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June 15, 2011

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

RE: Comments on Preliminary Draft NPDES Phase II Permit Language

To Whom It May Concern:

The City of SeaTac would like to thank the Department of Ecology for the opportunity to comment on the preliminary draft language for the Western Washington Phase II Municipal Stormwater General Permit. City comments on the preliminary draft permit language are broken down into two parts: 1) Major Issues and 2) Additional Detail Comments.

Major Issues
The following are considered SeaTac's primary or major issues of concern with preliminary draft language:

1. **Encourage LID Rather Than Mandating LID Where Feasible**
   Location: Preliminary Draft Permit Language and Appendix 1
   Comment: Mandating LID through permit requirements will be overly financially burdensome to small developments and small public projects given the additional costs of site assessment and soils analysis previously not required on small projects. Further, these additional costs will result in little to no net environmental benefit in comparison to existing flow control BMPs identified in MR 5 of the King County 2009 Surface Water Design Manual. Lastly, mandating these requirements may result in resentment from the development community and an emphasis in finding exemptions within the proposed feasibility criteria, rather than embracing benefits of these BMPs and techniques.
   Recommendation: LID should be encouraged and incentivized rather than required, especially for projects only subject to MR 1-5. The LID code updates should be focused on encouraging the use of LID by emphasizing potential benefits and providing incentives for their use.

2. **Public Review Process on Draft Language and Technical Manuals**
   Comment: During recent public meetings Ecology staff have identified their intent to run a concurrent public review process for the draft permit language and the technical manuals adopted within it (i.e. guidebook for integrating LID into local codes, LID technical guidance manual, Western Washington Hydrologic Model, 2012 Ecology Stormwater Manual etc). A ninety day public review process does not allow the majority of Phase II permittees

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adequate time to review and comment on these complex documents, as well as the draft permit language.
Recommendation: The public review process for the draft permit language and the technical manuals should be run separately, not concurrently. This can be accomplished by changing the issuance date of the 2013 permit to July of 2013, making the effective date of the permit August of 2013.

3. **Technical/Guidance Manuals Adopted by Reference in Permit**
Location: Preliminary Draft Permit Language and Appendix 1
Comment: The revised technical/guidance manuals for stormwater and LID facilities are not available for review, but must contain clear standards for design, inspection and maintenance to be useful and effective. 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 must be included in the technical documents adopted by reference within the permit.
Further, the economic impacts of these manuals should be thoroughly evaluated before they are adopted to fully understand the financial impact to both the public and private sector.
Recommendation: Delay issuance of technical manuals until clear standards for design, inspection and maintenance are included and said documents have been evaluated for economic impacts.

4. **Timelines for Code Updates & Technical Manuals**
Location: Prelim Draft Language Pg. 2 Sect. 4a
Comment: 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. [Please Note: Code updates took four years under the last permit, and given the state of the economy, it is unlikely that permittees will be able to increase staffing.]
Recommendation: Extend the timeline for adoption and implementation of codes and technical manuals to four years from the effective date of the 2013 permit.

5. **Elimination of One Acre Threshold**
Location: Several locations in Preliminary Draft Language and Appendix 1
Comment: Elimination of the one acre threshold will place a tremendous financial burden on those "small projects", such as single family construction and small road projects, which are only subject to Minimum Requirements 1-5 in Appendix 1, while offering little to no environmental benefits. Existing BMPs, such as soil amendments, full dispersion and infiltration identified

within the stormwater manuals already meet the goals of LID without specifically requiring rain gardens or pervious paving.
Recommendation: Retain the one acre threshold within the Phase II Permit or allow greater flexibility for small projects (projects only subject to Minimum Requirements 1-5). For example BMPs listed in Minimum Requirement 5 (MR 5) should be a'la carte, as described in the 2009 King County Surface Water Design Manual.

6. **Rain Garden and MR5 BMPs**
   Location: Appendix 1 - Definitions and MR 5, Pgs 22-24
   Comment: The draft language is silent on post construction inspection requirements for rain gardens and other treatment and flow control BMPs identified in MR5. Conducting annual post construction inspection and enforcing maintenance on these small project BMPs is infeasible in terms of the sheer volume of these structures that would be created by the new permit language and the ability to access these structures. Currently, MR 5 (small project) flow control and treatment BMPs are not subject to annual inspection requirements.
   Recommendation: Clearly identify that rain gardens and other treatment and flow control BMPs identified in MR 5 are BMPs, not facilities and as such do not require annual post construction inspection. Maintenance and care of these BMPs are best accomplished through public education efforts.

7. **Accessibility of Treatment and Flow Control Facilities for Inspection and Maintenance**
   Location: Appendix 1 Minimum Requirement (MR) 6 & 7, Pgs 25-31
   Comment: Locations for treatment and flow control facilities as described in MR 6 & 7 must be readily accessible (i.e. in common areas or tracts with access from the right-of-way), especially in residential developments, to allow for annual inspection and maintenance. Allowing many small facilities outside of common area tracts, such as backyard bioretention will make inspection, maintenance and enforcement infeasible.
   Recommendation: Allow permittees to restrict the locations of treatment and flow control facilities to accessible locations. This could be done through language in MR 6 & 7 and in the Feasibility Criteria section.

8. **Feasibility Criteria for Pervious Paving**
   Location: Appendix 1, Pg. 36 item B
   Comment: There are still many concerns and unanswered questions related to the broad use of pervious paving techniques in public roads and high travel areas, including, but not limited to: 1) Long term durability, especially at intersections; 2) Spill containment and clean up and resulting traffic impacts; 3) Maintenance, repair and tracking of these assets; and 4) Durability and maintenance when subjected to snow and ice treatments (i.e. sand, gravel, salt brine, etc.).

