

Denis Law
Mayor

City of
Renton



Public Works Department - Gregg Zimmerman, P.E., Administrator

June 17, 2011

DEPARTMENT OF ECOLOGY

JUN 20 2011

WATER QUALITY PROGRAM

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

RE: Proposed New 2012 NPDES Phase II Municipal Stormwater General Permit – Preliminary Draft Review Comments

Dear Ecology NPDES Permit Staff:

The City of Renton would like to thank the Department of Ecology for the opportunity to comment on the preliminary draft language for the Phase II Municipal Stormwater NPDES General Permit.

The City of Renton has reviewed the Preliminary Draft of the new Phase II NPDES permit that is proposed to be issued in July of 2012, but not become effective until August 2013. The City shares many of the same concerns expressed by other Phase II jurisdictions and concurs with the comments sent to you by the Regional Road Maintenance ESA Forum. The City of Renton has a number of concerns regarding the new LID and monitoring requirements included in the new permit to be effective August 2013. Due to the lack of time and resources, not all the comments and concerns are included in this letter. More time to review and better understand the proposed new permit language, the impacts of implementing the new LID and monitoring requirements is needed. We request that Ecology allow as much time for review and inter-jurisdictional coordination on the new NPDES permit requirements as possible prior to and during the formal public review period of the new permit.

In general, the Department of Ecology continues to implement and propose new NPDES permit requirements that far exceed the federal minimum requirements established in the Clean Water Act. These higher regulatory standards place a tremendous financial burden on jurisdictions to administer and implement. The higher regulatory requirements also make it more difficult for existing business in the state to grow and operate and are a deterrent to the recruitment of new businesses and employment to the State of Washington.

The following comments were identified by the City as the major issues of concern with the proposed preliminary Draft Language for the Western Washington Phase II NPDES Stormwater General Permit:

1. NPDES Permit Review Process and Permit Issuance.

- a. Ecology's proposed permit language and Appendix 1 includes numerous references to "Low Impact Development Standards" defined in the 2012 Ecology Stormwater

Management Manual for Western WA and the Low Impact Development Technical Guide for Washington. The 2012 Ecology Stormwater Management Manual for Western WA is not available for review and has not gone through any public review process. Before these technical manuals are made a requirement of the new NPDES permit, the adoption of both documents should first go through a formal review and rule making process. The requirements and guidelines included in those technical manuals are unknown and impossible to predict. There is insufficient detail to assess the costs and potential impacts of the requirements included in these technical manuals to adequately evaluate the requirements of draft new permit language. We are being asked to review preliminary draft NPDES permit language without understanding the technical aspects of the new requirements, which is a backwards approach. By adopting these technical manuals prior to including their requirements in the new Phase II NPDES Municipal Stormwater Permit would allow for a better review of the of the new permit requirements. Ecology's proposal to develop and adopting these technical manuals concurrently with the issuance of the new 2012 NPDES permit, which will not become effective until August 2013, reduces or eliminates the time needed by jurisdictions to review and fully understand the implications of the requirements in these technical manuals and the requirements proposed in the new NPDES permit.

Recommendation: Delay the issuance of the new NPDES permit with new LID and monitoring requirements to July 2013 instead of July 2012 as proposed. The one year extension of the current 2007 NPDES Phase II Permit (from July 2012 to July 2013) will insure NPDES permit coverage until 2013. By delaying the issuance of the new NPDES permit until July 2013 it will allow more time for the review of those technical manuals and the new NPDES Phase II permit requirements, instead of having to review both concurrently. This will insure that a better understanding of the requirements and avoid requirements changing as the result of the review process during the development of the new NPDES Phase II Permit.

2. **Requirement to revise local development related codes and standards, adopt, incorporate and require Low Impact Development (LID) on all new development and redevelopment projects (Prelim Draft Language Pg. 2 Sect. 4a).**
 - a. 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.
 - b. Phase I jurisdictions will be required to adopt and implement low impact development strategies beginning 18 months (February 2015) after the effective date of the permit. Phase II jurisdictions are required to adopt and implement LIDs by December 31, 2015. This timeline assumes that all Phase II jurisdictions will adopt the guidelines included in the 2012 Stormwater Manual and not another

Phase I jurisdiction's approved equivalent stormwater manual. The implementation timelines needs to allow sufficient time for a Phase II jurisdiction to adopt a Phase I jurisdiction's equivalent stormwater manual and flexibility should be allowed if the Phase I jurisdictions don't meet their deadline.

