

Transcript of Public Hearing Testimony

Draft Phase I and Western Washington Phase II Municipal Stormwater Permit

Vancouver, Washington

January 10, 2012

Let the record show that it is 1:40 pm on January 10th, 2012. This hearing is being held at the Washington State School for the Blind at 2214 E 13th St., Vancouver Washington. The purpose of this hearing is to receive public comments about the Draft Phase 1 and 2 Municipal Stormwater General Permits.

Letters were sent to each permittee. The EPA, the tribes and the government agencies required by the Washington Administrative Code. It was also published in the state register. It was filed on October 4th. The WSR number is 11-20-087. Emails and letters were sent to 43 interested parties, which included previous appellants, previous commenters, etc. The press release was sent out on October 19th, 2011. And, we also created a website about the draft permits, the comment period, the workshops, the public hearings. And, that is still up to this day.

The information about the workshops and draft permits were also posted and are still posted on the online public involvement calendar, found on Ecology's website. And additional notice was sent via five major LISTSERV that reach approximately 3600 people.

So, OK, when I call your name, and Kerry it is, you are up. Remember to begin with your name and affiliation for the record.

I appreciate this opportunity. Kerry Butler, American citizen. Citizen of Cowlitz County. I'm a contractor. I'm a landowner. I'm a short platter. And, I pay stormwater taxes in my area where I own property and live. As a citizen of Cowlitz County, we have a unique area there, both geologically, I feel, but also because our unincorporated urbanized area, which just abuts Longview and Kelso, is significantly small. I think we have less than 10,000 parcels, maybe less than 9,000 parcels. We're right in there; with a very small parcel number. We have a lot of large parcels of land that are in this unincorporated urbanized area that fell under the census and we adopted an ordinance – stormwater ordinance.

During the process of adopting the stormwater ordinance in Cowlitz County for the previous permit issuance, we had some challenges and some struggles. How is it going to work, how is it going to affect, and what impact is it going to have on affordable housing and continued development. We're – I would say – we're more economically depressed in our area than a lot of areas. There are areas that are harder off, but we're pretty – it's been pretty rough there. Lower housing starts, less people doing significant improvements to their property. And, so, these rules, I feel are extremely challenging. They affect affordable housing in a very negative manner. They affect land sales and development in a very negative manner.

One item that really bothers me in the new permit is elimination of the one-acre threshold. When the presentation was done earlier today, I heard that because many jurisdictions have a lower threshold than one acre, we'll just eliminate the one-acre threshold. I personally think that's wrong. Especially in areas like ours, where many of the properties that I have that are earmarked for development are $\frac{3}{4}$ acre parcels. They're larger parcels of land. They are larger parcels of land. They are 3 and 6. They are not smaller lots. So I think it's important to look at that side of it, where the one acre threshold – we agreed to it on the previous permit – we'd like to be able to maintain that. We'd like to be able to maintain that flexibility. If there are jurisdictions that want to lower that threshold, then those jurisdictions should be allowed to, but we should be allowed to keep the thresholds we want. I think it's important that some of these decisions be left up to the local area and guidance given by the Department of Ecology, but not stringent, cookie cutter "this is how you have to do it, or else" rules. We need that flexibility to look at our local issues, our local watersheds, our local water quality and how is that going to mesh with our attempt to create economic recovery in our area. So, one-acre threshold is extremely bothersome.

Another thing that bothers me is – I felt that like when we went through the original manual and the original NPDES permit for us, which was the last issuance, 'cause that was the first one that we had, I really beat it around the bush. I'm pro-development, I'm pro-land use, I'm pro moving forward when it comes to economics. I'm a capitalist. And, when we went through that and I got a very good understanding of it, I felt that when Cowlitz County adopted our stormwater ordinance, we found a good marriage between required regulations, requirements that I think are a stretch on the clean water act, requirements that I think are a stretch on our pollution control board, but I felt that we did a good job of finding some center ground that does good for our stormwater, does good for our management of our stormwater, which to me is rainwater, I don't know why it's called stormwater. It's a rainwater tax. It's rainwater. It's dealing with rainwater. But, I thought we did a real good job on that. And, I feel this new issuance and the new requirements are taking it beyond belief for me. They're taking it to a point where my dirt, my land is going to be worthless. I'm not going to be able to develop it

because these rules are going to be too stringent, too costly, unaffordable, and I don't see the benefit and I think that we're doing a good job with our critical areas ordinance, with our grading and clearing ordinances, and our stormwater ordinance of protecting the environment. I might say I'm a capitalist, but I majored in wildlife biology at the University of Montana. I read Rachel Carson's Silent Spring and believe in that stuff. I know Leopold's Sand County Almanac. I believe in conservation. I believe in preservation. I believe in protecting our environment. I think this takes it too far, and I really hope that you look at our comments from Cowlitz County when they're submitted in writing and you take into consideration that these are very, very hard on us economically. And, thank you for your time.

