City of Issaquah Comments on Preliminary Draft NPDES Phase II Municipal Stormwater Permit June, 2011

The comments contained in this document pertain to the NPDES Phase II Municipal Stormwater Permit and the currently proposed modifications to the permit posted on Ecology's website Titled: "Low Impact Development and Monitoring Preliminary Draft Permit Language". Comments are due to Ecology by June 17, 2011 at the close of the informal public comment period.

The City of Issaquah is specifically concerned with permit requirements that prove ineffective, are technically infeasible, are seemingly in conflict with other State Laws, and are costly to implement. These areas include existing permit requirements, elimination of the 1 acre threshold, requiring low impact development techniques, requiring a cash payment for regional monitoring of Puget Sound, watershed planning becoming the responsibility of local utilities, and the additional requirement to include groundwater as a receiving body of water for stormwater.

Existing Permit Requirements: The current Phase II permit language is not proposed to be changed except to add additional requirements to the permit holder (Agencies). It mandates many regulatory and operations/maintenance requirements which are difficult to provide the necessary resources to ensure compliance. The proposed permit modifications increase the requirements related to regulatory compliance by requiring additional stormwater code revisions as well as a requirement to pay a certain sum of money toward a regional monitoring plan which requires additional resources.

A general principal that Ecology should consider is to not make any changes to the current permit (certainly not add burdens to agencies) except those that would improve permit administration and effectiveness and that lead to a decrease in resources needed to protect the surface waters of the State in accordance with the Environmental Protection Agency (EPA) requirements. The City believes that this can be done while maintaining the same or improved level of protection afforded by the current permit.

Specific areas of inefficiencies contained in the existing permit include but are not limited to record keeping and reporting, public outreach and monitoring its effectiveness. Changes to inflexible prescriptive requirements that stymie creative thinking could lead toward more effective and economical water quality improvements. Another specific area of the permit that should be reviewed is the strict development standards, particularly the forested pre-developed condition for flow control which discourages redevelopment in the Urban areas which is in direct conflict with Growth Management Act that requires growth be accommodated in the Urban areas.

Elimination of one acre threshold: The elimination of the one-acre threshold for development activity continues and exacerbates the existing conflict with the State's Growth Management Act (GMA) which requires urban designated areas to accommodate the growth forecasted for the area in an effort to prevent suburban sprawl. This is the State's way to help ensure rural area resources that haven't been impacted by growth to be protected. By eliminating this threshold the permit drives up the cost of redevelopment substantially for the smaller in-fill/redevelopment projects which agencies depend upon to accommodate the growth expected under GMA.

In addition to being in conflict with GMA, this requirement has little or no benefit to stormwater runoff compared to the high cost being imposed by this requirement. This also is in conflict with GMA in that GMA also has the goal that the cost to provide urban services be reasonable which is made possible by

increased density within an urban area. As a result of this threshold change there will be many more parcels left under developed in the urban cores resulting in growth targets set under GMA not being met by agencies. While the permit has an economic exception, the level of cost is set too high and therefore is not applicable for the smaller parcels.

Requiring Low Impact Development Techniques and Defining Groundwater as a Receiving Body:

The inclusion of requiring Low Impact Development (LID) techniques for all projects is not technically feasible and sets up a conflict with another proposed change in the permit. That change is to define groundwater as a receiving body of water affording protection under this surface water legislation. Expanding the definition of groundwater to categorize it as a receiving body of water is expanding the EPA's legislation that was intended to protect surface water. This expansion is not necessary as groundwater of the State is protected under different legislation that ensures the groundwater quality does not degrade.

The use of LID by all development and re-development projects to mimic forested pre-developed flow durations for all site discharges between 8% and 50% of the 2-year discharge is not technically feasible. This discharge requirement associated with the LID requirement is in addition to the existing discharge requirement and is more restrictive and is not achievable unless all physical and site conditions are perfectly aligned. Even in those circumstances these discharge requirements may not be feasible to meet. The success of LID is predicated on site geology, hydrology, and subsurface soil conditions plus other constraints such as existing infrastructure. It is not reasonable to expect that all land uses in urbanized areas have just the right physical characteristics that ensure the success of LID. Given the inability to meet this additional discharge requirement and the lack of feasibility for LID, it is unreasonable to require as a new permit condition the requirement that LID be used to achieve the runoff characteristics prescribed in the permit.

