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CITY OF KELSO
Public Works Department
203 S. Pacific Ave., Suite 205
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Kelso, WA 98626

February 3, 2012

Harriet Beale
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

RE: Comments on the draft Western Washington Phase II Municipal Stormwater General Permit

Dear Ms. Beale:

The City of Kelso appreciates the opportunity to comment on the Western Washington Phase II Municipal Stormwater Permit (Permit) draft. The following are our comments:

Historical and Financial Context

During our current Permit, the City increased its residential stormwater utility fees to offset the added costs of complying with its requirements. We are a small city in a rural county and our fees are now among the highest in southwest Washington. Revenues from this increase were not enough to meet the current Permit requirements. However, we can not increase these rates as our residents shouldn't be asked for more burden during these hard economic times. An increase is beyond the capacity of our citizens. Some of the reasons include that 1) in our area unemployment rates are well over Washington and United States' average rates, 2) our poverty rate is well above Washington State, and 3) residents in the area have publicly opposed high stormwater utility fees in appropriate venues such as council meetings. Further raising of rates is likely to directly effect food and shelter for these individuals.

Since the current Permit was issued in 2007, the City has suffered financially due to the depressed local economy yet we make hard choices to live within our financial means. The City cut needed infrastructure projects until cuts could no longer be made. Then staff salaries were frozen and that included no cost-of-living adjustments. During this time the City also reduced its staff by 10 percent. Our Operations division had 4 full-time staff in the stormwater and streets crews and now we are down to 2 for the stormwater crew – the streets crew has been eliminated. Our Parks staff has been reduced from 2 to 1. These reductions have made maintenance of the current stormwater drainage system challenging.

Ecology, via the State legislature, provided the City with grants to develop and implement the current Permit's requirements and we appreciated these funds. These grants helped us to meet some of its requirements while local revenue helped us meet the remainder – yet we have struggled to meet current Permit requirements. However, we have no guarantee that grant monies to implement the draft Permit will continue. In fact, the legislature is leaning towards restricting grant monies for implementation of permit requirements to competitive construction-only grants such as the FY 2012 Statewide Stormwater Grant Program. The City applied for this program but was denied even though the program's intent was to solely fund communities least able to pay and even though the amount the City requested was the lowest of any applicant. Knowing this, the City has small hope of receiving grant monies sufficient to implement this more burdensome draft Permit.

The City believes Ecology does not fully realize the impact that the current and draft Permits have on small cities such as ours. I haven't seen a financial impact analysis from Ecology on many of the new requirements such as cleaning catch basins every two years; inspecting private systems city-wide; reviewing and inspecting projects subject to MR#2; and post-construction responsibilities for new BMPs. We believe the increased requirements of the draft Permit is setting us up for failure. We are concerned that with inadequate funds and staff we will be unable to implement all the requirements of the draft Permit. This will expose us to actions and fines from Ecology as well as 3rd party lawsuits. Coping with these will further be an impossible burden on our resources and budget.

The City would like to make it clear that we appreciate Ecology's efforts drafting Permit language to, as a result, improve on the reduction of stormwater quantity and increase in the stormwater quality. We support most of the changes but without funding sources outside of the City, we do not see how we can implement the proposed new requirements. The City will still work diligently to reduce stormwater quantity and increase stormwater quality within our budgetary means.

One-Acre Threshold

Ecology proposes to remove the 1-acre threshold for development and redevelopment. We strongly believe this will create a significant increase in documentation and this may not be reasonable for small sites. The lower thresholds will increase development costs for smaller projects and will increase the City's responsibilities mandating increased staff time for reviewing and inspecting.

Without the 1-acre threshold, small-scale projects will have to navigate the submittal process proposed in the SMMWW Volume I, Chapters 1 and 3 with its multi-stage processes and its large amount of required professional services. Rarely do these projects have the sophistication and funds necessary to do so – not to mention to complete the rigorous one-size-fits-all mitigations. During a time when development is struggling, these changes will surely impede the development needed to stimulate the economy. Please do not remove the 1-acre threshold.

