



February 3, 2012

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

Sent electronically to: SWPermitComments@ecy.wa.gov

RE: 2012 - 2013 Draft Phase I Municipal Stormwater Permit, and
2013 – 2018 Draft Phase I Municipal Stormwater Permit

To whom it may concern,

Thank you for the opportunity to review and comment on the Draft Phase I Municipal Stormwater Permit (Permit) dated October 19, 2011, the associated requirements of the 2012 Draft Stormwater Management Manual for Western Washington (SWMMWW) and the Draft 2012 Low Impact Development Technical Guidance Manual for Puget Sound (Draft LID Manual). We have appreciated the open dialogue with Ecology staff over the current permit cycle regarding Port-specific conditions and circumstances. We also acknowledge areas where Ecology has provided helpful guidance and greater compliance flexibility as well as certain areas of concern.

We have organized our discussion by the topics of:

- Low Impact Development
- Phase I incorporation of the 2012 SWMMWW and the 2012 LID Manual
- Stormwater Management Program for the Port of Seattle
- Monitoring

Under each topic, we provide our observations and conclusions with supporting rationale, and propose modifications to requirements or processes to address reasonable concerns, as needed.

2013 – 2018 Draft Phase I Municipal Stormwater Permit

S5. Stormwater Management Program

S5 permit requirements are not directly applicable to the Port of Seattle; however, Port properties are wholly situated within the jurisdiction of the City of Seattle. Therefore, the Port may be required to comply with many of these requirements which apply to City of Seattle.

Low Impact Development (Options)

S5.C.5 Controlling Runoff from New Development, Redevelopment and Construction

Appendix 1 – Minimum Technical Requirements for New Development and Redevelopment

Observations & Conclusions:

The Port of Seattle recognizes the benefits of Low Impact Development to the water resources of the region. We believe that LID measures can be an effective method of stormwater management on sites that are feasible and where there is a direct benefit to the receiving water. We are also pleased to see DOE's inclusion of an extensive list of conditions where/when LID may not be feasible (Appendix 1, Section 8) and hope that DOE will continue to include additional guidance for when LID may not be appropriate.

We also believe that the standard for implementation of LID should be AKART; All Known, Available, and *Reasonable* methods of prevention, control, and treatment. However, the DOE manual is requiring:

- 1. LID on sites discharging to non-flow control water ways; and*
- 2. Either implementation of LID from the 'Mandatory List' or meeting a performance standard by retaining low flows onsite.*

In either case, it is not reasonable to require LID or a performance standard on sites that discharge directly to waterbodies that do not require flow control for the following reasons.

If controlling the high flows (flow control) does not have a benefit to the receiving water, then implementing LID or retaining the low flows onsite also would serve no benefit. The majority of Port properties are waterfront properties that discharge to either the Duwamish River or Puget Sound. Dispersion and infiltration are the basis for most of the LID measures on the mandatory list. Infiltration is typically not feasible due to contaminated soils and/or high ground water and tidal influences. Many Port projects consist of replacing parking lots and do not include roofs or landscaped areas. If the LID measures on Mandatory List #2 (full dispersion, permeable

pavement, bioretention, and sheet flow dispersion) are not feasible because of high groundwater, contaminated soils, and tidal influences, then how is the performance standard to be met? It would be senseless to provide flow control just to meet the LID performance standard for discharge to a flow exempt receiving waterbody. Implementation of green roofs and/or stormwater harvesting for surfaces that are not “pollution-generating” will be a huge cost for a negligible benefit.

In addition, industrial sites with NPDES permits are required to meet discharge benchmarks and provide extensive stormwater treatment if the stormwater quality does not meet discharge benchmarks. Meeting benchmarks is a high and difficult bar to reach. Permittees are required to continuously evaluate their sites and operations to find ways to reduce pollutants and meet benchmarks.

These permittees should not also be subject to mandated LID BMPs, rather they should be allowed to complete the required NPDES evaluations, determine which BMPs will work best with their operations, select the best method of treatment for the specific pollutants, and provide the best treatment with the available funds.

Ecology should also consider removing the requirement to have LID on all Industrial/Individual/Boatyard permitted properties regardless of water body designation and allow consideration of **all** flow controls mechanisms where needed. This would permit maximum flexibility in cost and compliance for NPDES permittees already required to meet a high standard. LID BMPs could still be included in the overall BMP toolbox for these sites but as optional BMPs rather than mandatory. This would give permittees the choice to consider the use of LID where it would give the best opportunity for increased compliance with NPDES permit benchmarks.

Ecology should also provide a clear and concise method to determine the economic feasibility of many of the LID measures. For example, it is not economically feasible to require a green roof for a building when the cost of the green roof exceeds the cost of the building. This relates back to the “Reasonable” part of AKART. What threshold would determine when an LID BMP is, or is not economically feasible (reasonable)? If construction of LID BMPs increase the total project cost by 10%, 20%, 30%?

Based on these observations and conclusions, we propose the following:

Modification 1: Exempt LID requirements at Industrial sites that have NPDES Stormwater Permits **and** discharge to flow exempt receiving waters.