Recommendation: Provide permittees the flexibility they need to limit the use of pervious paving as described in the following sample language:

> Pervious paving is considered infeasible in the following areas until further studies and pilot programs have resolved questions of durability, maintenance, spill containment and cleanup:
>
> - within motorized vehicular travel ways;
> - within intersections and within 50 foot approaches of said intersections;
> - within areas with documented history of recurring spills;
> - within sport/play courts where it would be unsafe, or the quality of play would be affected, or a standard of development for that type of court set by a recognized organization would not be met
> - within areas where attaining structural load requirements make the project cost prohibitive
>
> [Note: Pervious paving techniques are generally considered feasible in parking spaces outside of travel paths, sidewalks, and separated bike lanes.]

9. **Performance Standards for LID Facilities**
   Location: Appendix 1 Pg. 24 – Low Impact Development Performance Standard
   Comment: The flow regime performance standards identified in Appendix 1 for LID, specifically 8% of the 2-year peak flow to 50% of the 2-year peak flow, are unattainable and will set permittees and developers up for failure.
   Recommendation: Flow regime performance standards should be equivalent to, but no stricter than Level 2 (Conservation Area) Flow Control as identified in 2009 King County Surface Water Design Manual Section 1.2.3.

10. **Definition of Receiving Waters**
    Location: Appendix 1 – Pg.6
    Comment: The revised definition of "Receiving Waters" has been expanded to include infiltration into groundwater. In essence this says soils that can infiltrate are receiving waters. Soils are not receiving waters. Only direct discharges to groundwater should be consider receiving waters and regulated separately through the underground injection control (UIC) program.
    Recommendation: Remove the new language added to this definition.

11. **Maximum Extent Practicable (MEP) vs. Maximum Extent Feasible (MEF)**
    Location: Preliminary Draft Permit Language – Pg 3, item iv.(1)
    Comment: This language requires code updates to incorporate LID principles and BMPs to MEP, while language used later in Appendix 1 requires LID to MEF. These are two very different standards and inconsistency in their use will likely cause problems for both the permittees and the state. Further, the Pollution Control Hearings Board clearly identified that LID be used where feasible, therefore MEF is the appropriate standard.

Recommendation: Make all references to development and implementation of LID principles and BMPs be to MEF within both the revised permit language and Appendix 1.

12. **Watershed Planning Requirements**
    Location: Preliminary Draft Permit Language Pgs. 8-10, item g
    Comment: Watershed planning requirements are land use and long range planning requirements, which should be addressed through zoning and comprehensive planning updates, not within municipal stormwater permits.
    Recommendation: Watershed planning requirements should be eliminated from permit and addressed through planning updates, such as GMA comprehensive plan updates.

Additional Detail Comments

1. **Definitions of Hard Surface, Impervious Surface and Pervious Surface**
   Location: Appendix 1 – Pgs.3-5
   Comment: These definitions are confusing in both their language and their interrelation. For example under the existing definitions provided, pervious pavement can be interpreted to meet all three definitions. Further, the need and use of the term "Hard Surface" needs further clarification with the definition itself. The Explanatory Notes did not provide sufficient clarity for the need of this term, nor should these notes be relied upon to explain their interrelation.
   Recommendation: Please better distinguish between these definitions and further illustrate the need for the addition of the term "hard surface" within the definitions section.

2. **Water Quality Monitoring Funding Options**
   Location: Preliminary Draft Language – Pgs.12-15, Section S8.C.2
   Recommendation: Based on the three funding options provided in the permit language, we recommend adoption of Option #1 – billing based on population. The other two options unfairly burdens smaller Phase II jurisdictions.

3. **Feasibility Criteria for Selected LID Techniques**
   Location: Appendix 1 – Pg. 38, Section 8.II
   Comment: The section on competing needs does not appear to allow local codes and regulations for public safety and access to supersede the LID requirements. For example minimum road width requirements for emergency vehicle operation should supersede the use of roadway narrowing techniques and local pedestrian access plans and policies should supersede the use of sidewalk narrowing techniques.
   Recommendation: Expand the language in this section to allow permittees the flexibility to exclude the use of LID BMPs and techniques based on conflicting local codes and standards for public safety and access.

4. **Code and Comp Plan Updates Required for LID**
   a. **Language Referring to PSP Guidance Manual**
      Location: Preliminary Draft Permit Language – Pg 3, item iv.(1)
      Comment: The use of the phrase "…review and revision process similar to…" is very thoughtful and well conceived, allowing permittees the flexibility of adapting this process to better match individual jurisdictions organizational structure and process needs.
      Recommendation: Keep this language as written.

   b. **Comp. Plan Updates**
      Location: Preliminary Draft Permit Language – Pg 3, item iv.(1)
      Comment: The permit language in this section refers to revising "…local development-related codes, rules, standards or other enforceable documents…", but remains silent on comprehensive planning documents. However, the PSP guidebook specifically mentions updating these comprehensive planning documents (i.e. growth management plans) to require the use of LID where feasible. Requirements to modify comprehensive growth management plans, if necessary, should be addressed through Growth Management Act revisions as a part of the comprehensive plan update requirements, not as a part of stormwater municipal permit issuance.
      Recommendation: Please add clarifying language stating that comprehensive growth management plan amendments are not required under this section.

Thank you again for the opportunity to comment. Please let me know if you have any questions or need any clarification.

Sincerely,

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