Thank you very much. OK, so we have – Curt is next, followed by Jeff and after that – Lehman Holder. Is Lehman here? OK, looks like that one has dropped off. After that, Susan Rasmussen. You'll be after Jeff.

Thank you. I'm Curt Henthorn. I'm here today representing the Lower Columbia Contractors' Association, which is out of Cowlitz County and our concerns are simply with the affect that I don't know if the Department of Ecology recognizes they have on contractors and the cost of doing these things and making these changes. As contractors, as Kerry said, we work with the dirt. We understand the importance of keeping our rivers clean and protecting our environment. We're not out to rape and pillage the environment. But at the same time, I just don't feel like there's any common sense in some of the things that they're asking us to do. As Mr. Butler said, we strongly disagree with eliminating one-acre threshold. The pollution that we need to be fighting – and I dunderstand that they're definition of pollution is different than my definition of pollution – but the pollution that we need to worry about is not going to come from a 7000 square foot residential lot that we're building a house on. And, to put these kinds of restrictions and limitations, and all the hoops that we need to jump through to follow through the things that they are requiring in Phase II of the stormwater act, to me, is just restrictive and prohibitive and just doesn't make sense for us to do. They kept talking about developers and developments and commercial and industrial in the presentation today, and those are the things we need to be going after. But, the person who owns a 9000 square foot house and wants to put in a 50 foot driveway and build a 1500 square foot house on there – those are not the types of issues we have, and I don't think they have any concept of how many of those lots and all the work that's going to be required to perform these hoops that they want us to jump through in order to meet the mandates that they are requiring. We don't have a problem with common sense things, but we just feel they are stepping over. Thank you.

Thank you. Jeff...

My name is Jeff Richter and I'm a citizen of Cowlitz County. I'm here today to speak on behalf of the Phase II permit, both the one-year and five-year. I'm not going to be able to go into too many specifics. I think what I'm going to talk about in more general terms. I am an employee of a logging company and also of a custom home builder. I own my own land. And, as Mr. Butler put it, on the short platter, I've started to do a lot of work in the county with developing short plats. And, I'm also an avid outdoorsman. I love to hunt and fish, hike and bike and I do consider myself somebody who wants to protect the environment – and a conversationalist in that respect. I think that I would like to thank the people who got up and presented today for the Department of Ecology. I think you did a very good job of explaining the different areas. Everytime I come to one of these types of events, I learn something new. But, it hasn't changed my belief on what is happening within our city and our county and our state governments. And, I believe that the regulations that we're seeing are really an all out attack on certain parts of our community.

It's my belief that with what we're going to be documenting and as far as comments written, there's people out there way more qualified than I. I look at the volumes of information that have come out of the Department of Ecology and it's very evident to me that there are people there who are very passionate about what you do. You take your jobs very seriously, and you should be commended for that. On the other side of that, though, is, you've got the general public – the private sector – that's out there every day trying to earn a living. I've dedicated 4 or 5 hours of my day today, and I'm thankful my employer will allow me to do this. But, this isn't something a lot of people can do. And, I think that's evident by what we're seeing in the crowd today. You don't have a lot of private sector people here. We have to depend on our city and county governments to help us navigate through the volumes of information we have. And, we have some very talented people in our area. I'm thankful for that.

The thing that strikes me, though, is the most important thing that I want to talk about, today, is the imbalance that we have. I think we have to strike a better balance between these regulations and what it's going to take to get our economy up and going and moving again. I think about the regulations that are being posed and the costs that go along with it. And, as I was sitting here today listening to the explanation and the presentation, I started thinking about – in the private sector, you don't undertake something this size until you've done a cost analysis on what it's going to take to get that done. And, I feel like what our government is doing at this point is that we've got the cart way ahead of the horse here. Because, in our county we don't have a baseline, we don't have a monitoring system, we have no way of tracking. So we don't know how well we're going to be doing. Yet, we not only have a Phase II permit, we have a draft coming right behind that.

