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Municipal Stormwater Permits
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504

SENT VIA ELECTRONIC MAIL

RE: Comments to the Eastern Washington Phase II Municipal Stormwater Permit

Dear Bill, Harriet and Julie,

The following comments on the Department of Ecology's preliminary draft language for the Eastern Washington Phase II Municipal Storm Water Permit (the "Phase II Permit"),¹ are submitted on behalf of the Environmental Law Clinic at Gonzaga University School of Law ("ELC"), the Spokane Riverkeeper ("Riverkeeper"), The Lands Council, and Futurewise.

ELC provides legal representation to not-for-profit environmental organizations in Washington, Idaho, and Oregon, and strives to protect and restore the quality and integrity of the region's natural resources through advocacy and public interest litigation. ELC provides real world experience for second and third year law students under the oversight of a supervising attorney, and appreciates this opportunity to participate in the administrative process for adoption of Clean Water Act permits.

The Riverkeeper is a program of the Center for Justice ("CFJ"). CFJ is a not-for-profit legal organization which provides legal services to individuals and public interest organizations in the Inland Northwest. CFJ works to ensure that all individuals and public interest organizations of limited means have access to justice, including a clean and healthy environment. Riverkeeper conducts surveillance of the Spokane River and its tributaries and reaches out to river users who share its commitment to a river that is swimmable, fishable, and properly regulated. To further these goals, Riverkeeper actively seeks Federal and State agency implementation of the Clean Water Act and, when necessary, directly initiates enforcement actions on behalf of itself and the public.

The Lands Council is a not-for-profit conservation group dedicated to protecting the quality of life and the environment in the Inland Northwest. The Lands Council is concerned about the environment's effect on people's health and works to protect thousands of acres of public land in order to maintain a clean and healthy environment. These lands include forests, water, and wildlife, including

¹ <http://www.ecy.wa.gov/programs/wq/forms/lidsubcomments.html>

but not limited to the Spokane River Watershed. The Lands Council collaborates with a broad range of interested parties including communities, businesses, recreational groups, government agencies, and elected officials to seek smart and mutually respectful solutions to environmental issues. When necessary, The Lands Council uses litigation to protect forests and waters on behalf of its members and the public. The Lands Council seeks to enforce environmental rules necessary to ensure a clean and healthy environment.

Futurewise is a statewide public interest group that works to promote healthy communities while protecting farmland, forests, and shorelines. Futurewise works with local governments to ensure that growth is managed responsibly and smart growth policies are enacted. Through advocacy, public education, legal programs, and technical support, Futurewise is able to work with local groups to promote environmentally sound growth in Washington.

I. GENERAL COMMENTS

Thank you for the opportunity to provide comments on the draft language to be included in the Phase II Permit, prior to the release of the draft Phase II permit and the formal comment period.

ELC, Riverkeeper, The Lands Council, and Futurewise support the inclusion of Low Impact Development (“LID”) requirements in the Phase II Permit. LID requirements are essential in limiting the amount of pollution that is carried by stormwater into our lakes and rivers, and it is a cost effective way to limit the impacts of stormwater from development and urban runoff. ELC, Riverkeeper, The Lands Council, and Futurewise also support the use of Best Management Practices (“BMPs”) to help meet LID goals of the draft Phase II Permit. Such BMPs include: soil amendment, trees, dispersion, rain gardens, permeable pavement, green roofs, rainwater harvesting, and low impact foundations.

ELC, Riverkeeper, The Lands Council, and Futurewise also support Ecology’s inclusion of effectiveness monitoring in the new Phase II Permit. The Phase II Permit must contain a mechanism to demonstrate that a municipality’s stormwater program is actually reducing polluted discharges to local water bodies. Without this confirmation, the permittees have no mechanism to demonstrate to Ecology or the public that they are complying with the Clean Water Act. Further, the inclusion of stringent monitoring requirements will provide interested members of the community, including members of Riverkeeper, The Lands Council, and Futurewise, with important water quality data regarding the impact of stormwater on area water bodies.

I. SPECIFIC COMMENTS

LOW IMPACT DEVELOPMENT COMMENTS

A. LID standard suggested by Ecology

We tentatively support the 95% stormwater retention rate. Without specific LID standards and stated LID goals, we are asking for unnecessary trouble and confusion. However, as expressed at the meeting at Moses Lake, the concern is that without requirements to retain a certain percentage of native vegetation, the default will continue; grade the entire property, lay down concrete and then install a few grassy swales. While this might meet the 95% retention rate, it does not adequately protect the environment, particularly groundwater. The environmental community does not want that pattern of behavior to continue and the Phase II Permit is an important tool in changing stormwater retention and control patterns in Eastern Washington.

