January 27, 2012

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Re: Comments due 2-3-2012 on the draft Western Washington Phase II Municipal Stormwater Permit

The City of Lacey appreciates the opportunity to provide feedback on the draft Western Washington Phase II Municipal Stormwater Permit for the years 2013-2018. We strongly support our region's efforts to provide for clean water by reducing the discharge of pollutants in stormwater, and we realize the need to advance the effectiveness of stormwater management to reduce the degradation of Puget Sound and our other water resources. In Lacey, we have allowed and even encouraged low impact development (LID) techniques for the past decade, so we are not opposed to using "new" methods. But for the proposed new requirements to be successful and effective, they need to be widely accepted. This would be aided by allowing permittees ample time, resources, and flexibility in adopting and implementing the new requirements, and by ensuring practicality and cost-effectiveness are part of the equation. With these objectives in mind, we offer the following comments and suggestions.

PART 1: GENERAL COMMENTS

Comment 1.1 Review Process for Draft Permit Language and Updated Technical Manuals

The concurrent review periods for the regulatory permit document and the interrelated technical manuals does not allow sufficient opportunity for full review and assessment. The draft Phase II permit and the suite of new/revised technical materials (primarily the 2012 Stormwater Management Manual for Western WA and the updated LID Technical Guidance Manual for Puget Sound) each should have its own non-overlapping review period. Between the permit and the two manuals, there is a tremendous amount of complex technical criteria and procedural information to read, analyze, discuss internally, and prepare comments on (while still doing our normal job tasks).

Suggestion: The public review periods for the draft permit requirements and the technical manuals should be sequential rather than concurrent. First, the technical documents should be fully completed, then released for review, since they establish the criteria and standards that become requirements in the reissued permit. The permit review process would then follow, giving permittees a more complete picture of the package we are facing.

Comment 1.2 Allow Flexibility in LID Implementation

Different locations have different conditions, and different proposals have different objectives. The permittee jurisdictions need the flexibility to help development projects meet their goals while satisfying our requirements and meeting public expectations. Requiring the use of specific LID techniques at all project sites is too limiting, and will likely create an emphasis on finding exemptions within the proposed feasibility criteria. Forcing all development to incorporate LID does not really make it the "preferred" approach, whereas making LID an attractive choice among various other options would.

Suggestion: Provide flexibility to local governments in implementing LID. LID should be promoted as a viable option to be chosen, rather than being strictly required - especially for smaller projects. The LID code updates should be focused on strongly encouraging the use of LID by providing incentives and cost benefits. We should make LID the more appealing approach, rather than strictly mandatory, so it might actually become widely preferred.

Comment 1.3 Financial Impacts

Strict mandating of LID techniques such as permeable pavements and green roofs will be financially burdensome, particularly for small developments, given the additional costs of site assessment, analysis and construction methods. On small sites, these additional costs will result in little net benefit. Also, the additional permit requirements will increase the workload for jurisdictions, particularly for code revisions, plan review, field inspections, and long-term maintenance, at a time when resources are being stretched and staff levels are held firm or reduced. The public and private costs of implementing such broad changes is a factor that must be addressed.

Suggestion: Provide evidence supporting LID implementation, especially cost-effectiveness of LID compared to conventional site development and stormwater management techniques. Cite positive examples of successful LID projects across our region, so anyone concerned can see how integrating LID into a site can yield positive results. Establish a certification program for LID design, installation, and maintenance, and for standard materials from suppliers, so some of the uncertainty in LID implementation is reduced.

PART 2: SPECIFIC COMMENTS ON WORDING IN PERMIT SECTIONS

Comment 2.1 Section S4.F.1 Page 14 Lines 20-29
Wording: "A Permittee shall notify Ecology in writing…"
Suggestion: Please clarify the difference between this S4 Compliance With Standards notification and G20 Non-Compliance Notification on page 72. Perhaps both notification types should be listed in the General Conditions section.

Comment 2.2 **Section S5.C.3.a(iii)** **Page 21** **Line 32**

Wording: "Permittees may rely on permanent stormwater control plans for mapping LID BMPs…"

Suggestion: Provide a definition of "permanent stormwater control plans" in the permit, to clarify what this means. Alternatively, reference the definition provided in the glossary of Volume I of the 2005 SMMWW. Note that the current definition ("…BMPs for control of pollution…") may need to be revised, since not all LID BMPs control pollution.