And, I think of the burden that this is putting on our local government, where these people are going to have to learn this, they're going to have to administer it, and they're also the ones who are going to have to enforce it. When I'm thinking about all these things, I can't help but think about how are we going to fund this. I was the one who asked the question today, and it was a bit of a loaded question about where is this money coming from for the monitoring. I know where the money is coming from. It's coming from my wallet, it's coming from your wallet. We're paying those taxes to fund this, and yet we don't have the money in our counties to do this. We're struggling in Cowlitz county just like every other county is struggling right now to balance the budget and come up with a way to make government work for the people. And now, what's going to happen is we're going to put more onerous regulations on them, on those people that are going to have to do that. They're going to have to train their folks. There's a cost associated with that. There's a cost associated with what it's going to take to get those permits. And, it worries me. Moving forward, how are we going to make this work? Because nobody is going to tell us, in our county, what this is going to cost. And, it's almost like...don't worry about it. Don't worry about that stuff. Don't worry about the cost. Why worry about the cost? I've been a business owner, I've been a manager and I work for a small company right now – you have to look at your costs and you have to look at it every single day. And you have to evaluate it. And, if you don't have that income, you've got to cut back some way. I think we have a runaway freight train here that's saying – we'll worry about that stuff later. Let's just get all this stuff – let's get these regulations in place so that we can move ahead with it. And, I know that there's legislation that plays a part in that. The federal government plays a part in that. But, I go back to the founding principles of this nation. It was founded as a republic with private property rights being in the forefront of why we're here. It's an absolute...I don't want to live anywhere else in the world. And, we've got to make it work here. But what I see happening is, private property rights are being challenged, they're being tamped, they're being infringed upon. I went into the website today, and I want to just read what was on the Ecology website because it was very interesting to me and it's something that we all have to keep in mind as we move forward. And, it talked about how this department was founded.

In establishing a modern environmental agency from many parts, the legislature declared that it is a fundamental and inalienable right of the people of the state of Washington to live in a healthy and pleasant environment and to benefit from the proper development and use of its natural resources.

I believe that. But what's happened is, the pendulum has swung too far. We need to bring it back. We need to slow down. And what I'm proposing is that we have a one-year moratorium from now for any new draft revisions. We need to take that long. We need to give people in our city and county governments an opportunity to take a breath,

learn what we have to do, and say OK, we will administer this. As Mr. Butler stated, we spent a lot of time, and months and months and months working in a collaborative effort with our government to come up with a solution that we felt was going to work for not only the Department of Ecology, but for the people of the county. Let's give it a chance to work. Thank you.

So, after Susan, I don't see anyone else that's signed up to testify. Thank you Susan. And, if you'd say your name for me and your affiliation for the record.

I'm Susan Rasmussen. I'm one of two of the founding members of the Clark County Clean Water Commission. It was founded 12 years ago. I live at 30301 NE Charity Road, LaCenter, Washington. I'm here today to give my comments, though, in my personal opinions as a county citizen. My husband and I are retired dairy farmers. We're currently raising beef on 25 acres on rural north Clark county. Roughly 15 years ago, our dairy farm was put out of business due to Ecology's regulations. And they come right down to Ecology. We milked about 110 Holstein cows and raised our dairy heifer replacements. We were young farmers at the time and we were out implementing – you know, we fenced off the creek, and guttered and down spouted our barns. And, we tried to set an example. And, we borrowed \$100,000 to build retention pond for a manure system to go out and sprinkle the water and nutrients back into the soil. That was engineered to help the soil conservation. 18 months later, Ecology fined us and took away our grade A status. The retention pond was not lined. And, it was built feet from a tributary to the east fork of the Lewis River. And, if you do not have a grade A permit, you can't make a living on a dairy farm. So, our family had to make a tough choice. And, we got out of dairy farming. We could not afford to do the upgrades that Ecology demanded 18 months after we built the lagoon. Now, being a farmer, you have to be a good steward of the land. And, we take pride in doing that. And, you become accustomed to the unpredictability of mother nature, of storms and drought, or of your irrigation pump going down. But let me tell you, the unpredictability of mother nature pales in comparison to the unpredictable demands imposed on Ecology.

I would like to see more local control of the water testing for our own database. From day 1, on our water commission of 12, we have stressed that to be accountable to our citizens so our citizens know the health of the water in their own creeks and rivers in their backyards. And, I'm about absolute facts and integrity of the science that tells our local citizens about the health of their water and how to fix it. Our database is locally sourced, Students, farmers, teachers can access it and they can add to it. This program contributes to the creation of our local clean water literate society. I consider it a major contribution in creating that clean water culture that we strive to get. And, we generate our own data that's relevant to our own county. And, I want to see that retained here. I don't want to see that go up to Olympia.