B. Native soils and vegetation should be maintained at all sites as best as possible

If the goal of LID is to return the developed site to its pre-development hydrology, the Phase II Permit should require that native vegetation and soil be retained as much as possible. This is an effective strategy to meet the LID standards, and reduces the amount of impervious surface created at a project. Developers should be required to preserve existing vegetation and soil, and where it is infeasible to retain native vegetation, the project developer must be required to restore vegetation and soil that has been disrupted during construction, and re-create any lost habitat due to construction. The main goal of LID is to conserve and protect water resources by decreasing the amount of stormwater runoff and protecting the natural habitat from the outset of project development is an effective strategy in accomplishing this goal.

C. Source Reduction Approaches

We support a requirement to allow source reduction approaches. This minimizes the disturbance of soils and preserves the natural vegetation and hydrology of the development sites. This also aides in managing stormwater runoff more effectively and as explained above there should be a special emphasis on maintaining and protecting the natural features of the site.

D. Permittees should document their participation in these LID projects and provide annual reports on their effectiveness

It is important to have documentation to see the effect that these LID projects are having and to ensure compliance and accountability. There needs to be some sort of record keeping when it comes to LID projects so there is a way to track progress.

E. The Phase II Permit should require the development of ordinances that require the utilization of LID strategies by developers

It is essential to the success of the Phase II Permit that municipalities require that developers use LID strategies for all construction and reconstruction. A requirement that municipalities adopt LID ordinances allows developers to properly prepare projects with LID in mind, thereby reducing costs associated with redesign and modification of projects.

F. Sites need to use BMPs that are the most applicable given the characteristics of the site in order to meet the LID goals

The environmental groups understand that there needs to be flexibility in meeting the LID goals, however, this should not be an excuse for not employing any of these tactics. Each site should use the BMP that is most appropriate given the circumstances. It is perfectly understandable that not all sites lend themselves to all BMPs, but the wide range of BMPs should allow almost any development to incorporate some form of LID. There also needs to be a routine monitoring schedule for BMP's to ensure their effectiveness and viability over the life of the development.

G. Infeasibility needs to be defined narrowly to ensure maximum compliance with LID requirements

Ecology must draft language that narrowly construes the infeasibility requirement or LID will fail. Although evidence indicates that LID reduces costs, the majority of developers in Eastern Washington probably do not share this view or are undereducated on the subject. Therefore, overly broad feasibility exemptions would allow developers to make unfounded assertions regarding design problems. Technical feasibility is a real issue in Eastern Washington, given the varying soil and climate issues, but Ecology must draft language that makes it clear to developers that infeasibility is a rarity and not the norm.

H. Developers need to be in on the process of development and implementation of LID strategies

It is essential that developers are involved in the stakeholder process that leads to the development and implementation of LID strategies. Developers are important to the success of LID because they have to construct the BMPs to meet the LID goals, so it is important that they are involved in the process. The environmental groups would be willing to reach out to local developers and industry associations to bring them into the process, and can provide educational workshops or presentations to further this goal.

I. Removing barriers to LID is not enough, the permit should require LID for all construction and reconstruction and establish the appropriate LID standards to be incorporated into the permittees programs

The requirement of LID is essential to keeping our waters safe and clean. LID should be required for developers in all construction and reconstruction projects. The serious concerns of reducing the development envelope, reducing impervious surfaces, protecting and restoring native soils and vegetation, and minimizing disturbances requires us to make LID mandatory. Each site should use the BMP that allows them to meet the LID standard.

MONITORING COMMENT

J. Monitoring Program

We strongly support the use of effectiveness monitoring to demonstrate compliance with the Clean Water Act and the Phase II Permit requirements. The lack of compliance monitoring will only lead to needless litigation and permit challenges. Effectiveness monitoring is important because municipalities must demonstrate to the regulator and the public whether the techniques adopted are working effectively to reduce stormwater impacts.

The specifics of the monitoring program can be determined in a stakeholder process, but the draft permit must make it clear that effectiveness monitoring will be mandated in the Phase II Permit during this permit cycle. The environmental groups would support a regional or watershed approach to monitoring if the permittees can demonstrate that they have the capabilities to effectively implement a comprehensive monitoring program. Any program developed must be comprehensive enough to demonstrate to all parties whether Phase II implementations are actually improving water quality. The monitoring system needs to be properly designed to determine compliance and effectiveness. To meet this requirement, the program must be adequately funded by the permittees. While sending the money to Ecology to develop the program may not be the answer for some permittees, the monitoring program must be flexible enough to allow others to adopt that solution.

Once again, we appreciate Ecology's efforts on the development of this permit and urge the formal draft to incorporate the comments presented above.

Sincerely,

/s/ Michael J. Chappell

Michael J. Chappell
Director of the Gonzaga Environmental Law Clinic
On behalf of Spokane Riverkeeper,
The Lands Council, and Futurewise