



ROSEMERE NEIGHBORHOOD ASSOCIATION

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Washington Dept. of Ecology
Attn: Carrie Graul
Water Quality Program
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Submitted via email

RE: Draft Phase I Municipal Stormwater Permit, Western Washington Phase II Stormwater Permit, and Eastern Washington Phase II Stormwater Permit

Department of Ecology:

Rosemere Neighborhood Association (Rosemere) submits the following comments on the Department of Ecology's (Ecology) draft Phase I, Western Washington Phase II Stormwater Permit, and Eastern Washington Phase II Municipal Stormwater Permits.

Today's best science regards stormwater runoff as a primary source of waterborne pollution, endangering the biodiversity of the water column and its associated habitats as well as endangering the public's health and welfare. Whereas water quality has continued to degrade over the past several decades (with the vast majority of waterbodies in the state failing water quality standards), even with the implementation of stormwater permitting and monitoring programs, it is clear that the toxic load that pours into the state's waterways has not been sufficiently remedied in order to prevent further deterioration of the various habitats and species that are being harmed with each and every rain event.

Rosemere is a non-profit volunteer organization dedicated to preserving the environment, and we have spent the last 12 years working to alleviate waterborne pollution in our state. We serve on the advisory committee for the Burnt Bridge Creek TMDL, and have worked to address problems associated within the City of Vancouver and Clark County stormwater management programs. Rosemere firmly believes that Ecology must employ as many workable tools as possible in order to reverse the downward trend of water quality failures. We further believe that the NPDES program and the Municipal Stormwater Permits are all vital tools to help insure that our state's waterways can be healed and preserved for future generations, and that these permits must be renewed using the best available known science and to the "maximum extent practicable" as required under the federal Clean Water Act.

Within the permits section Annual Report form for Cities and Counties, there should be a line item included to track complaints received from the general public regarding potential harms caused by development activities, and there should be tracking for investigations and findings stemming from such complaints. We have found that the public can and does report incidents of concern, such as sedimentation of streams resulting from construction adjacent to waterways, that would have otherwise gone unnoticed by development review officials. We have also found that credible complaints from the public have been ignored by municipal officials, and

better accountability is required in order to minimize harm caused by earth disturbing activities. Sedimentation of waterways can and does completely alter waterways and make them less habitable for various species, especially for ESA listed fisheries throughout the state. Furthermore, if a phase II municipality surpasses its population threshold through annexation and/or growth, such phase II permittees should be re-classified as phase I permittees. Such is the case with the city of Vancouver, one of the largest population centers in the state, yet still classified as a phase I permittee. Rosemere believes that Vancouver should be a phase I permittee, having surpassed a population of 100,000 many years ago. This section also calls for a listing of the number of enforcement actions taken by the permittee – this item should be flushed out to include tracking of the enforcement actions and the remedies used to determine the effectiveness of these actions in preventing pollution. It is our experience that tracking of enforcement activities and stop work orders is often vague and ineffectual. We further note that large scale projects, such as Department of Transportation road projects adjacent to waterways, should experience regular and frequent inspections during construction (especially within storm events) to monitor potential hazardous impacts to affected waterways. This is particularly important for those waterways under a TMDL study, or where a TMDL study is being designed or considered.

Under Appendix 10 of the permit, Equivalent Programs for Runoff Controls for New and Redevelopment and Construction Sites, the entire section pertaining to Clark County has been redlined with a footnote stating that Clark County's program is in the appeals process in the courts. However, in *Rosemere et al. v. Clark County et al*, Case No. C11-5213RBL in US District Court of Western Washington, Judge Leighton issued an order granting Rosemere's request for a preliminary injunction. Clark County is enjoined from issuing any permit or authorization that fails to meet condition S.5.C.5 of the Phase I Permit until further notice from the court, pending further decisions from the Washington State Court of Appeals. Clark County is not under a building moratorium, they are simply enjoined by the court to revert to the state's default flow control standards until the court process has been exhausted. Thus, Clark County will continue to issue permits and review plans, and projects will continue to be built. It is confusing for Ecology to simply leave the section on Clark County blank, especially when it could take a year or more before the cases in question are settled. Ecology should update this section to reflect the current findings from the court. Clark County has been in violation of the PCHB findings since January 2011, and has continued issuing permits and plan approvals that do not adhere to the PCHB rulings. Clark County justified its position by saying Ecology had been silent on the matter. Thus, it would be prudent for Ecology to add clarifying language to this section in adherence to the various findings on these matters. It is not helpful for Ecology to refrain from doing so because it is inconvenient or cumbersome within the administration of the permit cycle.

