January 17, 2012

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

**RE: City of Kirkland Comments**
**On Draft Western WA Phase II Municipal Stormwater Permit**

Dear Permit Coordinator:

Thank you for accepting comments on the draft revised NPDES Western WA Phase II Municipal Stormwater Permit. Kirkland agrees with many of the proposed changes and understands the need to protect our valuable surface water resources, but also does not want to over burden projects with excessive standards.

Our City's first and foremost concern is that the challenging economic conditions that we are in continue to hamper local agencies and the communities that they serve. Regulations and oversight that are perceived to be added barriers to economic recovery are not in Kirkland's interest at this time, and our request is that Ecology acknowledges this and, similar to the delays authorized in the 2011 legislative session, recommends delaying adoption of these new regulations. As the economy gains strength, regulations that serve to improve our environment will become more important to implement.

In the event that the regulations do proceed, a list of Kirkland's additional comments, citing permit section and page number, prepared by City of Kirkland staff is attached. Below are general comments relating to the proposed changes:

**Low Impact Development**

- Requiring LID on all sites requires additional soil and geotechnical information that is not currently required on smaller projects. The required soil information will be an additional expense for developers, will require additional city staff review time, and will require cities to have staff with geotechnical knowledge.

- Are LID BMPs intended to be used for 100% of runoff, or some other percent? A lower percent, like 50%, would be more realistically feasible than 100%. Kirkland has been requiring LID BMPs for 10-20% as required in the 2009 King County Surface Water Design Manual, and that has been achievable on most development projects in Kirkland.

- Clarification is needed for the "cost analysis" option for infeasibility of a vegetated roof referenced in the permit section 4.5. Jurisdictions need criteria or a threshold to review a cost analysis.

**Inspections of Stormwater Treatment and Flow Control Facilities**

Clarification is needed regarding the requirement to inspect and clean all conveyance systems. Is there a minimum pipe diameter (like 12"), or minimum length, or only conveyance on a road with a specific ADT level, or some other threshold?

**Vesting**

The vesting language in the permit is problematic, and may conflict with State vesting laws.

**One-Acre Threshold**

Proposing to eliminate the 1-acre threshold requires a significant increase in paperwork that may not be reasonable for small sites. The lower threshold will likely translate to higher development costs for smaller projects and increased staff time for reviewing and inspecting smaller projects.

**Increased Liability**

We are concerned the revised permit stormwater codes are controlling land use instead of the GMA or other land use regulation.

**Cost Tracking**

Further guidance is needed on the cost-tracking requirement. This is a potentially time consuming process, and it is unclear how Ecology is using the information that was gathered during the first permit cycle. Knowing how the information is used would help jurisdictions gather and share the information more efficiently.

As stated above, the full list of comments from the City of Kirkland is attached. If you have any questions regarding our comments, please contact Jenny Gaus, Environmental Services Supervisor, at (425) 587-3850. Thank you again for accepting our comments.

Sincerely,
Kirkland City Council

by Joan McBride, Mayor

Attachment: Kirkland Staff Comments on Draft WW Phase II Municipal Stormwater Permit

**City of Kirkland Comments on the Western WA Phase II Municipal Stormwater Permit, 01/2012**

**General Comments**

| | | |
|---|---|---|
| 1 | | The Stormwater Manual for Western Washington has not gone through a formal rulemaking process. As a result, it has not had the review of a science panel. Appendix 1 essentially requires city to adopt this manual, so it should go through the rulemaking process. |
| 2 | | This permit includes surface water requirements for new and re-development, but does not require retro-fitting of existing development. New development cannot be expected to repair an entire watershed. |

