

PUBLIC WORKS ADMINISTRATION

Timothy J. LaPorte, P.E.
Public Works Director
400 West Gowe
Kent, WA 98032
Fax: 253-856-6500

PHONE: 253-856-5500

February 3, 2012

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

RE: Comments on the Draft Phase II Municipal Stormwater Permits

Dear Ms. Beale:

Thank you for considering the city of Kent's comments on the draft Western Washington Phase II Municipal Stormwater permit (draft Permit). The city of Kent takes seriously its obligation to protect water quality and is committed to full involvement with municipal permit development and implementation. That said; concerns about permit language remain. Comments are divided into four main sections below; General Comments, 2012 -2013 Permit Body Comments, 2013 – 2018 Permit Body Comments, and 2013 – 2018 Permit Appendix Comments.

General Comments:

Review process

Comment - The city of Kent believes that the concurrent review process for the draft Permit and supporting technical documents (2012 Stormwater Management Manual for Western Washington and the LID Guidance Manuals) puts an undue burden on permittees and does not allow time for a methodical, thorough review of the draft Permit. Of note, the LID Technical Manual was released over two months after the draft Permit. Because these documents are interrelated and changes to one will affect the other, the existing comment period does not allow adequate time for review.

Kent requests permit issuance be delayed to allow for sequential review of these documents, beginning with the technical documents.

ESHB 1478 (WA State Legislature 2011)

Comment - This bill was passed by the State Legislature during the 2011 session. This bill was intended to reduce the economic burden on municipalities already struggling during the ongoing economic downturn. The city of Kent believes that the current permit review process is counter to the spirit of ESHB 1478. Ecology should factor in the overarching intent of ESHB 1478 and work to develop a review

process that allows adequate time to methodically review the permits and all associated documents.

Economic Impact Analysis

Comment - Given the significant economic impact the draft Permit requirements would have on municipalities and developers, the city of Kent believes that the Department of Ecology should thoroughly analyze these impacts prior to mandating the proposed permit requirements. In addition, Ecology should conduct a small business economic impact statement as required by RCW 19.85.

Analysis of Existing Water Quality Measures

Comment - There are signs that the requirements in the current Permit are making significant improvements in the protection of surface water quality and water resources. Many permittees are seeing tangible improvements in pollution prevention efforts and citizen and developer-awareness of the importance of surface water pollution prevention. Rather than push forward with unproven technology (e.g. Low Impact Development) and requirements that further stretch the capacity of municipal funding and staffing levels, Ecology should more thoroughly analyze the substantive improvements achieved by the current municipal permit and work to ensure that all permittees are fully implementing the requirements.

2012 -2013 Permit Body Comments

Comment - Deadlines for compliance within the one-year permit need to be clarified. The Special Conditions addendum on page 5 of the reissued draft Permit (2012 – 2013) touches on the problems related to 'reissuing' the current permit. However, this section needs to more explicitly state that the timelines in the current permit are no longer applicable to the reissued permit. Also, the addendum should clearly state which programs need to be maintained during the one-year permit term.

2013 -2018 Permit Body Comments

Public Education and Outreach (S5.C.1)

"The outreach program shall be designed to educate target audiences about the stormwater problem..."

Comment - Please define "stormwater problem".

Illicit Discharge Detection and Elimination (S5.C.3)

"Permittees shall prioritize conveyances and outfalls and complete field screening for at least 40% of the MS4 within the Permittee's coverage area no later than February 2, 2016, and 20% each year thereafter." - page 26

Comment - This is a large amount of pipe that would need to be screened for illicit discharges by that time, and the annual requirement will be hugely burdensome and costly for permittees.

"The SWMP shall include an ongoing program to identify, detect, remove, and prevent illicit connections and illicit discharges into the MS4."

Comment - Please delete "prevent" as this is not feasible.

"Land use..." (S5.C.3.a)

Comment - Please define "land use"

Development and Construction (S5.C.4)

Vesting date issues (S5.C.4.a)

Comment - The date should refer only to the date on which a completed application was submitted. It is unreasonable and burdensome on cities and applicants to require revisions to projects mid-stream. The approach to tie the requirements from the draft Permit to the submittal date must be consistent with state laws and legal interpretations regarding vesting of development regulations (<http://www.mrsc.org/subjects/legal/vestedrights.aspx>).

Comment – The permit needs to be clear about what project approval means; i.e., is it land use approval, is it civil construction approval, etc? Also, what if someone bonds for, rather than constructs, the improvements for a plat? A long plat is valid for 7 years and possibly well beyond with extensions. This language needs some attention and thorough vetting by the planning and legal communities.

Watershed-scale stormwater planning (S5.C.4.h)

Comment - This requirement to cooperate with the Phase I county (King Co) for watershed-scale stormwater planning is overly general and unnecessary for urban areas. This planning tool must be more specific. How does the planning apply to water quality? How will growth management, critical areas protection, shoreline planning, the new regional monitoring, the WRIAs, and the many other local and regional planning groups already in place wrap into this requirement? There is no guidance as to what the goal of this planning will be and thus, the economic impacts cannot be adequately assessed.