- c. Phase II municipalities recently adopted and are currently implementing manuals that are equivalent to the Ecology's 2005 Stormwater Technical Manual. More time is needed to fully assess the economic impacts to jurisdictions and the State of Washington of the current stormwater regulations before Ecology requires new or additional stormwater regulations.
- d. Proposed language requires cities to develop and maintain a program for maintenance and inspection of LID facilities. Insufficient information is available regarding long term operation and maintenance of LIDs to assure optimum performance. Without that knowledge, developers and permittees will be unable to identify, design, operate and maintain LID facilities. 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.
- e. Ecology needs to review the legal authorities that jurisdictions have to inspect LID facilities on a private property (single family residential lots) and establish the legal tool that local jurisdictions can use to perform inspections with respect to private property rights.
- f. The inspection of all LID facilities will have a significant cost impact to jurisdictions and be difficult to establish the ability to perform and enforce from a social/political perspective.

Recommendation: Extend the timeline for adoption and implementation of codes and technical manuals to 4 years from the effective date of the 2013 permit or until standards for design, construction, maintenance and inspection of all LIDs have been implemented. Ecology needs to perform a comprehensive legal and cost analysis addressing the impacts of implementing these and all other requirements in the new NPDES Phase II Permit to determine if there is a positive cost benefit ratio for having higher regulatory requirements and putting the state of Washington at an economic disadvantage when competing in a global economy.

- 3. **Requirements for Cities to assess hydrology and water quality impacts were accumulative expansion of the incorporated area of 80 acres or more will occur, and/or a planned land use action that is projected to increase the total impervious surface area of a watershed by 5% of existing impervious area. (Prelim Draft Language Pg. 9 Sect. 4g).**

- a. All potential annexation areas to the City of Renton are under the jurisdiction of King County, A Phase I jurisdiction currently implementing the requirements stipulated in the Phase I NPDES Permit. Any new development within the City, including annexed areas will have to comply with the requirements stipulated in the City's NPDES Permit, which will require the implementation of LIDs, flow control and water quality treatment facilities.

The Growth Management Act (GMA) established urban growth boundaries to force growth into the urban areas to prevent environmental impacts caused by urban sprawl. In order to accomplish requirements of GMA, the increased densities in the Urban Growth area result in an increase in impervious area within the Urban Growth Area. The Watershed Planning requirements appear to conflict with GMA by requiring lower densities to minimize the increase in impervious area in the Urban Growth Area. This will over time require the expansion of the Urban Growth Area, which would defeat the purpose of why the Urban Growth Area was originally established. The current Ecology stormwater requirements regulate runoff from new development and redevelopment projects to match flow duration of pre-developed forested conditions (regardless of existing site conditions) over the range of flows extending from 50% of the 2-year rainfall event up to the full 50-year rainfall events. This flow control standard along with the current water quality treatment requirements, are sufficient to mitigate new development and redevelopment within the Urban Growth Area in basins that are not historically highly urbanized basins. The Watershed planning requirements are land use and long range planning requirements and should be addressed through zoning and comprehensive planning (GMA) updates not through stormwater NPDES permit requirements.

Recommendation: Watershed planning requirements should be eliminated from permit.

4. Monitoring (Prelim Draft Language Pg.12 Sect. 8).

- a. The collaborative approach for monitoring appears to be the most cost effective alternative. More time to evaluate, review and discuss monitoring cost and requirements with City's policy holders will be needed.
- b. The scope of work for the monitoring program shall be developed and available for review prior to permit issuance.
- c. First payment shall be due a year after the effective date of the permit to allow funding to be budgeted, if this is made a requirement of the new NPDES permit. Ecology should implement a pilot monitoring program for Phase I jurisdictions, which are currently required to perform monitoring, to demonstrate that the proposed approach can be implemented and validate the cost associated with the regional monitoring program before making it a requirement in the new Phase II NPDES permit.