**Section-Specific Comments**

| Section Citation | Title | Page Number | Comment |
|---|---|---|---|
| S2B.2 | Authorized Discharges | 12 | "The discharge <u>occurred during</u> emergency fire fighting activities…" In a large MS4, discharge <u>from</u> the MS4 may occur some time after emergency fire fighting activities have ceased. Having the previous language made it clear that discharges caused by emergency fire-fighting are in compliance. This altered language implies that there is some time limit or other type of limit on when firefighting discharges are in compliance and when they are not. The fact sheet states that the intent is to require control and cleanup of materials discharged during cleanup activities associated with a fire, but there is no definition of what is cleanup and what constitutes the actual fire. Seems like this brings greater liability without clear instruction as to what is the desired outcome. We agree with the goal of preventing discharge from fire-fighting activities from the MS4 as much as possible, but this language does not clarify expectations. |
| S5.A.1 | Stormwater Management Program for Cities, Towns and Counties | 16 | Include the acronym "SWMP" in the section title or define it in this section (Stormwater Management Program). |
| S5.A.3.a | Stormwater Management Program for Cities, Towns and Counties | 17 | Further guidance is needed on cost-tracking. This is a potentially time-consuming process, and it is unclear how Ecology is using the information that was gathered during the first permit cycle. Knowing how the information is used would help jurisdictions gather and share the information more efficiently. |
| S5A.5.b | Stormwater Management Program for Cities, Towns and Counties | 18 | Clarify whether the organizational chart should include names of individuals or position titles. |

| | | | |
|---|---|---|---|
| S5.C.1.a.iii | Public Education and Outreach | 19 | Add LID facility maintenance |
| S5.C.1.c | Public Education and Outreach | 20 | Requiring evaluation of a "NEW targeted audience in at least one NEW subject area", could pose a problem in established cities that are covering most of the targeted audiences. Support the allowance for regional evaluation. |
| S5.C.1.c | Public Education and Outreach | 20 | Recommend changing language to "understanding and/or adoption of targeted behaviors." |
| S5.C.2.a | Public Involvement | 20 | What are applicable State public noticing requirements with regards to this permit? |
| S5.C.3 | Illicit Discharge Detection and Elimination | 21 | Consider adding the phrase "designed to" so the first sentence reads "The SWMP shall include an ongoing program **designed to** identify, detect, and prevent…." The MS4 jurisdiction can't be held accountable for preventing all illicit discharges - it can only be held accountable for putting together a program that has the intent of doing this. |
| S5.C.3.a.iii | Illicit Discharge Detection and Elimination | 21 | The fact sheet states the intent is for Permittees to map in greater detail areas where the risk of harm is greater, but this is not reflected in the Permit requirements. |
| S5.C.3.a.v | Illicit Discharge Detection and Elimination | 22 | It does not seem appropriate to include suggestions (i.e. items that are not required) in the permit language. Although the goal of pro-active business visits is laudable, these should either be required, or should not be discussed in the Permit. The same applies to private maintenance inspections. |
| S5.C.3.c.i | Illicit Discharge Detection and | 25 | Strongly support the increased flexibility for pro-active screening for detection of illicit |
| S5.C.3.c.i | Illicit Discharge Detection and Elimination | 25 | Clarify "conveyance" to prioritize (for example, conveyance 12" diameter or greater, or other criteria. |
| S5.C.3.c.i | Illicit Discharge Detection and Elimination | 25 | What does it mean to "... field screening for at least 40% of the MS4 within the Permittee's coverage area…"? Does 40% of the MS4 apply to conveyances? If so, how? |
| S5.C.3.c.iii | Illicit Discharge Detection and Elimination | 26 | The training requirements are vague. It is hard to document when the expectation is not stated. Perhaps change this to some sort of certification on the part of the jurisdiction that staff are properly trained and educated based on standards of care for the profession? |
| S5.C.3.c.iv | Illicit Discharge Detection and Elimination | 26 | the fact sheet states this section is retained in the IDDE portion because the intent is to require education regarding the dangers and importance of preventing illicit discharges. This seems inconsistent with flexibilty provided regarding other education topics. |