I'd like to see us be more involved in our own water planning. Do our own basin area and the future of our own water here. And, I have to tell you, I don't know anybody that's been up to Ecology in your focus groups from Clark County that's made contributions. Again, I'm for local control that bubbles up under the parameters – we're talking about water here, right? – that's laid out by the state. And, I want local feedback from that. Because we are so different from the Puget Sound area. We're even different from the Cowlitz area.

What you are proposing would be a heck of a lot more costly. And, I don't see what impact, if any, it will have on cleaning the water. The flow control standards going back to pre-European settlements seems to defy common sense to me. And, doesn't seem to be based on a lot of good science, but more speculation. Adding another layer of regulations, bureaucracy, would only give negligible environmental benefits if any. We value our citizen's hard earned dollars and take pride in our budget. 12% of our budget is scheduled for administrative purposes only. And, we take a lot of pride in that. And, I feel like Ecology hasn't made the adjustments necessary to take into account other factors – the economy, unemployment, local differences, families just struggling to put a roof over their heads and to feed their families right now. They're carving our county's staff to contribute more time on court-ordered work instead of getting out there working in the field and cleaning up the water. Thank you for your time. Thanks for coming down in our area.

OK – if you'd like to state your name for the record.

My name is Art Stubbs. I live in Clark County. 6804 NE 86th Ct. over in the Green Meadows area. I am the other half of the original group that was formed by the Clark County Commissioners by our elected officials to try to write up a program to implement the clean water program that was sent down from Congress to the state that was sent down to the counties for funding.

My concern is the concern that we heard at public meetings all around the county, wherever we went. And, for one year, the clean water commission listened to the concerns of the people. Everybody wants clean water. Everybody wants clean drinking water. Nobody disputes that. The problem comes in as – how do we get it? We're here to really clean up the sins of our fathers and our grandfathers and ourselves. And, you can see that as you drive down the freeway with the little white bags that are stacked up along the road that people have thrown things out. The total ignorance, I should say, and it's not deliberate. It's just plain ignorance that we all had. Washing our cars in the street. Buying bags of fertilizer and putting it on the lawn so it'd be nice and green. Nobody ever told us that we should be concerned what happens to that stuff after we put it down. But, over the period of a year, and listening to the public, the first questions that they wanted was: If you're going to charge me regardless of what the

amount is, how do I know that that money is going to go to clean up the water? Clark County set it on \$33 per unit. Anyway, it was so much per unit for everybody in Clark County. So, the bill would be evenly distributed. Whether commercial or residential, it didn't matter, you still paid a unit price.

After the first couple of years, we held public meetings, again, all around the county. Again, the question was: How do we know the water is any cleaner today than it was last year or the year before?

That was 12 years ago. We're still getting the same questions. My question would be, if we now relinquish our authority in doing our local monitoring, that wasn't really necessary at the time, but Clark County told us to implement, and we relinquish that and send 60 or 70 thousand dollars up to the state, how do we know that the monitoring that the state is going to do is what's required by or local staff? That that information is going to get back to us? That the information that we're now gathering isn't going to continue the information that local people want.

And, I really have a concern in asking the citizens which we plan on doing shortly, to increase the amount of money they're paying for the clean water program because the amount we're getting in and the amount we're spending on capital improvements and on maintaining the capital improvements we have is pretty well evening out. And, we're going to be down very quickly. Now we're going to ask the people to donate more money and they're going to say what is it for. And, we're going to say we're going to write a check and send it up to Ecology. I really have a problem with that. I would much rather keep our money local and one of the arguments that I use in public meetings was "I believe that if we didn't implement the clean water program, we were subject to a federal fine of \$25,000 a day per outfall, of which at the time we thought we had 2000. We now know we have over 9000. And, I would rather spend \$100 locally or send \$5 back to the federal government never to be seen again. I feel the same way about sending any money up to Olympia.

If we're going to spend 460 or \$70 or \$100,000 on monitoring, I want it spent here in Clark County. I want it spent by the staff that we hire by our elected representatives that have to answer to us. I think the public has the right to go to our county commissioners and say what are you doing with my money? And, I don't think saying "We signed a check and sent it to Olympia" is going to be acceptable. Please consider it as an opt out. Thank you.

Thank you very much. OK, let me check my tape.....

OK, you're on. And, again, please remember to state your name for the record.