Modification 2: If the LID measures on the mandatory list are not feasible and the project discharges to an exempt flow control waterbody and the project is providing basic water quality treatment, then the flow-based performance standard should not be required.

Modification 3: In addition to the technical feasibility criteria, Ecology should also allow an economic feasibility evaluation.

Phase I incorporation of the 2012 SWMMWW and the 2012 LID Manual

The Permit incorporates by reference the requirements, criteria, and standards in 2012 SWMMWW and the LID Manual.

Observations and Conclusions:

First, the Port is concerned that the concurrent review process for the Permit, 2012 SWMMWW, and LID Manual will not provide sufficient review of critical requirements. We think that there are legal issues in regard to the process by which both manuals are being reviewed and then incorporated by reference into the permit without being given the full opportunity for review.

Second, the technical studies and supporting documentation for implementation of LID are expensive. There are many sites where LID is clearly not feasible and these expensive studies and documentation are not necessary. Implementation of LID *needs to* have a simple methodology to document when a site is not feasible. For example a site with high groundwater or contaminated soils is clearly not a site where infiltration is feasible, and an extensive geotech study and PIT analysis would not make sense and should not be required. A simple report stating why LID is not feasible at a site must be allowed.

Third, LID maintenance standards were not included for review in either the Draft 2012 SWMMWW or the Draft 2012 LID Manual. Successful implementation of LID is dependent on long-term maintenance. These details must be available for review and comment during the comment period.

Fourth, the 2012 LID Manual is a good reference document and includes an extensive amount of background information. The 2012 SWMMWW should focus on and explicitly state the minimum requirements of LID, include these requirements in the SWMMWW, and refer to the LID Manual as supporting documentation, or a resource to be educated implementation of LID beyond the minimum requirements.

Fifth, the Duwamish River has been added to the flow-control exempt surface water list (Appendix I-E, SWMMWW). The Duwamish River meets the criteria to be included as a Basic Treatment Receiving Water; the mean annual flow exceeds 1,000 cfs.

Based on these observations and conclusions, we propose the following:

Modification 4: The SWMMWW must prioritize the implementation of the studies identified in the LID Manual.

Modification 5: LID maintenance standards must be available for review and comment prior to requiring implementation through the permit.

Modification 6: The 2012 SWMMWW must include the details of the minimum LID requirements and refer to the LID Manual only for supporting information or methods beyond the minimum requirements.

Modification 7: Please also add the Duwamish River to the list of Basic Treatment Receiving Water (Appendix I-C, SWMMWW) or clarify that the Green River listing extends to the Duwamish River. The Montlake cut should also be included as a flow-control exempt water body (Appendix I-E, SWMMWW).

S6.E. Stormwater Management Program for the Port of Seattle

Observations and Conclusions:

Functional Control

The Port appreciates Ecology's understanding of the limitations associated with tenant leases and the inclusion of municipal requirements focused on properties "under the functional control" of the Port.

First, Port tenants have lease holds that require tenant maintenance. Also, many tenants have Industrial Stormwater General Permits that require the industrial permittee to perform maintenance and retain records.

Second, Properties covered by Industrial Stormwater General Permits conduct monitoring and visual observations to detect and eliminate illicit discharges and connections.

Based on these observations and conclusions, we propose the following:

Modification 8: The following sections should clarify that the activities apply to the sites under functional control of the Port:

S6.5.3.c.v. Implement a program to document operation and maintenance records for stormwater treatment and flow control BMPs/facilities and catch basins under the functional control of the Permittee.

S6.5.3.d. Conduct field screening of at least 20% of the MS4 under the functional control of the Permittee each year for the purpose of detecting illicit discharges and illicit connections.

S8. Monitoring

Monitoring comments are provided for both the 2012 – 2013 and the 2013 – 2018 Phase I Municipal Stormwater Permits.

2012 – 2013 Phase I Municipal Stormwater Permit

Observations and Conclusions:

S8.C.1.a For S8.D, Stormwater Monitoring is complete when the permittee has collected three complete water years of data.

The Port recommends that partial water years at the beginning and at the end of the three years should be allowed to meet this requirement. For example, if the first data set was collected in March and the first water years samples included those from March to September, then data from October to March would complete the third water year. Not including these partial water years would penalize permittees who started monitoring early in the permit cycle by requiring additional sampling to meet the three water years of data. Alternately, sampling completion could be identified by a total number of samples collected.

Based on this observation and conclusion, we propose the following:

Modification 9: Make the following language change:

“Stormwater Monitoring is complete when the permittee has collected thirty-three (33) samples over three water years.”

2013 – 2018 Phase I Municipal Stormwater Permit

Observations and Conclusions:

First, the Port supports the option to participate in the regional stormwater monitoring program (RSMP) through the pay-in options. We believe that a RSMP will provide more meaningful data than individual permittee monitoring requirements.

Second, the Port supports the current cost allocation estimates based on permittee populations. We recognize the difficulty of estimating population levels for Port properties, but believe that the current method of calculation based upon neighboring population densities is consistent with the objectives of the proposed monitoring program. However, we are unclear how the population was calculated by Ecology and feel the federal population methodology is the preferred approach.