Comment 2.3 **Section S5.C.3.c** **Page 25** **Line 7**

Wording: "…implement an ongoing program to identify and detect non-stormwater discharges…"

Suggestion: Put "detect" before "identify" since that's the logical order of task occurrence.

Comment 2.4 **Section S5.C.3.c(i)** **Page 26** **Lines 3-6**

Wording: "…field screening for at least 40% of the MS4…and 20% each year thereafter…"

Suggestion: This needs clarification. The definition of MS4 on page 77 of the permit includes streets, curbs, gutters, and conveyance piping. Is the intention for permittees to inspect a percentage of the entire street width of all streets, and to send cameras through a percentage of pipes? How should permittees interpret the percentages – should we assume "40% of the MS4" means 40% of the total length of all streets, plus 40% of total length of all pipes, etc.?

Comment 2.5 **Section S5.C.3.c(iv)** **Page 27** **Line 36**

Wording: "All illicit connections to the MS4 shall be eliminated."

Suggestion: Revise to read, "All confirmed illicit connections to the MS4 shall be eliminated." We can only eliminate what we know and can confirm to be actual illicit connections.

Comment 2.6 **Section S5.C.4** **Page 29** **Lines 7-10**

Wording: Deleting the one-acre threshold for controlling runoff from development sites.

Comment: Elimination of the one-acre threshold will place a tremendous financial burden on "small projects" (those which are only subject to Minimum Requirements 1 through 5), while providing little environmental benefit. Small projects and retrofit sites have a difficult time proceeding even under the current permit requirements, so applying the proposed stricter standards could kill those projects, which would be counter-productive. Retrofit projects that could provide water quality and hydrologic benefits to existing sites could be thwarted by the inability to pencil-out under strict new stormwater regulations.

Suggestion: Ease the LID requirements as applied to small projects and retrofits, and allow greater flexibility for projects subject to Minimum Requirements 1-5.

Comment 2.7 **Section S5.C.4.a** **Page 29** **Line 23**

Wording: "…meet the requirements of S5.C.5.a(i) through (iii), below…"

Suggestion: Correct the permit section reference to "S5.C.4.a"

Comment 2.8 Section S5.C.4.g(i) Page 34 Lines 21-32

Wording: "…No later than December 31, 2016, Permittees shall review and revise their local development-related codes, rules, standards, or other enforceable documents to incorporate and require LID…"

Comment: This is a huge task, requiring extensive education and outreach, public process, and coordination and cooperation across various departments at each Phase II jurisdiction. It will require a high level of staff involvement to coordinate the revisions and to ensure that our revised regulations end up not only in compliance with the permit, but are also workable, non-conflicting, meet local goals, and go through sufficient public process. That is a big job for so many jurisdictions to accomplish over the next few years. Further, making such extensive revisions to established codes and regulations will expose permittees to potential inconsistencies and conflicts in our local requirements.

Suggestion: Prior to this requirement being initiated, Ecology should provide strong evidence supporting LID to foster acceptance and buy-in among City staff and elected officials, the development community, and the general public throughout the region.

Comment 2.9 Section S7 Page 49 Line 17

Wording: "…issuance of the permit oro priot to the date…"

Suggestion: Correct the typo to read, "…issuance of the permit or prior to the date…"

Comment 2.10 Section S8 Page 50 Line 17

Two general comments on the proposed Regional Stormwater Monitoring Program: (1) The RSMP goes way beyond determining whether permit holders are in compliance with their permits; this is research-level data gathering that ultimately will funnel funding away from needed stormwater improvements. The state needs to consider whether it's really in the public interest to study the problem more, or put available funds into addressing problems. (2) This is terrible timing for another unfunded mandate to apply to local governments. Local governments are being hit with higher fees and unfunded mandates for a number of state programs, this being just one of several, where the costs have to be passed along to fee-weary residents and businesses.

Comment 2.11 Section S8.C.1 Page 51 Line All

Wording: Regarding Status and Trends Monitoring, Option 1

Comment: There needs to be a more equitable funding approach for the Status and Trends monitoring program, which is too comprehensive to warrant funding the entire program from stormwater permit fees. Other sources of funding (such as other NPDES permit holders that discharge to PS or its tributaries) should be identified for this.