Low Impact Development (LID)(S5.C.4.g)

"...The intent of the revisions shall be to make LID the preferred and commonly-used approach to site development..."

Comment - The design, installation, maintenance, and life-cycle costs of LID features in the Northwest are not well-documented. LID should be encouraged and incentivized rather than required. Thus, LID code updates should focus on

encouraging the use of LID by emphasizing potential benefits and providing incentives for their use.

Comment – Prior to prescribing LID techniques via municipal stormwater permits, Ecology should initiate a structured, wide-spread pilot program focused on installing and monitoring LID techniques. This would go a long way in determining the feasibility of these techniques over the long term, which is particularly important given the diverse topography, hydrology, soils, and geology of the region.

Comment - Before LID becomes the cornerstone of mandated approaches to handling stormwater, regulators need to find a way to address the critical aspect of proper inspection and maintenance. Without doing so, the long-term outlook for LID's effectiveness in addressing storm water is questionable and could be detrimental.

Comment – The LID Technical Guidance Manual, on which the draft Permit so heavily relies, is not detailed enough to provide the standards on which LID techniques should be designed, built, and maintained. In fact, halfway through the review period for the LID Technical Guidance Manual, Ecology issued an RFP for developing a maintenance manual for LID BMPs. If LID maintenance standards are not yet fully developed, how are municipalities supposed to fully assess the impact of the proposed LID requirements?

Comment - The regulatory cost of review, inspection and code enforcement for potentially thousands of LID BMP's is burdensome for the jurisdiction and will add significant permitting, construction, and maintenance costs to development; thereby creating restrictions on development, job growth, and the economic recovery. Ongoing maintenance inspection of thousands of privately owned and maintained BMP's is unrealistic. If defects are present, requiring private owners to fix them will result in a code compliance and legal quagmire and will create a significant cost to tax payers via use of city forces.

Comment - The regulatory cost of review, inspection and code enforcement for potentially thousands of LID BMP's is burdensome for the jurisdiction and will add significant permitting, construction, and maintenance cost to development; thereby creating constrictions on development, job growth, and the economic recovery. Ongoing maintenance inspection of thousands of privately owned and maintained BMP's is unrealistic. If defects are present, requiring private owners to fix them will result in a code compliance and legal quagmire and will create a significant cost to tax payers via use of city forces.

Operations and Maintenance (S5.C.5)

"Annual inspections of all stormwater treatment and flow control BMPs/facilities...Permittees may reduce the inspection frequency based on maintenance records of double the length of time..." – page 36

Comment - The city has over 400 of these facilities and, until the records are established, requiring increased frequency of inspection will divert resources from

areas that are known to need more frequent maintenance. A more realistic timeline would be to require inspection and maintenance of all stormwater treatment and flow control facilities one time during the five-year permit term.

"Inspection of all catch basins and inlets owned and operated by the Permittee at least once every two years."

Comment - This requirement is beyond the previous requirement and will be extremely onerous for local agencies to comply with, especially on top of the other increased inspection requirements. Revert to the previous requirement to inspect and maintain, as necessary, all catch basins once during the five-year permit term.

Timelines to address maintenance deficiencies – page 36

Comment - Please identify a timeline for addressing maintenance that requires capital construction of greater than \$25,000?

Monitoring (S8)

Comment - Status and Trends monitoring in receiving waters is the charge of the WA State Dept of Ecology (see Ecology EAP). Municipal permittees should not be required to carry out this requirement. Monitoring requirements for permittees should be limited to strategic MS4 monitoring only.

Comment - What happens if significant contributors to the proposed monitoring budget opt out of the buy-in option? Will a reassessment of expenses be necessary? And how would this be conducted with regard to permittee review and input?

Comment - The regional monitoring plan and funding mechanism means that a good portion of monitoring funding will be spent on locations outside of municipalities that are paying into the monitoring fund. Ultimately this means that rate payers will be paying for a service that is not occurring in the rate paying area. The legality of this funding framework should be thoroughly evaluated prior to implementing it.

Comment - Ecology has determined there will be a need for an oversight committee to monitor cost expenditures. This will require a significant amount of participation from permitted jurisdictions, and therefore the jurisdictions participating in the oversight committee should be compensated. This could occur by via in-kind credit towards the monitoring buy-in costs, or some other compensatory measures.

Appendices Comments

Appendix 1

"Converted Pervious Surface" (definitions)

Comment - New landscape areas should not be included in threshold calculations because they generally allow infiltration and should be encouraged.