Under Appendix 9 of the permit, Stormwater Discharge Monitoring, Rosemere vehemently objects to the removal of Fecal Coliform Bacteria and Organics such as PCBs from the list of monitoring parameters. Fecal Coliform monitoring is vitally important in areas such as Clark County where there is a predominance of septic tanks in use, especially in areas where buried perforated storm pipes are designed to draw high groundwater levels in high density residential areas that may be mixed with septic tank drainfield discharge. Fecal coliform monitoring can be used to identify illicit discharges, or cross contamination caused by groundwater mounding in septic influenced areas. Rosemere also advocates for the ability to rely upon the quant-tray sampling method rather than using the cumbersome time-intensive process of membrane filtration analyses. The quant-tray is approved by EPA, is reliable, and far easier to use. Rosemere also believes that the removal of organics, such as PCBs, from the list is a terrible mistake. PCBs bio-accumulate, and studies are beginning to show that stormwater conveyance can be a major source of in-stream contamination. A full organics spectrum and fecal coliform sampling should be replaced as regular monitoring requirements. It has been our experience that monitoring programs have become ineffective for both Phase I and Phase II permittees, and that monitoring programs have not been designed in a holistic fashion to broaden the base for watershed management planning. Instead, monitoring has been disconnected and arbitrary, and this needs to be corrected.

S5.C.7.b.iii.1. of the Phase I permit states: “Businesses may self-certify compliance with the source control requirements at the discretion of the Permittee.” Rosemere strongly objects to this component that allows self-certification, as we believe it will only lead to a total lack of enforcement, and the end result will become ongoing violations and damage to the environment. This item should be removed, and Ecology should have direct review of all compliance measures.

Regarding LID requirements for both phase I and phase II permittees, Rosemere reiterates the PCHB ruling from February 2009 wherein Ecology was instructed to begin implementation of LID standards, and requests Ecology include specific language to direct permittees to adopt specific LID standards within their stormwater programs. Rosemere advocates for the inclusion of the use of permeable pavements, rain gardens and cisterns, and the use and preservation of native vegetation as primary components best stormwater management practices. It is our understanding that Pierce County has experienced impressive improvements to water quality while embracing LID practices.

Regarding alternative plans and Ecology’s equivalency review, Rosemere advocates for opportunities to offer public comment for any alternative proposed by a permittee under Ecology’s consideration. Stormwater management is a public interest, and the public should not be excluded from participating in review of alterations to state standards, especially when alternatives could result in public subsidy of stormwater programs that should only be the responsibility of private interests. Furthermore, the funding pathways for any alternative program should be clearly defined by the permittee, and should be subject to public review. This did not happen with Ecology’s Agreed Order with Clark County that was found to be inadequate by the PCHB. It is important for all capital improvement projects to be implemented in such a way as to bring the projects as far upstream in a watershed as possible, and for projects to be situated as close to development projects as possible in order to ensure that stormwater capital projects adequately offset development impacts. This should be the baseline paradigm going forward in watershed management practices of the future, otherwise placement of capital projects could become arbitrary.

Rosemere fully supports the comments offered by Columbia Riverkeeper and the Puget Soundkeeper Alliance on these draft permits. We further ask that Ecology refrain from delaying the permit cycle and stay on course with all permit development, implementation and enforcement.

Thank you for your time and attention to these comments.

A handwritten signature in black ink, appearing to read "Dvija Michael Bertish", with a long horizontal flourish extending to the right.

Dvija Michael Bertish
Director of Environment & Conservation
Rosemere Neighborhood Association