Also, if Ecology proposes to remove the 1-acre threshold then Ecology should do similarly with its Construction Stormwater General Permit. Then Ecology will feel under the same difficulty as cities, including finding extra funds and extra staff needed, to manage the extra permitting work load.

LID

We put significant effort into developing our 2009 municipal codes and stormwater section of our engineering design manual that included major stakeholders' input. This effort included LID incentives that encourage their implementation and the development community supports this model. The draft Permit will bring to an end this effort and replace it with forced LID implementation that the community will likely find objectionable. We have worked hard to educate the public and give LID incentives to win people over to use these new methods, not a forced approach that may backfire. Developers will indeed be upset with the increased development expense to require additional soil and geotechnical information that is not currently required for all projects.

We are concerned that the draft Permit would require us to install permeable pavement on our City streets. For our streets we use chip seals or grinding and re-paving to extend the life of our pavement – cost saving tools not available to pervious pavements. Our concerns are that extra staff time and specialized equipment would be required for maintenance of permeable pavement. A forerunner in LID, the City of Portland has a makeshift piece of cleaning equipment for their pilot project of permeable-pavement and its cleaning efficiency is not effective or substantial. We do not believe specialized equipment is available for purchase even if the City had money to pay for it. We believe installing permeable pavements for City streets will have significant life-cycle replacement costs. Our roads are not receiving the maintenance they need due to budget cuts by our City council. We are unsure how we would have funds in the future to (instead of maintaining pavement) install complete section replacements of impervious pavement.

Detailed Comments

Page 14 (D): Replace the sentence with “The Permittee meets all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent and control pollution of waters of the state of Washington when it meets the requirements of the Permit.” The Permit is a prescriptive-approach permit and is one of the most restrictive Phase II permits in the nation. We believe that Ecology drafted the Permit to meet AKART and if we meet the requirements of the draft Permit then we meet AKART.

Page 17 (line 19-21): Further guidance is needed on cost-tracking. Depending on the implementation of this requirement, it is a staff-time intensive task. How does Ecology use this information? If this were spelled out, permittees could collect this data for more effective usage.

Page 20 (line 14): Change “and” to “and/or.”

Page 20 (line 15): Remove the word “new” from the sentence. Kelso, in collaboration with other local Phase II permittees, performed market research for “before” and “after” education of the public to measure targeted behaviors. Our surveys were comprehensive, scientifically valid and included all significant targeted audiences and subject areas. If we were required to determine new audiences and subject areas, our results would have little worth.

Page 26 (line 13): Strike the sentence “Permittees shall prioritize...thereafter.” Outfall or conveyance screening is not an effective tool for identifying illicit discharges due to the

intermittent nature of illicit discharges. Unless more funds are available from the state for the City to hire staff for this requirement, it will take away from other practices such as business inspection and educational programs.

Page 29 (line 7 and 11): Do not strike the two sentences that remove the 1-acre or greater threshold and related language in Appendix 1 (3.1). Kelso already has stormwater regulations for development projects with over 5,000 square feet of new impervious surfaces.

Deleting the one-acre threshold will increase the amount of staff time for the City and will create higher development costs for small projects. This creates more costs to the City and to the development community. Most development and redevelopment projects in the city are on sites under one acre and The SWPPP is a large document. Much of it may not apply to smaller sites and Ecology should recognize this documentation burden is unreasonable for small sites. This proposed change is at a time when we now must potentially deal with new issues such as LID and monitoring on top of the usual Permit requirements. If this condition is removed it will restrain development during these hard economic times.

Note that removal of the 1-acre threshold and modifications to Volume III of the SMMWW, Section 3.3.5, result in a scenario where most projects, prior to applying for a building permit, must install and operate groundwater monitoring wells through the wet season to measure level (and flow direction). This is an expensive request; but more to the point, it will immediately and substantially retard the pace of growth, which again is needed to climb out of this economic downturn. Please do not remove the 1-acre threshold.