| | | | |
|---|---|---|---|
| S5.C.4 | Controlling Runoff from New Development Redevelopment and Construction Sites | 29 | In proposing to eliminate the 1-acre threshold, Ecology needs to recognize the paperwork burden currently required of large sites is unreasonable for small sites. Specifically, the current requirements include development of a Stormwater Pollution Prevention Plan for sites over an acre. Erosion control plans are already required for most sites in Kirkland, but the SWPPP is a large document, much of which may not be practical for small sites. |
| S5.C.4.a | Controlling Runoff from New Development Redevelopment and Construction Sites | 29 | We are concerned that the provision that "….projects approved prior to January 1, 2016, which have not started construction by January 1, 2021" may conflict with State vesting laws. |
| S5.C.4.a | Controlling Runoff from New Development Redevelopment and Construction Sites | 29 | Definition of "started construction" is fuzzy - this is discussed in the fact sheet, but needs to be further clarified in the permit itself. Does, for example, placement of erosion control fencing count as starting construction? |
| S5.C.4.g | Controlling Runoff from New Development Redevelopment and Construction Sites | 34 | This section requires that LID principles be incorporated into local codes. This is essentially controlling land use via stormwater requirements. |
| S5.C.4.g | Controlling Runoff from New Development Redevelopment and Construction Sites | 34 | Timeline is tight for implementation of the findings of the LID code review, especially for larger jurisdictions. It often takes more time to alter land use codes that impact LID than it does to alter stormwater regulations. |
| S5.C.4.h | Controlling Runoff from New Development Redevelopment and Construction Sites | 35 | Watershed planning as required in the Phase I Permit will run into significant conflicts with the Growth Management Act, regardless of what jurisdiction performs the analysis. This puts jurisdictions in the position of having to decide whether to meet GMA goals or Permit requirements. |
| S5.C.5.c | Municipal Operations and Maintenance | 36 | spot checks should be eliminated from the Permit if no definition of the event size at which they are required is included. This is extremely vague, and cannot be checked. |
| S5.C.5.d.ii | Municipal Operations and Maintenance | 37 | Clarify conveyance systems to be cleaned, like pipe diameter 12" and greater or other criteria. |
| S5.C.5.d.ii | Municipal Operations and Maintenance | 37 | Instead of "clean all conveyance systems", change to "inspect all conveyance systems and clean as needed." |

| | | | |
|---|---|---|---|
| Appendix 1 | 3.1 Thresholds - Figure 3.2 | 9 | Clarify vegetation. You are removing "native" from vegetation, so does that mean any vegetation, including grass or invasive species converted to lawn / pasture / landscape would be considered PGPS? |
| Appendix 1 | 4.1 Minimum Req #1: Preparation of Stormwater Site Plans | 13 | "...site-appropriate development principles to retain native vegetation and minimize impervious surface". What criteria does a city use when reviewing if an applicant has done this? What enforcement does a city have to say the applicant did not do this? |
| Appendix 1 | 4.2.SWPP, 12.d. | 21 | Typo - Change "on" to "one" in the sentence "The CESCL …(sites less than **on** acre) must…". |
| Appendix 1 | 4.5 Minimum Req #5: On-site Stormwater Management | 25 | Under Mandatory List #1, change "BMP's" in the first sentence to "BMPs". |
| Appendix 1 | 4.5 Minimum Req #5: On-site Stormwater Management | 25 | Are LID BMPs supposed to be used for 100% of runoff, or some other percent? A lower percent, like 50%, would be more realistically feasible than 100%. |
| Appendix 1 | 4.5 Minimum Req #5: On-site Stormwater Management | 25 | Requiring stormwater LID on all projects requires additional soil and geotechnical information that is not currently required for small projects. The required soil information will be an additional expense for developers, will require additional city staff review time, and will require cities to have staff with geotechnical knowledge. |
| Appendix 1 | 4.5 Minimum Req #5: On-site Stormwater Management | 26 | Under Mandatory List #2, change "BMP's" to "BMPs" in the following places: in the first sentence, and both items 3 "Bioretention BMPs" under "roofs" and "other hard surfaces". |
| Appendix 1 | 4.5 Minimum Req #5: On-site Stormwater Management | 26 | Clarify the "cost analysis" necessary to claim infeasibility of a vegetated roof. For example, if the cost analysis shows the vegetated roof will cost 50% or more than a traditional roof, then it is infeasible. The city needs criteria or a threshold to review a cost analysis. |
| Appendix 1 | 4.6 Minimum Req #6: Runoff Treatment | 27 | Typo in first bullet point, change acronym from "PGIS" to "PGHS" for pollution generating hard surface. |
| Appendix 1 | 8.I.A. | 37 | change "BMP's" in the first sentence to "BMPs". |
| Appendix 1 | 8.I.C. | 40 | Include and clarify the "cost analysis" for infeasibility of a vegetated roof referenced in section 4.5 (Min Req #5). For example, if the cost analysis shows the vegetated roof will cost 50% or more than a traditional roof, then it is infeasible. The city needs criteria or a threshold to review a cost analysis. |