LID should only be required where the site geology, hydrology, and soil conditions, as well as other site constraints, are evaluated and are shown to support LID techniques for addressing stormwater runoff.

Associated with the LID are proposed additions to Minimum Requirement #5, Onsite Stormwater Management and Section 8 of Appendix 1 which are unreasonable.

- LID requirements listed on page 24 are already included in codes and manuals for use as appropriate when conditions are conducive to LID (e.g., soils amendments, downspout BMPs at small developments, and dispersion). However, many that are proposed are not justified: These include the requirements for pervious pavement for all roads and other "hard" surfaces, bioretention covering 7.5% of the area of all residential developments and 4% of commercial sites, and required green roofs on all commercial buildings. These are extreme regulatory requirements that cannot be justified as LID is not feasible at all locations.
- The list of exceptions to LID in Section 8 of Appendix 1 is severely limited. Attempting to list all possible exceptions to LID would be impossible since LID is dependent on the geology, hydrology, soil conditions and site physical characteristics which are different at every site. Exceptions should be evaluated as part of a feasibility assessment that addresses site-specific conditions and constraints.
- Requirements to inspect and maintain LID are not realistic at this time given the scientific community has just begun to implement LID and has not determined how best to inspect/monitor these facilities or determine the regular maintenance required since every facility is unique and built specifically for the geologic environment it is constructed. More

research work needs to be done on the subject of inspection, maintenance, and enforcement of LID measures.

Cash Payment for Regional Monitoring: The monitoring program developed relates to the State's initiative to "clean up" Puget Sound and is focused on monitoring Puget Sound. The EPA National Pollution Discharge Elimination System legislation is intended to clean up pollutant discharges into receiving bodies. This monitoring program does nothing to achieve this goal. It siphons resources from the local level toward a State initiative which takes away from the local agency's ability to actually clean up its discharges. Monitoring locally in the vicinity of discharges is valuable information which may lead to targeted efforts to eliminate certain pollutants. Monitoring in such a large body of water such as Puget Sound and large rivers will not provide useful information to help local agencies target efforts to eliminate pollutants from the discharge streams in agency jurisdictions that do not border on the bodies of water being monitored.

Watershed Scale Planning: Watershed planning is not appropriate as a condition of the NPDES permit. The NPDES permit is focused on eliminating and preventing discharges of pollutants into the surface water. Planning efforts on a watershed basis is more related to land use planning as the stormwater regulations for runoff control and treatment are expected to address the potential impacts due to development and other activities.

Summary:
The City of Issaquah is specifically concerned with permit requirements that prove ineffective, technically infeasible, are seemingly in conflict with other State Laws, and are costly to implement. These areas include existing permit requirements, elimination of the 1 acre threshold, requiring low impact development techniques, requiring a cash payment for regional monitoring of Puget Sound, watershed planning becoming the responsibility of local utilities, and the additional requirement to include groundwater as a receiving body of water for stormwater.

It is Issaquah's recommendations that Ecology modify its proposed changes to the Phase II Permit as follows:

- Revise current permit language to provide for a more effective permit that achieves the requirements of eliminating pollutant discharges and eliminates conflicts with the State's Growth Management Act.
- Maintain the one-acre threshold.
- Do not change the discharge requirements expecting LID to address them.
- Do not require LID but allow for site specific studies to determine whether LID can be used effectively to control runoff.
- Do not define Groundwater as a receiving body of water.
- Do not require payment toward the proposed regional monitoring plan for Puget Sound.
- Do not require permit holders to do Watershed Scale Planning.

Kerry Ritland, Stormwater Utility Manager, can be reached at 425.837.3410 and is available to discuss these comments in more detail if desired.