

***Transcript of Public Hearing Testimony***  
***Draft Phase I and Western Washington Phase II***  
***Municipal Stormwater Permits***  
***Renton, Washington***  
***January 24, 2012***

Let the record show that it is 11:37 on Tuesday, January 24, 2012. This hearing is being held at the Renton Community Center at 715 Maple Valley Highway, Renton, WA. The purpose of the hearing is to receive public comments about the draft Phase I and II Municipal Stormwater General Permits. Letters were sent to each permittee, the EPA, the tribes, and the government agencies required by Washington Administrative code. Notice of the hearing and the comment period was filed at the state register on October 4, 2011. And the state register number is 11-20-087. Email and letters were sent out to 43 interested parties, including previous appellants and previous commenters. Ecology created a website about the draft permit's comment period, the workshops, and the public hearings and issued a press release on October 19<sup>th</sup>. Information about the workshops and public hearing for the draft permits is also listed on Ecology's online public involvement calendar. Additionally, notice was sent to five major list serves, reaching a total of about 3600 people.

When I call your name, go ahead and step up to the front. So Glenn, you are up. And again, remember to state your name and address for the record. Thank you, and please be careful of the cords. Maybe, come around this way next time.

I'm Glenn Cutler. I'm the Director of Public Works and Utilities for the City of Port Angeles. Our place of employment is 321 East 5<sup>th</sup> Street, Port Angeles, WA, 98362. I'm commenting on the Phase II Permit for the 5 year period.

First of all, thank you for providing the opportunity to make some comments. Terri Partch has been following the stormwater engineer for the City of Port Angeles as well. We are the only city on the Olympic Peninsula, I believe, that is covered by NPDES Phase II permit. My comments are specifically associated that Clallam County to be included, particularly the urban growth area. But before I get into that specifically, I want to thank Ecology for providing Capacity Grant Funds to us. It has made a significant difference in our programming and getting

items done on our first permit that we are currently working on. The citizens of Port Angeles have put forth significant amount of effort to comply with the current Phase II permit. It has been a significant financial impact on our citizens as well. In part, because we are also a combined sewer overflow community, and we are spending about \$40,000,000 on that over the next few years. We'll be paying that off over a 20 plus year period.

My comments specifically are the, concerning the consideration of inclusion of Clallam County, particularly the urban growth areas surrounding the community. The Growth and Management Act specifically anticipated urban growth areas to be absorbed into cities in the future, and it is better now to start planning for stormwater requirements at this particular point in the stage versus it be fully developed and incorporated into the city.

The other thing I would like to point out, that I am not sure if it is under consideration or not, but, a watershed basin planning is extremely important. And I want to refer to a map that we put together.

I want to try and just give you a little bit of a layout right now. The Straits of Juan de Fuca are up here. This is to the north, looking at Vancouver Island. This white area that I am pointing to, and I know it will be difficult to get on your tape recording, is actually the City of Port Angeles. This gray area that is bounded by the gold stripe is the urban growth areas to the east, and then there is a section to the west as well. And then, to the South of us, we've shown the various watershed basins, and the various creeks that then feed into the city. It is very difficult for us to control our destiny in the city for stormwater if we are not controlling the basins that feed into it. And the other thing that we have shown on here as a green line in the national park. We are obviously not concerned with the national park, this is very little development that is done in that area, but between the national park and the city there is great potential for developing those areas that are impacting our ability to meet stormwater requirements. So we would request that you look into that further and include Clallam County in that, and we certainly desire to work with them cooperatively as neighboring jurisdictions in that area. And we that it would be a benefit to the environment if that was done. Thank you very much for the opportunity.

Okay, So next we have Terri. Followed by Kate and then Heather.

