



MUCKLESHOOT INDIAN TRIBE
Fisheries Division

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February 3, 2012

Ms. Carrie Graul and Ms. Harriet Beale
WA Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7696

RE: 2012 Draft Municipal Stormwater General Permits, Phase I and Phase II Municipalities

Dear Ms. Graul and Ms. Beale:

We have reviewed the Draft Phase I and Western Washington Phase II Municipal Stormwater General Permits and offer the following comments in the interest of protecting and restoring the Muckleshoot Indian Tribe's treaty-protected resources.

Tribal notification and coordination issues

Both the Phase I and II draft permits should be revised to include more than the very limited existing language regarding coordination with federally recognized Indian Tribes. Coordination is essential for both on-reservation and off-reservation treaty-protected water and fisheries resources. It is important that affected Indian Tribes automatically be sent copies of all maps generated under this permit by the permittees, including secondary permittees. In addition, Ecology and the Permittees should coordinate with the affected Indian Tribes regarding the Regional Stormwater Monitoring Program (RSMP) and the locations chosen for monitoring or the locations chosen by Permittees that choose to monitor outside of the RSMP.

Similarly, the fact sheets and draft permits do not specify how affected Indian Tribes will be notified when potential permittees apply for coverage under these two general permits. Specifically, we request that permit applications in WRIA 8, 9, and 10 be made available to the Muckleshoot Indian Tribe Fisheries Division for review and comment prior to Ecology approval.

MS4 systems operated by federally recognized tribes within Indian Country Lands should be excluded specifically from both the Phase I and II permits, as these activities are already regulated by US EPA as applicable. Indian Country Lands should be added to the definition section for both permits.

Permittees needing coverage

Clarification is needed to indicate whether special purpose districts in Snohomish, King, and Pierce Counties are required to seek coverage under the Phase II permit. There are existing Drainage Districts, Sewer and Water Utilities, etc., in all three of these counties that are not listed on page 10 in S.D.2a.iii.

Compliance with Washington State's water quality standards

We are concerned that the draft Phase I and II permits do not include numeric effluent limitations to be applied to the end of the pipe. Other general NPDES permits in the State of Washington are required to meet water quality standards at the end of pipe. These final Phase I and II stormwater permits should also require water quality standards to be met at the end of stormwater pipes discharging to surface waters, at least for some parameters, such as Total Suspended Solids (TSS); other parameters should then be added in the next round of reissuing these stormwater permits as more monitoring data become available. This approach would close the loop with data gathered from the Source Identification and Diagnostic Monitoring Information required under S.8.E and advance the future permits to meeting water quality standards.

Per S.4.F, the draft permits conditions do not ensure water quality violations will be remedied. Instead, we recommend that once a violation has been reported by a permittee to Ecology and the affected Indian Tribes, monitoring requirements should be initiated at the location of the violation for a specific period of time. Once there is sufficient information to conclude water quality standards are no longer being violated, then these monitoring requirements could be discontinued in the related area.

Stormwater Control Measures, Effectiveness, and Permittee discretion

The draft Phase I and II permits grant excessive discretion to permittees to design stormwater control measures and to evaluate their effectiveness. Instead, we recommend that the draft permits be modified to define clear performance standards and targets for stormwater control measures and assign Ecology a clear role in evaluating the design and effectiveness of these measures. These recommendations would also be useful to demonstrate compliance with the State's water quality standards and the Clean Water Act.

Low Impact Development measures and Best Management Practices

The draft permits do not require essential components for low impact development measures and best management practices. Specifically, S5.C.5b.ii. in the Phase I permit and S5.C.4.g.ii in the Phase II permit, along with the minimum technical requirements in Appendix 1 for both permits, do not include clear targets and performance measures for retaining native vegetation, percent impervious area limits, and other best management practices. As noted in the Puget Sound Partnership's LID Code Development Guidance, "*native vegetation retention is probably the least expensive way to meet LID stormwater goals because existing natural site amenities may be used to disperse, store and infiltrate stormwater.*" Both permits should provide clear targets and performance measures for retaining native vegetation and impervious area limits (at least effective impervious surface areas). Ecology should also specify how it will evaluate and enforce this section with these recommended changes.

We support the draft Phase II permit's requirement that stormwater be regulated from sites less than 1 acre and ask that the 1-acre project size exemption be removed as proposed.

Total Maximum Daily Loads (TMDLs)

As drafted, both permits would result in a delay of the implementation of total maximum daily loads (TMDLs) pollution control plans. The permits do not require municipalities to implement measures to comply with TMDLs that are issued after the issuance of these stormwater permits. Rather, newly completed TMDLs will not need to be implemented until the next round of reissuance of these stormwater permits, which at the earliest is 2018. This is an unacceptable delay to address water quality impairments.

We recommend that the draft permits require the permittees to comply with TMDLs once a specific TMDL is completed. The permit could include general language defining Ecology's responsibility to notify a permittee once a TMDL is completed within its jurisdiction. TMDL compliance measures may then be implemented on a timeline starting with this notification.

Monitoring Requirements and Objectives

The draft permits' monitoring requirements and objectives are not, but should be clearly defined. As written, they do not identify a specific regional stormwater monitoring program listed as one of two options for permittees to meet the monitoring requirements. If the previous Stormwater Group Recommendations are proposed as the Regional Stormwater Monitoring Program (RSMP), then Ecology should provide a reference (i.e. agency publication number) for the RSMP in the permit and an overall explanation in the factsheet of what the RSMP entails. Alternatively, if the RSMP is a draft document, this should be discussed in the Fact Sheet with timeframes and comment periods documented for future review.

Another concern is that the permits and factsheets do not provide a basis for how either option 1 or option 2 for the stormwater monitoring requirements will provide Ecology with representative monitoring results to evaluate how well the stormwater management program (SWMP) is working for each municipality. We recommend that the Permit factsheets provide the basis for how either option 1 or option 2 for monitoring requirements will provide Ecology with representative monitoring results to evaluate how well the stormwater management program (SWMP) is working for each municipality.

We appreciate the opportunity to review these draft permits and are available to meet to discuss these comments further. Please call me at (253) 876-3116 to set up a meeting.

Sincerely,



Karen Walter
Watersheds and Land Use Team Leader