Tom McConathy, Vancouver. I'm not going to read all my comments. But, I'd like to make a couple comments. I was – with Art and Sue, who are on the clean water commission. I was part of the lawsuit that finally dragged Clark County kicking and screaming to comply with the clean water act. After 10 years of ignoring the clean water act, to finally to comply and to form the clean water commission and to do what they're not doing today. I, as a general comment about the S-8 monitoring requirement, I'm impressed with the effort that the Puget Sound put together with the stakeholder process a plan to regionally address the unmet needs of that basin. I see that we, too, need a stakeholder arrived at solution, but I see that the lumping of all southwest Washington into a single unit is arbitrary and artificial. We have unmet needs that lie between the city of Vancouver and Clark County with regard to Vancouver Lake. We have unmet needs between the county and now the city of Camas with regard to Clackamas Lake. These are critical waters that Ecology has elected not to address through the TMDL process. And, our community has tried to address those problems. And, they're almost insurmountable without that sort of agreement. If those agreements were incorporated into this permit, we too could accomplish some of those same regional needs that are being accomplished within the Puget Sound area. I see that perhaps other entities down here, such as Chehalis and Longview – they too have regional needs. But they're not expressed with Vancouver and Clark County. They're not expressed with Aberdeen. They're expressed with their base between Phase I and Phase II and even between entities, such as the subgroups such as the Washington State University, and diking districts and things like that. These are where those agreements need to be arrived at. And, again, with a local stakeholder process.

The clean water act is like a three-legged stool. It has the NPDES program. It has the TMDL program. And, it has standards. And, we have been – we have not done a very good job with the other two legs of the stool. This leg of the stool, we're making advancements it seems radical to some people like the contractors and to Sue and even to Art. It seems radical, this change. But, it is because we are waiting so long. And the deal is not getting the permit out in a timely manner. I also fear, looking at the next permit, this one here is supposed to go for 5 years and within it it has accomplishments which have to be accomplished within the 5 year period. It's very likely it's going to be longer. I mean, all permits have. We look at the original permit, it was almost 10 years – the second permit was 7 years. We need to have – either that we do finish on time or incorporate into this permit what is going to occur when we don't renew it on time.

I also see within this process, where we have a one-year interim permit. This is delaying the implementation of TMDLs. There are TMDLs that should be made within this permit, of which we should be able to locally be able to be implementing. And, they're not going to be implemented because of this interim permit.

Also, the cooperation in SI –C3. It describes that cooperation is supposed to be required between permittees. And, but the problem is that it's only being implemented with this permit, within the stormwater permittees. We should also be including wastewater, industrial and DOT permittees. Because, if you look at their collective impacts, they're a lot stronger than if we look at only stormwater impacts. Also, in S5-1, on anti-degradation, I see that we are monitoring stormwater outfalls that I don't see anywhere within this permit where we're actually monitoring streams themselves. Streams – the final receiving waters – is important. Bottom line of what this is all about. And, I see too little of where we're doing that. The only place we're doing it I can see is that one basin where we are supposed to do basin planning with regard to the LIDs. And, we need to have it in other places as well.

This is all I am going to do now. The rest of it's in writing. I thank you. Today was a very informative process. Thank you.

Thank you. Alright, one last chance everyone. Going once. No? Are you sure?

OK, I have a couple more things to read into the record, reminding folks where you can send your comments. You have until February 3rd, 5 pm. The hard copies posted by 5 pm. Email copies by 5 pm on the 3rd. Any comments received here today will take equal weight with written comments. Feel free to do both. Again, it will go into the same responsiveness summary that will come out as an appendix to the fact sheet when we issue the permit, which I believe the anticipated date for that will be (when do you guys anticipate?) June 2012. Boy, you guys have a lot of work to do.

OK.

Deadline, February 3rd, 2012. Additional workshops with hearings will be held January 17th at the Skagit Transit Station up in Mount Vernon. Meeting time starts at 10 and January 24th at the Renton Community Center. That's in Renton Washington starting at 9 am. We will also hold one more workshop where it's a workshop only, no hearing. That will be on January 19th in Poulsbo at 10 am at the City Council chambers. Information about those workshops can be found in the handouts or on the website. If you need those addresses, let me know. What comes next? We'll review and incorporate comments into the permit prepared "Response to Comments" and the written responses and the summary will be an appendix to the final fact sheet. The issue date – 2012 June. If you submit written comments, you will receive notice of issuance when Ecology issues the final permits. Don't hesitate to ask if you have more questions. Let the record show that this meeting is adjourned – this hearing is adjourned at 2:18 pm on January 10th, 2012. Thank you so much for coming.