Hi, I'm Terri Partch. I am the Stormwater Engineer for the city of Port Angeles. My place of employment is 321 East 5<sup>th</sup> Street, Port Angeles, WA, 98363. I'm commenting on the Phase II five-year permit. The city is very concerned about the definition of the illicit discharge. I note

that the language says, "Illicit discharge include, but are not limited to, spills, discharges associated with illicit connections, and infiltration and exfiltration of non-stormwater that takes place in pipe bedding." For Jurisdictions that happen to have their own sewer included in their jurisdictions that they control, the sewer, the wastewater treatment requirements are that, that the city address inflow and infiltration into our wastewater system. This is covered under the wastewater NPDES Permit and requires that we address that, I think it's 2 percent or 5 percent of the facilities that leak each year. The city is concerned that if that inflow and infiltration out of our wastewater lines is, is covered then as an illicit discharge under our stormwater permit that we may be required to address that sooner and in a greater percentage than would be required through our wastewater industrial, our NPDES permit. So really we have double coverage of that particular pollution issue. Both from our wastewater NPDES Permit and then potentially from our stormwater NPDES permit. We would request, as the city, that that part of the illicit discharge definition be removed. Again, we believe it has potential for double coverage and increases the liability under our permit. Thank you.

~Okay, next is Kate. Again, followed by Heather and after that is Don? Did you go?

(Don: I will decline.)

~Okay.

So then, after that will be Amy, oh, I can't see the last name. Is Amy still here?

(Amy: Waterman)

~Okay, Waterman. Wonderful.

My name is Kate Flaumer, I live in Seattle at 925 12<sup>th</sup> Avenue East on Capitol Hill. I also spent a lot of time in Snoqualmie and the North Bend area, and also on Vashon Island. I am speaking to, both the five year permits, number one and number two. And I just want to ask a question of the people here. If you're here on your own time, would you raise your hand? There are four

of us here who aren't paid to be here. And I make that comment on all of the, this public process. It's a little bit skewed because it's during working hours and most of us can't take time off from work to come here and sort of represent Puget Sound and represent the water. I do work with Puget Soundkeeper Alliance, and we were one of the organizations that brought the suite to a Pollution Control Hearings Board, and led to this legal requirement that LID be implemented where feasible. We've been part of the working groups. I haven't personally, and so I am speaking at some distance from the issue. But part of the working groups do work on the stormwater monitoring group, and also do work on defining feasibility in conjunction with Ecology. And I would say that, I guess that's one of my comments, that feasibility still is not defined. And I realize that it's a huge burden, but when we talked about the ability of jurisdictions to enact their codes and to revise their codes, I just want to mention that I have two friends who are developers who have tried to implement Low Impact Development in two different jurisdictions. One, a very self-proud jurisdiction, first, of the first category, and one of the second category. And, in both cases it's been impossible. Road setbacks, road widths, sidewalks on both sides, there are constituencies who will tell you that those are all necessary local, local laws and ordinances. Acreage, zoning, if those things are out, outs exits on the road to LID, and they are allowed to stand in your local codes, or if the Fire Marshalls can come in and say – oh we know, Olympia's nearer their roads and we still get there or there, but you can't do it here, you can't do it in Bothell, oh no. You're going to have that kind of a response. And if that's going to lead to unfeasibility, non-feasibility, because Ecology hasn't defined it, we've all been going around in circles for four years. So, I'm very concerned about the lack of definition of feasibility and of the jurisdictions on whom this falls to try to implement it. I do want to praise Ecology for having abolished the one-acre limit. And second what was said about Port Angeles, it is really important in the areas that are developing that LID be implemented there, because that is where you really have the opportunity to maintain vegetation. In Seattle there isn't that much development/re-development and there isn't that much opportunity to maintain vegetation, which is critical if we're going to get there. So speaking in the general interest that we all share, and I think everyone in this room shares, Puget Sound is truly endangered. Puget Sound has lots of earmarks that you've all heard about just how endangered it is, and if we just can't economically save it we ought to give up now, but the economy and Puget Sound have to exist because Puget Sound is key to our economy and so we're gonna have to make those sacrifices. Thanks.

~Alright, Thank you.

Good morning. My name is Heather Trim and I'm Policy Director of People for Puget Sound, 911 Western Avenue, Suite 580, Seattle, 98104. And I'd like to echo the comments that Kate made that talks about the importance of these permits for the health of Puget Sound. And I want to talk to some specific points with regard to the Phase I, Phase II five-year permits, and we will be submitting jointly with Puget Soundkeeper Alliance very detailed comments. So today I'm just talking about a few of the items that we're concerned about in the permit. First, the new standards in the permit, especially with Phase I are not fully embracing crucial LID techniques. And notably the protection of vegetation on site, and the reduction of impervious surfaces which are mentioned in passing but the language is, at this point, in the permit still vague, and potentially permissive.

