



CITY OF BAINBRIDGE ISLAND

February 3, 2012

Municipal Permit Comments
WA Department of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on the October 19, 2011, Proposed Draft Phase II Western Washington Permit

Dear Ms. Beale,

We appreciate the opportunity to provide comments and suggestions on the draft for the proposed Phase II Permit during the official public comment period. The following comments are submitted for your consideration.

GENERAL COMMENTS ON THE PERMIT

The City of Bainbridge Island requests Ecology revise their timelines in order to conduct separate, consecutive public review processes for the draft Manual and the draft Phase II Permit. The concurrent process likely conflicts with the state's Administrative Procedures Act for rulemaking Ch. 34.05 RCW. Ecology's intent is that the draft Manual will be used as an enforceable regulatory document which requires its adoption comply with the appropriate rulemaking processes. The City also has concerns with the concurrent review process for the combined reviews of the supporting technical documents (i.e. the 2012 Stormwater Management Manual for Western Washington and the LID Guidance Manuals). With these documents being so interrelated and changes to one will likely affect the other; the existing comment period does not allow adequate time for review. The permit reviews and issuance should be delayed to allow for sequential review of these documents, beginning with the technical documents.

Moreover, Ecology has not informed municipalities affected by this proposed permit whether they have conducted the required economic impact assessment pursuant to Ch. 19.85 RCW. This is an essential component allowing municipalities are able to evaluate the financial impacts to their budgets. The City's concerns regarding the cost of complying with this permit, and its unfunded mandates, are shared by most municipalities. Bainbridge Island is currently undergoing substantial financial stress and adequate review time has not been provided for staff or our elected officials to educate the community about the far reach of many of the proposed changes or assess the financial impacts. This is troublesome in the sense that the public policy implications of these documents have yet to be vetted. Therefore, the City requests that Ecology extend the review period to allow additional community dialogue on the draft Manuals and Phase II Permit.

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Further, it would be helpful if Ecology would issue a technical implementation document to outline and clarify requirements of the interim timeframe adjusted to the current permits. This would better assist our staff in evaluating the proposed changes and allow for better community dialogue.

The City has the following comments to make:

Condition C1

ITEM 2: Page 19, S5.C.1.a.i and S5.C.1.a.ii

Both of the noted subsections contain "General public". This is redundant and one should be eliminated.

Condition C3

ITEM 3: Page 26, S5.C.3.c.i

The required field screening task, based on the percentages established in this permit section, is an insurmountable task. This would be a daunting task even for small municipalities. For the City of Bainbridge Island, 40% of the MS4 would mean field screening 11 square miles of the city in the first year and 5.5 square miles each year thereafter.

Ecology should revert to the existing language or amend this language to a condition that could be accomplished. The City of Bainbridge Island's experience is that the ORI program has successfully resolved illicit discharges and sufficiently provides for maintaining water quality standards.

Condition C4

ITEM 4: Page 29, S5.C.4.a

Along with the City of Bellevue and other cities who have commented on this draft, the City of Bainbridge Island urges changes in Section 4.a and footnote #21 on page 29 of the draft permit.

The proposed requirement that the new standards apply to all projects starting construction after January 1, 2021 is problematic in terms of vesting rights. It will inevitably lead to complicated and expensive litigation. Bainbridge Island has experienced a number of appeal processes that have lasted more than five years from the time the application was deemed complete and prevented the applicant from beginning construction within a five-year window from that date. It is likely that these situations will recur. The consequence will be multiparty lawsuits involving the applicant, resource agencies, the city and Ecology where abuse of administrative and regulatory process will be alleged to have forced the applicant to delay start of construction beyond that five-year period.

A solution to deal with this expected and expensive litigation is to simply make the new permit requirements apply to all permit applications that are not deemed complete by December 31, 2015 – without adding the construction deadline.

ITEM 5: Page 29, S5.C.4.a.i Appendix 1

GENERAL COMMENTS TO APPENDIX 1

The requirement for permeable pavement on city roads resulting in added costs of cleanup, and increased repair costs. There is a potential loss of maintenance tools, like chip seals and resurfacing, that currently extend the useful life of our traditional roads by many years. Without these tools we will incur an increased replacement schedule for our neighborhood streets. Please consider the elimination of this requirement until such time as permeable pavements have proven their durability and cost effectiveness.

Ecology should consider maintaining the current language that allows direct discharges to exempt waters as in Minimum Requirement #7, as long as the parameters for water quality are met.

Page 11: 3.2 New Development and 3.3 Redevelopment

Reconsider maintaining the word "native" when describing the removal of vegetation in the thresholds for triggering minimum requirements #1 through #9 may have unintended consequences for noxious weed control or restoration projects not intended to trigger minimum requirements 1-9.

Page 19: 9. Control Pollutants Section c.

Spelling error, please change "take" to tank.

Page 20: 11.a

Recommend "Inspect" be added before "maintain and repair"

Page 21: 12.c.

Recommend using existing language.

Page 23-26: 4.5 Minimum Requirement #5: On-site Stormwater Management

Does Ecology believe that Item 11 of Minimum Requirement # 2 will serve as the maintenance requirement for projects required only to comply with minimum requirements #1 through #5? As those projects are not subject to minimum requirement #9: Operations and Maintenance.

ITEM 6, Page 75: Definitions, Illicit Discharges

Please revise this language by removing "and infiltration/exfiltration of non-stormwater that takes place in pipe bedding" from the last sentence. The City has no control over infiltration/exfiltration of stormwater into pipe bedding and lacks the resources and ability to effectively trace and remove discharges into from groundwater or pipe bedding without extensive study, staffing and extensive budgets

ITEM 7, Page 32: S5.C.4.c.ii

The percent threshold, on construction completion, sets the bar too high for inspection requirements for a small agency to enforce. Even incomplete subdivisions can be moved to the standard procedure for annual maintenance inspections. In the case of subdivisions, many lots may remain unconstructed or vacant for many years or even decades.

Please retain the language of the 2007 Phase II permit

ITEM 3: Page 34, S5.C.4.g

The established timeframe in this section is not sufficient to allow the required comprehensive review and change processes to occur. Revisions to the codes, standards, and regulations in multiple land use and public works standards are labor intensive. Please extend this timeframe.

Conclusion

Thank you for accepting these comments on the Permit. We look forward to continuing to work with the Department of Ecology to create a permit that protects our water quality and allows for responsible development in our community. If you need additional clarification or have any questions on the above comments, please contact Melva Hill at (206) 780- 3724.

Sincerely,



Lance Newkirk
Public Works Director