

**JAMES A. TUPPER, JR.**

Direct (206) 493-2317  
tupper@tmw-law.com

February 3, 2012

*Via U.S. Mail and E-mail*

Municipal Permit Comments  
WA Department of Ecology  
Water Quality Program  
PO Box 47696  
Olympia, WA 98504-7696  
SWPermitComments@ecy.wa.gov

Re: Public comment; 2012 Draft Western Washington Phase II Municipal Stormwater General Permit

Thank you for the opportunity to comment on the Draft Western Washington Phase II Municipal Stormwater General Permit (the “Draft Phase II Permit”). Please accept these comments on behalf of the Sammamish Plateau Water & Sewer District, a water-sewer district authorized pursuant to Title 57 RCW..

The Draft Phase II Permit should regulate underground injection structures owned and operated by municipalities and secondary agencies and governments covered under the permit. The state Underground Injection Control (UIC) program<sup>1</sup> currently rule authorizes any UIC structure operated by a covered municipality. The clear presumption in the administrative rule is that Ecology will regulate these structures under the Phase II permit. The draft permit, however, simply excludes those facilities from coverage under the permit leaving what amounts to a regulatory black hole. The UIC structures are rule authorized but do not have to meet any endangerment standards including design and location standards to operate. This potentially allows UIC structures to operate without a waste discharge permit,<sup>2</sup> and without any protection against degradation of groundwater quality.

The UIC Regulations appear to presume that a municipality’s waste discharge permit will provide ongoing assurance that discharges do not violate groundwater standards. To qualify for rule authorization, the UIC structure must meet the nonendangerment standard. WAC 173-218-080. The nonendangerment standard is presumptively met when the

---

<sup>1</sup> Draft Phase II Permit, S2.A.1. (“Discharges to ground waters of the state through facilities regulated under the UIC program, Ch. 173-218 WAC, are not authorized under this Permit.”)

<sup>2</sup> Any well that is rule authorized under the UIC program is not required to obtain a state waste discharge permit to operate. WAC 173-218-070.

municipality is operating under an NPDES permit. WAC 173-218-090(1)(c)(i)(C) (new UIC wells); WAC 173-218-090(2)(d) (existing UIC wells).

This presumption is not warranted, because Ecology did not extend any of the Draft Phase II Permit's requirements to include UIC structures. UIC structures are entirely exempt from the Stormwater Management Plan requirements in the Draft Phase II Permit. As a consequence, permittees do not have to address UIC structures in the permittee's Public Education and Outreach, S5.C.1.

UIC structures are also omitted from the permittee's Municipal Operations and Maintenance program under S5.C.5. Consequently, the Draft Phase II Permit does not require municipalities to update maintenance standards consistent with the 2012 Stormwater Management Manual for Western Washington by a specific date. *Compare S5.C.5.a.*

This omission is particularly critical because it deprives the public of any assurance of ongoing compliance with the UIC regulations. A UIC structure must meet the nonendangerment standard on a continuous basis.<sup>3</sup> WAC 173-218-070 ("Rule authorization can be rescinded if a UIC structure no longer meets the nonendangerment standard of this chapter); -080. Hence, so long as a Phase II permittee is not in violation of its Permit, Ecology presumes that the nonendangerment standard remains met. In reality, this provides little protection for groundwater resources, because Permittees do not have to conduct annual inspections of BMPs applied to UIC facilities, spot check UIC facilities after major storm events, inspect catch basins associated with the UIC structure, clean the UIC structure, or any of the other requirements otherwise applicable to municipal stormwater management.

Rule authorized UIC structures are also exempt from the Draft Phase II Permit's annual reporting requirements under S8 and S9. Municipal operators of a UIC structure are not required to annually describe monitoring, assessment or evaluation efforts related to their UIC structures. *See S4.F.3.d.* In short, Ecology has no process by which it verifies the ongoing compliance of UIC structures and UIC discharges with applicable laws, regulations, and water quality standards.

It also appears municipal UIC operators are not subject to the requirements in the Draft Phase II Permit applicable to "discharges", insofar as stormwater discharged into a rule-authorized UIC structure. Ecology's Draft Phase II Permit has no definition of discharge. Under the current Phase II Permit, a discharge is defined as "any discharge from an MS4 owned or operated by the permittee." Hence, for example, a Permittee's obligation to notify Ecology within 30 days of becoming aware of a violation of water quality standards caused by a "discharge", S4.F.1., does not clearly apply to stormwater merely conveyed to a permit-exempt, rule-authorized UIC structure.

---

<sup>3</sup> The purpose of the UIC Program is to prevent groundwater contamination by regulating the discharge of fluids into UIC wells, to comply with the Federal Safe Drinking Water Act, and the Washington State Water Pollution Control Act. WAC 173-218-010.

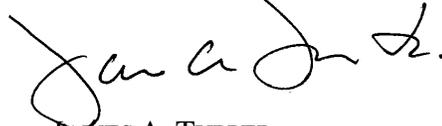
February 3, 2012  
Page 3

The UIC Guidance includes certain source control, pre-treatment and vadose zone treatment requirements, and cross-reference requirements in Ecology's stormwater management manuals. *Guidance for UIC Wells that Manage Stormwater*, Ecology Pub. No. 05-10-067 (Dec. 2006), §5. The UIC Guidance also states that BMPs must be chosen that achieve state ground water quality standards when the discharge reaches the water table or first comes in contact with the aquifer. *Id.*, §5.2. But even though Ecology has recently drafted revised Stormwater Management Manuals, Ecology has added no references to the Manuals specific to UIC structures. Hence, it does not appear that any revisions have been made to the Manuals that fill the gaps left by rule-authorization of UIC structures.

Thank you for your consideration of these comments and the above concerns regarding the protection of groundwater resources.

Sincerely,

TUPPER MACK WELLS PLLC

A handwritten signature in black ink, appearing to read "James A. Tupper", written over the printed name below.

JAMES A. TUPPER