Comment 2.12 Section S8.C.2 Page 54 Line All

Wording: Regarding Status and Trends Monitoring, Option 2

Comment: There should be more flexibility in opting out to allow for continuing long-term local monitoring programs such as Thurston County's status and trend monitoring relating to stormwater impacts. As it is, the SWMP monitoring locations are different from the

sites that have been monitored by Thurston County for years. We prefer funding monitoring that shows measurable outcomes at the local level, and are concerned that we will not get the same local information, and benefit, from the SWMP as we do from Thurston County's program. Because it appears a duplication of effort, our city is not likely to pay into both the SWMP and the long-term local monitoring program, so paying into the SWMP will be at the expense of this valuable long-term program.

Comment 2.13 Section S8.D Page 55 Line All

Wording: Regarding Effectiveness Studies

Comment: We question whether it is realistic for Ecology to conduct the RSMP at the number of sites, qualifying storms per year, and parameters identified for the Effectiveness Studies. If not, the requirements for opting out should be relaxed to make it easier for others to conduct portions of this monitoring.

Comment 2.14 Definitions and Acronyms Page 75 Line 35

Wording: "Illicit discharge means any discharge into or from a municipal separate storm sewer that is not composed entirely of stormwater…"

Suggestion: Please delete the words "or from," as permittees cannot totally control the composition of flow at the system outfall.

Comment 2.15 Definitions and Acronyms Page 75 Lines 37-39

Wording: "Illicit discharges include…infiltration/exfiltration of non-stormwater that takes place in pipe bedding."

Suggestion: This could be interpreted to include wastewater I & I, which goes beyond the scope of this permit. Please delete this from inclusion among "illicit discharges."

Comment 2.16 Definitions and Acronyms Page 77 Lines 37-39

Wording: "Outfall means point source…where a municipal separate storm sewer discharges to surface or ground waters of the State."

Suggestion: This essentially includes any infiltration facility as an "outfall." There should be a qualifier for depth and/or proximity to groundwater, as well as the extent of the groundwater. Please revise this definition, or use a different term than "outfall" for infiltration discharge points.

Comment 2.17 Appendix 1, Section 2 Page 2-7 of 40 Lines All

Wording: Definitions Related to Minimum Requirements

Comment: Definitions and Acronyms on pages 73-81 are almost immediately followed by another set of definitions in Appendix 1 on pages 2-7 of 40.

Suggestion: Combine the definitions in this section with the Definitions and Acronyms that immediately precede the appendices. Doing so would reduce redundancy, ensure only one definition for any term, reduce confusion, and make the permit more concise.

Comment 2.18 Appendix 1, Section 4.5 Page 24 of 40 Line 1

Wording: "The Permittee must require On-site Stormwater Management BMPs…"

Comment: Minimum Requirement #5: On-site Stormwater Management dives straight into a discussion of requirements for BMPs, without any mention of LID principles or the site design framework within which the LID BMPs should be incorporated.

Suggestion: The two most crucial LID factors are retention of native soils/vegetation and minimizing impervious surfaces, so those principles should be included with the LID BMPs.

Comment 2.19 Appendix 1, Section 4.5 Page 24 of 40 Line 10

Wording: "Projects triggering only Minimum Requirements #1 through #5 shall use On-site Stormwater Management BMPs from Mandatory List #1 for all surfaces…"

Comment: Mandatory List #1 includes BMPs such as rain gardens and permeable pavement, but since MR #9 is not required for these smaller projects, there is no specific requirement for maintenance of these BMPs.

Suggestion: Some provision must be made for long-term maintenance of any required BMPs, or those BMPs will eventually fail. Projects subject to MR #1-5 and constructing BMPs should also either be subject to MR #9, or at least address maintenance to some extent.

PART 3: LACEY-SPECIFIC COMMENTS ON APPENDIX 2 - TMDL REQUIREMENTS

Comment 3.1 Appendix 2 Page 24 Lines 32-35

Comment: Section 2 is regarding TMDL requirements, not the IDDE program, so it should reference the Henderson Inlet TMDL Implementation Plan.

Suggestion: We suggest editing this to read:
"Continue developing and implement a fecal coliform bacteria wet weather sampling program for the College Regional Stormwater Facility by December 31, 2013 ~~in accordance with the illicit discharge detection and elimination efforts and activities identified in S5.C.3 of the Western Washington Phase II permit~~ consistent with recommendations in the Henderson Inlet TMDL Implementation Plan (Ecology 2008)."

