interflow-- If a site is dominated by interflow in the existing condition, it will be dominated by interflow in the developed condition if extensive use of bioretention/raingardens and permeable pavements are used. A drainage area with less than 10,000 square feet of impervious surface and/or 3/4 acre of pervious surface can be routed to a bioretention/raingarden with a minimum of 1' vertical separation to the seasonal high water table, bedrock, or other impervious layer (i.e., hardpan). There does not appear to be any separation criteria between bioretention areas/raingardens and, in fact, the feasibility criteria encourage breaking down drainage areas to meet the thresholds above. This will equate to a lot of runoff being put into shallow layers of soil. If the WWHM does not accurately reflect the occurrence of interflow in the developed situation for widely dispersed, shallow LID BMPs, then flows from the site will actually be increased downstream as the analysis will include interflow in the predeveloped condition, but not in the developed condition.

Vesting language--Ecology appears to have added vesting language to Section 3 (pg 8 of 38) with the following sentence: "Use the thresholds in sections 3.2 and 3.3 at the time of application for a subdivision, plat or a short plat." This language is actually less stringent than the City's Planning Director Interpretation, which requires a "complete" application before vesting occurs, in order to avoid substandard submittals intended only as place holders for future development to meet out-dated standards.

Vagueness of language--A number of the feasibility criteria for both bioretention/rain gardens and permeable pavements include language such as "due to reasonable concerns", cannot "reasonably be designed" (pages 35 and 36 of 38), cannot "reasonably be broken down" (pg 35 of 38) and developers are given "options" to do one thing or another, i.e "can be designed with an underdrain" (pg 35 of 38), "applicant has the option of placing a six-inch layer of media" (pg 37 of 38). This type of language is essentially unenforceable and puts the City in the position of refereeing between different interest groups.

Redistribution of runoff below pavement--The mandatory list of LID BMPs on page 24 of 38 allows for the collection of stormwater runoff from an otherwise impervious surface, with redistribution of the runoff below the pavement. This practice greatly increases the fines and pollutants contained in the stormwater runoff because of the increased carrying energy of flows running across pavement. One of the advantages of permeable pavements is that precipitation infiltrates where it falls, and doesn't obtain velocities across pavement that allow for sediment/pollutant transport. In addition, permeable pavements themselves act as a sediment filter, and there is good evidence that biofiltering-type water quality benefits also result due to bacteria "setting up shop" in the pore spaces. When runoff is collected and conveyed below the impervious surface, it eliminates the treatment benefits of the permeable pavement itself and it will make the underlying soils much more prone to clogging and therefore, make the entire surface much more prone to failure.

Use of permeable pavement— Permeable pavements should not be used in the traveled way for motor vehicles until more information becomes available on life cycle and maintenance costs. There is very little peer reviewed literature which documents what the lifecycle and maintenance costs are for permeable pavements and until more studies are done which answer these questions, permeable pavements should be limited to low risk areas such as sidewalks, parking lots, bike paths and non-motorized trails. Across the nation municipalities have amassed financially stifling backlogs of deferred maintenance and preservation needs, particularly for road, bridge and storm water assets. The objective of this permit is to improve and protect water quality and that can only be accomplished with the implementation of proven and fiscally sustainable means and methods. Pavements in the traveled way are the single most valuable and expensive asset of the taxpayers. The small volume of data that is available suggests pervious pavements will have life-cycles that are significantly shorter than traditional Hot Mix Asphalt and Portland Cement Concrete pavements. Even in considering the most optimistic data available, the implications to interim and long term pavement preservation costs are extreme and would likely be insurmountable.

Maintenance of LID BMPs—dialog box on page 6--Ecology is asking for comments on options for maintenance requirements for LID BMPs. This is a bit perplexing. If LID BMPs have been used in the Eastern US, and are highly touted, isn't there a current maintenance scheme available that could be obtained and modified for local conditions? How do we tell if a BMP is in failure—do we only inspect them in the pouring rain, or blast them with a fire hose to see if they still infiltrate? Inspection of

raingardens in single family yards is not feasible—inspection in City right-of-ways may be. It is all about the definitions and expectations for these structures, and that is not clear yet. If proper design, inspection and maintenance of these techniques is not available, Ecology should hire consultants and convene a technical committee to clarify this before it is a permit requirement.

Watershed-scale stormwater planning--4.g.—In reading this and discussing with other municipalities, it seems that this land use action proposal would be appropriate as part of GMA planning, but not in a stormwater permit.

Native vegetation—4.1, page 13—Most developed cities in the Puget Sound region have little or no native vegetation left—they were stripped clean in the lumbermill days, and developed after that. Counties may still have it in their rural areas. There is a definite difference between cities and counties in this instance, and the definitions and requirements should reflect that.

Thank you for the opportunity to comment. If you have questions or seek further clarification, please contact me at 425-257-8889, or hkibbey@ci.everett.wa.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'HEATHER KIBBEY'. To the left of the signature, there are some additional handwritten initials or markings that are difficult to decipher, possibly 'DAD-FOZ'.

Heather Kibbey
Surface Water Manager