Second, we're concerned about the strong, the lack of strong requirements to consider water re-use in green roofs in particular. So it's leaving, primarily for many sites, rain-gardens and pervious pavement as the primary LID techniques. And without a full range of application of LID tools, we think that these alone will not make the difference that is needed.

As Kate mentioned, the draft permit is, contains very broad feasibility and competing need exemptions. We do support flexibility, that's incredibly important to the municipalities and that's what we've heard. And we don't actually think that the permit language is written right now even meets some of the concerns that the municipalities have with regard to this, but we'd like to see the exemptions be shifted around in terms of the way they're written right now.

Right now if the permittee misses their deadlines they are, the way it's written in the permit, they do not need to submit an explanation of what they're going to do to comply, why the violation occurred, and what they're going to do to come into compliance. And this is not the way wastewater NPDES permits are written right now, there's quite a procedure that is written into the permit that is for some reason missing in the stormwater permits.

We're also concerned that Ecology is not fully expanding the coverage for the Phase II permit which it has ample legal discretion to do.

For the SWMP as was mentioned in my question earlier in this morning, we are concerned about public participation. And having worked with King County and city of Seattle specifically on how that has gone. I think there are better ways and I think King County did implement a better way to do public participation through their web page and video and that kind of thing and made it very believable and understandable to the general public. So I'm concerned to hear from Ecology *well, it hasn't worked so well, therefore we're going to take it out*. Rather, let's go to a better process for doing public participation where people can actually give actual formal feedback to the jurisdictions, and then that's reported to Ecology about what they think about

what their jurisdiction's doing for stormwater for the coming year or years. So the language as written right now is not strong enough.

Furthermore, we are concerned about the lengthening of time by which LID is required within the permits. The jurisdictions Phase I have known since 2008, that LID would be required, and many of them are, in fact, doing quite a good job on LID already in various ways, various levels. And so we think that the deadlines are too generous both for the Phase I and for the Phase II.

We are, as Kate mentioned, very pleased that the one-acre threshold has been removed. There are many sites around Puget Sound that have, in the past five years, in the past cycle, been below that one-acre threshold and we're continuing to see degradation of the health of Puget Sound. This is a really strong improvement in the program.

We are concerned that the retrofitting requirements in the permit appear to be even weaker in the new proposed permit than in the existing permit. And this does not meet the findings from the hearings board.

We are also concerned about the source control program. It's puzzling that Ecology has chosen to eliminate some of the SWMP control components in this current draft.

With regard to the public education program as was discussed a little bit this morning, it's not clear right now, and maybe this is the intent of Ecology, that all of the Phase I jurisdictions, for example, put out to the same audience with the same behavior. Rather than seven behaviors, seven audiences; and given the amount of money being put into this, that's concerning, that we not be doing a more comprehensive effort on our education. And, furthermore, that Ecology is not playing a role to help determine that there is not any accountability as to, these are the most important behaviors to address. For because they will have, that will have, the biggest benefit for the environment. Right now there's no performance level there for why one will be picked versus another.

And the other concern we have with regard to that is the tracking and record keeping for the education piece of the permit.

We also are concerned that the TMDLs are written in such a way, currently in the appendix of the permit, so that if a TMDL comes after the permit is issued and it won't apply within the permit. And that again seems to be a legal issue that we're concerned about.

And with regard to monitoring we're very pleased that we now have a much stronger regional monitoring program that is written into the permit and also being used. Not just for permits, but in all the regional monitoring with regard to the health of Puget Sound. People Free Sound and the other environmental groups though are very concerned that the amount of money that

is going to be pooled together is not adequate. And as we were going through the committee process, we kept hearing *well we need to cut that back, we'll need to cut that back*, and that's not okay. If we're going to a new regime, it's going to result in much better data that's not going to just go on the shelf, but, and it's going to save each individual jurisdiction quite a bit of money over what they would've had to do if they were just doing regular monitoring, but right now there's a huge gap between those two levels of funding.

And that would be it for now.

Thank you so much.

Okay, next is Amy. Followed by Ann. And then I'll [sounds like: look it] up to the audience for people who've changed their mind.