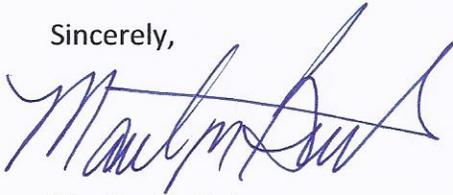
We remain concerned that if a significant number of permittees opt-out, that this will affect the overall budget of the RSMP and could impact the regional effort.

Third, DOE should pursue additional creative ways to fund the RSMP. This could include funding elements such as those being implemented in California. The Industrial Stormwater General Permit permittees could monitor onsite for four of the five years in the permit cycle, and contribute the equivalent of the fifth years' worth of monitoring costs to the RSMP. This would provide a broader, more equitable funding mechanism that includes industrial stormwater dischargers in addition to the municipal stormwater dischargers. In addition, grants should also be considered.

Fourth, the Port has provided specific recommendation regarding the Appendix 12 Funding Agreement between Ecology and Municipal Stormwater Permittees. Please see Attachment I. We believe that the agreement is a positive start and Attachment I provides ideas for further discussions.

Please feel free to contact me at (206) 787-3378 with questions or comments.

Sincerely,



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Attachment I

2013 Phase I Municipal Permit Regional Stormwater Monitoring Program Funding Agreement

- 1) Overall purpose is to define authorities and responsibilities of the parties in conducting program
- 2) Effective date and duration
- 3) Establishment of Regional Stormwater Monitoring Work Group (RSMWG)
 - a) Only those Phase I and Phase II MS4 permittees who enter into funding agreements are members of RSMWG
 - b) Responsibilities of RSMWG as whole
 - i) Approve annual budget and scope of work prepared by Ecology
 - ii) Approve Quality Assurance Project Plans (QAPPs) for each task
 - iii) Appoint one member as chair of the group to run the meetings, act as single point of contact for Ecology. Chair shall have a two-year term
 - c) Decision-making:
 - i) Opportunity provided for in-person discussion (meeting) prior to approval
 - ii) Decision re: approval provided via email/electronic voting
- 4) Local jurisdiction responsibilities
 - a) Payment to Ecology (See Permit S8)
 - b) Appoint one representative and one alternate who is responsible for response to correspondence and providing approval/disapproval decision
 - i) Optional to attend meetings
 - c) Agree that all communication with media and public will be through Ecology
- 5) Ecology responsibilities
 - a) Administrator for the RSWMG
 - i) Produce annual report for RSWMWG review that describes
 - (1) Overall budget for next year
 - (2) Schedule for next year
 - (3) Evaluation of contractor performance
 - (4) Any proposed changes in scope of work
 - (5) Any proposed changes in contractor assignments or budgets
 - ii) Establish mechanism to distribute materials to RSWMWG
 - iii) Set up annual meetings
 - iv) Collate approval responses

- b) Ecology's contractor selection and management responsibilities
 - i) Ecology will issue one or more contracts to complete the following RSWM tasks
 - (1) Status and trends monitoring in small streams of Puget Sound lowlands - see scope of work in Attachment #1
 - (2) Status and trends monitoring in marine nearshore areas of Puget Sound - see scope of work in Attachment #2
 - (3) Regional Effectiveness Studies Sound - see scope of work in Attachment #3
 - (4) Source identification and diagnostic monitoring information repository- see scope of work in Attachment #4
 - ii) Contracting process
 - (1) Solicit contractors per Ecology contracting procedures and state law
 - (a) Contractor can be public or private entity
 - (2) Rank
 - (3) Award per Ecology contracting procedures and state law
 - (4) Notify RSWMWG of results
 - iii) Manage performance and payment of contractors
 - c) Ecology's financial management responsibilities
 - i) All funds received from RSWMWG will be held in separate funds, and shall be used for no other purpose
 - (1) Cannot shift dollars between RSWM tasks without amending scope and getting approval
 - ii) Ecology will invoice each member of RSWMWG (see permit)
 - (1) List contact name, address email
 - iii) Insufficient funds: If exceed costs, shut down project
 - iv) Management of excess funds
 - v) Seek, apply for, manage grants and alternative forms of funding from other organizations or permittees
 - vi) Maintain records per accounting principles, and conduct audit if required
 - d) Ecology's records maintenance and retention responsibilities
 - i) Contractor's reports shall be made available to RSWMWG prior to public distribution
 - ii) Data management in form that can be made available to RSWMWG
 - e) Ecology's public relations responsibilities
 - i) Act as lead contact for communication with media and general public
- 6) Termination and withdrawal (two alternatives)
- a) RSWMWG members cannot withdraw until end of 5 year period; or
 - b) Can withdraw in the first year if sufficient number of entities don't sign up
 - i) In which case, get pro-rated amount of money back
- 7) Dispute resolution

- 8) No admission of liability
- 9) Not enforceable by third parties
- 10) Amendments in writing
- 11) Authority of signatories
- 12) Counterparts
- 13) Entire agreement