Page 29 (lines 15-22) and Page 34 (S5.C.4.g.i): The timeline is very tight. Drafting an ordinance, codes, rules, standards and policies for development and redevelopment that includes stringent LID practices will take considerable effort and time. This will include multiple-department coordination as well as workshops and hearings with the public and buy-in with our City council. These items should be drafted concurrently with the due date extended to December 31, 2017 or later.

Page 34 (S5.C.4.g.i): Add clarifying language to the draft Permit indicating that updating of growth management plan and shoreline management plan documents are not mandated under this Permit requirement. The *Integrating LID into Local Codes: A Guidebook for Local Governments* cites the need for updating comprehensive land use planning documents. These changes to comprehensive planning documents such as growth management plans and shoreline master plans are not appropriate for a stormwater permit.

Page 34 (S5.C.4.g.i): Strike this section as reporting requirements are already burdensome enough. The City of Kelso, and no doubt many other cities, will present its new codes, standards, etc. on its website. A check box on an annual report can indicate if a permittee has performed this requirement.

Page 36 (lines 33-35): Keep “(greater than 24-hour, 10-year recurrence interval rainfall)” or insert a different definition. Removal of the definition of the major event makes it difficult for City staff to know when to spot check.

Page 37 (line 1): Return language to its previous form. Also, in line 7 change two to five. A two-year inspection frequency of catch basins and inlets, along with required cleanings, is unfeasible for our City without additional funds from outside sources to pay for staff.

Page 37 (lines 17-23): Change the inspection frequency from “two” to “five.” A two-year inspection frequency of catch basins and inlets, along with required cleanings, is unfeasible for our City without additional funds from outside sources to pay for staff.

Page 37 (lines 25-28): Do not change the previous language. The City should only have to clean the catch basins that need cleaning. If conveyance (a definition was not provided) means stormwater pipes, culverts, etc., then the City does not have the staff or funds available for this huge task of cleaning all these conveyances. Delete this requirement to clean conveyances.

Page 77 (line 37): Strike “or ground” from the outfall definition. I do not find in the Clean Water Act that it regulates groundwater so why should the draft Permit? Groundwater protection provisions are included in the Safe Drinking Water Act, Resource Conservation and Recovery Act, and the Superfund Act. (Wikipedia). In addition, financial, legal and technical challenges are beyond the City’s capabilities to address monitoring, enforcement and other issues of groundwater.

Appendix 1 (Page 5, line 32): Strike “Ground water to which surface water is directed by infiltration.” Adding groundwater to the definition of receiving waters opens up permittee’s to liability. This definition conflicts with the intent and benefits of filtration and infiltration LID best management practices.

Appendix 1 (Page 11, line 18): Strike “..., regardless of size,...” This requirement to include no size limits is too burdensome on smaller developments that usually create minimal off-site impacts.

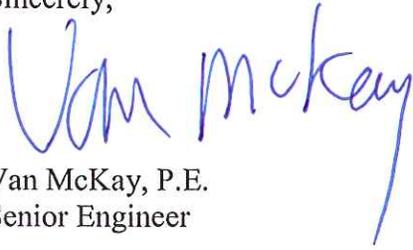
Appendix 1 (Page 26, Mandatory List #2): Requiring LID on projects requires additional soil and geotechnical information that is not currently required for small projects. This required soil information will be an additional expense for developers, will require additional City staff review time, and will require cities to have staff with geotechnical knowledge. The City does not currently have staff or funds for these additional requirements.

Appendix 1 (Page 25, lines 6-7): Strike “Project sites that must also meet minimum requirement #7 – flow control-condition just match flow durations between 8% of the 2-year flow through the full 50-year flow.” The standard has only been modeled – not tested on a regional scale. This increased flow standard is too burdensome and may be unattainable. As a result this increased standard may reduce the use of LID practices.

Appendix 6 (Page 1, line 24): Return language to its previous form. Sewer authorities do not have regulatory authority over discharges to MS4s.

If you have any questions or comments feel free to contact me at (360) 423-6590. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Van McKay". The signature is written in a cursive, flowing style.

Van McKay, P.E.
Senior Engineer