Hi, my name is Amy Waterman, I'm representing Sustainable Seattle at 1402 3<sup>rd</sup> Avenue, Seattle, Suite 430, 98101

I'm representing Sustainable Seattle non-profit in Seattle obviously, and we're interested in this project because we've been installing rain gardens in businesses and organizations in Seattle. And we have an on-going interest in green infrastructure, promoting green infrastructure, active participants in a group called the green infrastructure group, represents a group of organizations and non-profits.

We appreciate the complexity of regulating stormwater and appreciate the efforts of DOE in developing this new permit.

Just have a couple of comments.

One specifically addresses what Heather mentioned, the section S5C4 that talks about the public participation requirement summarizing it as the need to include an opportunity for public involvement seems very, very vague. And it seems like it would be helpful to for DOE to designate some kind of minimum requirements for, what does that mean, how is that information, how to get the information, minimum of time, people to respond, and then a process for how all this, what happens with those comments. Otherwise it's not very useful.

The other specific comment addresses in appendix 1 where the mandatory list of practices are being discussed. The confusing section about commercial buildings, requiring either doing a vegetative roof or routing to the permeable pavement as addressed earlier. Or, just regular cost analysis decision that says the vegetative roof is just too expensive. I was confused by that

because it circumvented the other option that seemed routing to permeable payment. And also precluded other options. Just seemed really limited. And what happened, it seems they need to lose earmark explicit at what happens with this other option of adding to the road payment (or perhaps said pavement).

Other than that, my general comment is just that in reading through the, I'm not an engineer and I'm not a municipal permit person, but in reading through it, the general impression I got it's going to be a little bit too easy for developers to continue the status quo to put it in traditional development. And a little bit of an onus on them to prove that LID will work instead of really being a full incentive for doing LID.

So, That's all.

~Thank you.

My name is Ann Aagaard, and I'm here to represent the League of Women Voters of Washington. I am the Shoreline and Wetlands Chair for the League. I live at 16524 104<sup>th</sup> NE, in Bothell.

And one of my comments will specifically reference an issue I'm am familiar with.

The League of Women Voter's positions support strict enforcement of laws affecting water quality and quantity management in Washington State. And based on that position, we are here to testify from these do Phase II Stormwater regs in particular. We will send in written comments so I'm really addressing only two specific things today.

One is the feasibility requirement, which is, you have heard before, we feel it is unduly broad, and accommodates many competing needs and exemptions. It appears from our reading that if you simply have an area in your comprehensive plan that would not accommodate an LID for some reason, you could be considered exempt. It simply needs to be strengthened and much clearer.

The other comment I have relates to one of the last statements that was made by the speaker, I believe his name is Ed. When he was discussing the different changes in the Phase II and Phase I permits, but particularly the Phase II, and the LID requirements.

So this is both a comment and a question for clarification. I did read the section in the Attachment 1 that related to flow exempt streams, and I'm particularly concerned about that because the Sammamish River, which is basically right down the hill from where I live, and it goes through the city of Bothell, I know there are numbers of projects that are considered flow-

exempt into the Sammamish. And so I wasn't clear exactly what Ed was referring to, but I thought this was what he was saying that there really had not been a determination as to how these flow-exempt, flow requirements in streams would be accommodated in the rank. So I would appreciate both clarification and making my comment regarding that, assuming they are somehow exempt still, that were exempt, for example, from the LID requirements. Then the concern switches over, in particular to rather than just exemption, but to the regional monitoring and its effectiveness. If this regional monitoring, which would be a perfect place in this more urbanized area with some very important feeder streams, then how is the regional monitoring going to be truly effective if you're having exemptions because of these flow-exempt streams.

So thank you for putting this time together, and for all of us, and in general, we certainly support many good changes within this permit.

Thank you.

~Okay, I believe Ann was the last person signed up to testify. I'll take this moment now to open it up to anyone who may have come in late. Yes sir, please remember to state your name, and address for the record.

[long pause as the new speaker gets set to testify]

Hi, thank you. I'm Bill Derry, I am president of People for Puget Sound. I'm a career stormwater manager and consultant also. And want to speak today – although now retired – I want to speak today about primarily the requirements for new development, for redevelopment. I appreciate the earlier comments. I think redevelopment is still not anything near as strong as it should be with the requirements. But most of my comments are going to be confined to the requirements for LID. The Appendix 1, minimum technical requirements for the new development, redevelopment. We continue to base our stormwater program on the faulty assumptions similar for everything that comes out of it. It falls a little short. The faulty assumptions being that there is runoff in the forest. And so, that's the premise of all of our engineering statements. Let's hope you don't wind up with a zero discharge statement. So what of that, that's a flaw we were trying to protect. Stream flows, and stream fish habitat.