"Hard surfaces" (definitions)

Comment - Pervious pavement should not be included in threshold calculations of new surfaces. While impervious and green roofs effectively are still impervious, permeable pavements, if designed and constructed correctly, do not have the same impact on runoff as impervious surfaces. Additionally, including pervious pavement in the threshold calculations may discourage the use of pervious pavement.

"Pollution Generating Pervious Surfaces" (definitions)

Comment - Parks should not be included in this list, as a park is not a surface. A park may, and typically will, include several categories of surfaces; so listing a park under this one category is neither accurate nor appropriate. Other items in the same list are also troublesome, as, for example, a "landscaped area" may or may not be pollution-generating, depending on the plant material and the maintenance plan. Likewise, sports fields and lawns should not be included as they may or may not fall under the category, depending on the particulars of the surfacing used as well as on the owner's maintenance practices.

"Rain Garden" (definitions)

Comment - Clearly state that this is not a flow control or Retention/Detention facility and that these facilities are not subject to a yearly inspection.

"Replace Impervious Surfaces" (definitions)

Comment - The definition of "replaced impervious surface" indicates a prejudice against moving the footprint of impervious surfacing, regardless of the net storm water impact. That could actually discourage responsible reconfiguring of existing impervious surfaces, such as inefficient parking lots, to improve storm drainage handling and treatment.

Comment - Definition should include an exception for rebuilding due to fire damage.

2.2 Exemptions (pg 2-3)

"The following road maintenance practices are considered redevelopment, and therefore are not categorically exempt. The extent to which the manual applies is explained for each circumstance. ...Removing and replacing a paved surface to base course or lower, or repairing the roadway base: If impervious surfaces are not expanded, Minimum Requirements #1 - #5 apply."

Comment - Roadway repair, even for large sections of road that excavate down to base course, should not be considered "redevelopment". With the proposed new requirements of Minimum Requirement #5, applying this minimum requirement to roadway maintenance projects is not reasonable or cost effective. All roadway repairs that do not expand the roadway surface should be exempt from all MRs except #2.

Flow Chart (Page 9)

Comment - This flow chart is confusing. It references converting $\frac{3}{4}$ acre or more of "vegetation" to "landscaped areas" without containing a definition within the document for either term.

Additional Requirements for Re-development Project Sites (Section 3.4)

Comment - This section only allows for a variance/exception to the application of the flow control requirement due to economic hardship. Since there is a standard presumption that the public sector cannot plead economic hardship, the underlying assumption is that there is never any good reason for the public sector to be exempted from the flow control requirement.

Comment - There should be written into the regulation some degree of discretion if it is determined that granting a variance is deemed to be in the public interest. Otherwise, the presumption is that storm water handling is the greatest public good, over every other potential public good, in every circumstance.

Minimum Requirement #1 (Section 4.1)

Comment - This requirement calls for retaining native vegetation and minimizing impervious surfaces "to the extent feasible". This unclear direction gives regulators too much discretion to decide that it is "feasible" to retain the native vegetation or to minimize impervious surfaces by not building a proposed park improvement in the first place. The verbiage needs to be clearer. At the very least, it should provide guidance for determining feasibility.

Minimum Requirement #5 (Section 4.5)

Comment - The requirement that small projects must use Low Impact Development BMP's will lead to maintenance and compliance issues in the future. Some of these BMP's have not been proven to function over long periods of time and long term maintenance criteria and procedures have not been adopted. Additionally, the LID performance standard and associated stormwater modeling has not been adequately developed, tested, and utilized in the industry.

Minimum Requirement #6 (Section 4.6)

Comment - Multifamily residential sites do not have the same pollutant characteristics as commercial or industrial and therefore should not be subject to Enhanced Treatment requirements.

Minimum Requirement #8 (Section 4.8)

Comment - This entire section (via requirements of guide sheet #3) requires extensive analysis of modeling that is not an industry standard. The relative infancy of these techniques and requirements will be difficult for private industry to

adequately design. Similarly, increased plan review efforts by local jurisdictions will be enormous and burdensome. This requirement will put a burden on local jurisdictions regarding mapping and classification of offsite downstream wetlands – you cannot force applicants to trespass on private property to determine classification, etc.

Feasibility Criteria for Selected Low Impact Development Best Management Practices (Section 8)

Comment - The feasibility assessment criteria includes a lot of "if reasonable" caveats. This is too vague and leaves way too much discretion up to permittees. This can lead to litigation based on differing opinions of what constitutes reasonable.

Comment - Setbacks from slopes should be based on geotechnical analysis.

Comment - Individual jurisdictions should be able to decide if they will allow bioretention facilities within building setback lines.

Comment – One-foot of vertical separation between the seasonal high groundwater table and infiltration facilities is not enough, regardless of the amount of impervious surface. Three feet should be the minimum.

If you should have questions related to any of the above comments, please contact Shawn Gilbertson, City of Kent NPDES Coordinator, at (253)856-5560.

Sincerely,

Tim LaPorte, P.E.
Deputy Public Works Director
City of Kent