Comment 3.2 Appendix 2 Page 24 Lines 36-40

Comment: In Section 2a, it is not realistic to identify a sampling schedule with timelines for monitoring unpredictable storm events. At best we can identify the season for monitoring, and the targeted sampling frequency.

Suggestion: We suggest editing this to read:
"Submit a ~~program~~ plan for the wet weather sampling program to Ecology for approval by November 1, 2013. The sampling program shall ~~include a regularly scheduled sampling schedule~~ establish a sampling frequency of ~~(~~at least two times per year, as feasible~~ and consistent with the city's Wet Weather Discharge Plan~~) during the wet season (November through April), and shall include specific sampling locations, sampling protocols and parameters, and analytical methods ~~timelines~~."

Comment 3.3 Appendix 2 Page 25 Lines 6-12

Wording: "Develop and implement a coordinated plan with the City of Olympia…"

Comment: Section 3 needs to be edited reflect actual requirements in the TMDL Implementation Plan. In particular, because the Fones Road stormwater treatment facility did not exist at the time the TMDL study was conducted in 2005-2006, the TMDL Implementation Plan recommends monitoring discharges from the newly constructed facilities for bacteria. As written, this section requires "eliminating" bacteria discharges which is more strict than the 98% load reduction identified in the TMDL Implementation Plan that was based on loads prior to construction of the treatment facility. To better reflect the TMDL Implementation Plan, we suggest editing this section to,

Suggestion: We suggest editing this to read:

By December 31, 2014, ~~D~~develop and implement a coordinated plan with the City of Olympia to ~~detect and eliminate~~ monitor ~~fecal coliform bacteria~~ discharges from the Fones/Taylor wetland treatment facilities for fecal coliform bacteria ~~by December 31, 2014 in accordance with S5.C.3 Illicit Discharge Detection and Elimination of the Western Washington Phase II permit.~~

a. Submit a program plan to Ecology that includes ~~a timeline~~ sampling frequencies and identifies, at the minimum, who will be responsible for sampling, investigations and enforcement by December 31, 2013.

Comment 3.4 Appendix 2 Page 25 Lines 19-24

Wording: "In accordance with S5.C.3 ….develop an inventory and map septic systems…."

Comment: Section 4, regarding septic systems, should be deleted. Septic system mapping in the Henderson Inlet watershed, as well as conducting the Henderson Inlet Watershed Septic System Operations and Maintenance Program that is targeted at residential septic systems, has already been done by Thurston County as part of efforts for the Henderson Shellfish Protection District. Page 25 of the Henderson TMDL Implementation Plan acknowledges that Thurston County is the lead for the Henderson Inlet Watershed Septic System Operations and Maintenance Program, so it is duplicative and not even consistent with the TMDL Implementation Plan to require Lacey to complete the same work. Furthermore, septic systems are regulated and addressed through entirely separate programs by the state and the county, so it not appropriate or necessary to add additional regulation via the municipal stormwater permit.

Suggestion: This section should be deleted from the permit.

Comment 3.5 Appendix 2 Page 25 Line 29

Wording: "Manage vegetation along Woodland Creek and its tributaries."

Comment: This is vague and needs to be clarified.

Suggestion: Please clarify Section 5a with the following edits:

~~Manage~~ Continue streamside re-vegetation and nuisance vegetation management along Woodland Creek and its tributaries within the City of Lacey.

Comment 3.6 Appendix 2 Page 25 Lines 34-37

Wording: "Sample any wet-weather discharges from the Taylor Wetland..."

Comment: The requirements for Lacey (in Section 3, page 25) are much more stringent than those identified for the City of Olympia (in Section 6, page 25), although Lacey's stormwater contribution to the Taylor wetlands is much less than Olympia's.

Suggestion: Because it is a joint stormwater treatment facility that receives the majority of storm flows from Olympia, Lacey's requirements should not be more stringent than Olympia's. The requirements for Olympia should include the development and implementation of a coordinated plan with the City of Lacey (per Section 3; see Comment 3.3 above).

END OF COMMENTS

Thank you for allowing us this opportunity to comment on the draft Western Washington Phase II Municipal Stormwater Permit. We look forward to continued working with Ecology to develop a permit and technical framework to allow for responsible growth while protecting our vital water resources.