The primary issues I see are two-fold. One, we allow developers to make a site infeasible. There is no prevention from them stripping all the vegetation, stripping all of the top soil, exporting it all, excavating down to really close to the water table, then saying hmm, there's not enough

separation for me to infiltrate. It would make far more sense to say start at the initial top of the soil level. And if you're going to strip it away, replace it, and then determine your separation from ground water and infiltration surfaces.

The facts we know from the science that when we lose about a third of the forest, we create less than 10% impervious surface, we lose fish. Period. So, the bottom line, in front of the bottom line question in my mind is, will this permit adequately protect endangered species, and I would say no. Right from the very beginning it (...inaudible) intent.

So, on into individual exceptions, the thresholds for exemptions allow two possibly three houses without any water quality treatment, or flow control. There's, as I said, there's a more requirement to preserve soils or vegetation, which allows developers to maximize every square foot of development and then say LID isn't feasible. The list of BMPs considered, is a good list, except it ends with the phrase where considered feasible by the developer. This essentially makes the list voluntary. And that phrase should not be in there.

Bioretention is not required Section 4.5, mandatory list number 2. (...inaudible) surfaces.

Bioretention is not required if the infiltration rate is less than 3 inches an hour. The original research done on this in the original manual determined that 2 inches an hour was fine. Although it's not at all clear to me why that was made more restrictive.

Phosphorus treatment is voluntary for local developments to determine whether they want it or not. And I don't understand that myself. We're recognizing now that both phosphorus and nitrogen are limiting factors in Puget Sound. It was always thought it was just fresh waters. But we're getting to the point where that's an issue everywhere.

The exemptions for arterial or collector high use in industrial activity were not supported by the science. This seems to be simply a cave-in to certain interest groups. Infiltration in impervious pavement is certainly feasible in those areas. Page 38, third paragraph importing infiltration land should not be an option, it should be required, if needed.

Page 38, fifth paragraph. A developer should be required to address sources of pollution coming out of the site. and stabilize it or divert, rather than determining that that makes permeable pavements not feasible.

I will skip to the last comment that a roof design that has a slope greater than 20 percent makes rooftop infiltration infeasible. Why not require instead not to put a roof on that's more than 20 percent. Again, nearly every single LID requirement can be exempted out by the developer. So, my comment on the new permit and manual is that LID remains voluntary.

Thank you.

~Thank you.

One last opportunity for anyone else to testify.

This might be a good time to note that written comments, email comments, or public testimony comments are all given the same weight, so it doesn't matter if you don't like to testify in public, you can still submit your comments by February 3<sup>rd</sup> at 5 pm.

I do have a couple more things to read into the record and we will close the hearing. And if you still have some questions you want answers for today, you can grab one of the Ecology staff here.

Please do remember February 3<sup>rd</sup>, 5 p.m. get your comments postmarked or in by email. You can send all those hard-copy comments to the Municipal Permit Comments at the Washington State Department of Ecology, I won't do the address, it's on the handout out front.

Electronically as well, the email address on the handout out front. And information on further workshops, also on our website, that address also on that handout. The official record for this permit public comment period will include all the testimony received today and all the other public hearings, any emails or comments received to written, by 5 pm on the 3<sup>rd</sup>.

We will also hold two more workshops only, because we had to reschedule we did have to eliminate that public hearing option, so this is the last option for public comment, in person, that is; but the workshops, were the first part of that presentation that, there will be another one in Poulsbo, and another one in Mount Vernon. That's the 30<sup>th</sup> and the 31<sup>st</sup>. that information also available on the website.

What comes next – Ecology will review and incorporate the comments where appropriate. And they will prepare a response, the written responsive summary will be an appendix to the fact sheet and will be posted online. If you signed in and gave me an address or you already have your address on record you'll be notified of that.

I think other than knowing you can ask questions of Carrie and Harriet over there, I thank you for coming. I really appreciate you taking the time out of your day and I do acknowledge that the middle of the day for some of you folks is tough. Thank you very much for taking the time. And

Let the record show that it is 12:13 on January 24, 2012.

And this hearing is closed.