Recommendation: Ecology should first prove that the regional approach can be implemented. It is recommended that Ecology first implement a pilot regional monitoring program with Phase I jurisdictions, which are currently required to perform monitoring. The pilot monitoring program is needed to demonstrate that the proposed regional monitoring approach can be implemented and validate the cost associated with the regional monitoring program, before making it a requirement in the new Phase II NPDES permit. If this approach is required in the new NPDES permit, change the issuance date for the new permit to July 2013 with an effective date of August 2013. This will provide jurisdictions sufficient time to discuss this approach, the monitoring requirements and associated costs with policy makers and the public that we serve.

5. Section 2 of Appendix 1 – Minimum Technical Requirements for New Developments and Redevelopment Projects (page 2, section 2).

- a. Definition for rain gardens (page 5) refers to the Rain Garden Handbook for Western Washington Homeowners for Rain Garden Specifications and Construction Guidance. However, no post construction inspection requirements or maintenance requirements are referenced or included.

Recommendation: Clearly identify that rain gardens designed and constructed to comply with minimum requirement #5 are considered flow control BMPs and not facilities; and therefore are not required to comply with the annual post construction inspection requirement.

6. Section 3 of Appendix 1 – Minimum Technical Requirements for New Developments and Redevelopment Projects (sections 3.2 and 3.3).

- a. The draft permit will require the implementation of LIDs as the preferred option to mitigate for stormwater impacts. LID should not be the only tool available to manage stormwater runoff.
- b. Mandating additional LIDs (such as permeable pavement and rain gardens) in all small projects, will be overly financially burdensome to small developments and small public projects given the additional costs of site assessment and soils analysis. Further, these additional costs will result in little to no net benefit in comparison to existing flow control BMPs identified in Appendix C of the 2009 King County Surface Water Design Manual.

Recommendation: Provide permittees the flexibility they need to implement the use of LID without requiring implementation of rain gardens and permeable pavement in all projects. The implementation of LIDs should be encouraged and incentivized rather than be required, especially for projects only subject to Minimum Requirements 1-5 in the Ecology Stormwater manual. The LID code updates should be focused on encouraging the use of LID by emphasizing potential benefits and providing incentives for their use. Ecology needs to perform a cost benefit analysis for implementing LID

requirements for all hard surfaces to evaluate the cost of implementing LIDs versus the net reduction in runoff that LID facilities will provide.

7. Section 4.5, Minimum requirements of Appendix 1 – Minimum Technical Requirements for New Developments and Redevelopment Projects - Feasibility Criteria for Pervious Paving.

- a. There are still many concerns related to the use of pervious paving, including, but not limited to: 1) long term durability, especially at intersections; 2) performance standards; 3) spill containment and clean up and resulting traffic impacts; 4) maintenance, repair and tracking of these assets; 5) durability and maintenance when subjected to snow and ice treatments (i.e. sand, gravel, salt brine etc.); 6) cost for construction; 7) availability of pervious paving materials and; risk of groundwater contamination.

Recommendation: The use of permeable pavement shall be limited to areas such as sidewalks, parking lots (outside well head Aquifer Protection Area) and bike paths. Permeable pavement should not be used in traveled way for motor vehicles until more information becomes available for life cycle and maintenance cost and until more studies are done answering the questions listed above.

The City of Renton appreciates having the opportunity to review the proposed new permit requirements. We look forward to working corporately with Ecology and other jurisdictions to better understand and establish reasonable requirements for the new NPDES Phase II Permit. If you have any questions, please contact me at 425-430-7311, or Ron Straka, Surface Water Utility Engineering Supervisor at 425-430-7240.

Sincerely,



Gregg Zimmerman, P.E.
Public Works Administrator

cc: Jay Covington, Chief Administrative Officer
Larry Warren, City Attorney
Alex Pietsch, Community Economic and Development Administrator
Lys Hornsby, P.E., Utility Systems Director
Ron Straka, P.E., Surface Water Utility Supervisor