



11930 Cyrus Way – Mukilteo, WA 98275

February, 2, 2012

Harriet Beale
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696
RE: Comments of the Draft Phase II Municipal Stormwater Permits
Dear Ms. Beale:

Thank you for the opportunity to provide comments on the draft of the NPDES Phase II permit and for incorporating comments from the preliminary draft permit into this latest draft. Upon review of the draft Western Washington Phase II permit the City of Mukilteo has prepared the following list of comments. We look forward to these issues being addressed in the final permit.

General Comments

Review Process

Many cities, including Mukilteo, have expressed concern over the concurrent review process for the combined review of the draft permit language and the supporting technical documents (i.e. the 2012 Stormwater Management Manual for Western Washington and the LID Guidance Manuals). They have also identified concerns over the limited availability of these documents, especially the LID documents. As these documents are interrelated and changes to one will affect the other, the existing comment period does not allow adequate time for review of all of these regulatory and technical documents. We request that the permit issuance be delayed to allow for sequential review of these documents, beginning with the technical documents. Mukilteo as many other small municipalities has limited staff and therefore has not been able to adequately review in detail three combined, interrelated documents totaling some 1500 pages. The Department of Ecology presentation on changes to the Stormwater Manual is 176 pages.

Expansion of the Scope Beyond EPA Requirements

Sections of this draft permit go well beyond the minimum requirements of the EPA and the Clean Water Act, and will create significant financial burdens on municipalities

during a time when cities can ill afford additional costs. Examples of these expansions include Low Impact Development (LID) and Monitoring requirements. We request that these sections be removed from the permit and be reassessed in future permits.

Economic Impacts

Compliance with 19.85 RCW Regulatory Fairness Act - The Act defines “small business” as “. . . *any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.*” The Act finds that uniform regulatory requirements can impose a disproportionate burden on small businesses (19.85.011 Findings – 2007 c 239 (5)). Further, Section 19.85.030 (1)(a) of the Act requires agencies to prepare a small business economic impact statement if a proposed rule will impose more than minor costs on businesses in an industry. The City of Mukilteo is concerned that the proposed mandatory LID requirements will have significant economic impacts on small businesses and developers and this will in turn result in an adverse economic impact to the city. In addition, it is the City’s opinion that prior to instituting such a mandate, a small business economic impact statement is required.

Low Impact Development

Comments: Reviewing and revising Municipal Codes to remove barriers and to promote the use of LID is a good idea, and is required under the current permit. More discussion and clarification of what LID practices may be required in areas that are not suitable for common LID best management practices (i.e. high groundwater, poorly infiltrating soils) is needed before the permit calls for codes to require LID.

Further consideration must also be made for inspection of LID facilities. By its very nature LID will create several times the number of stormwater facilities that need to be inspected when compared to “traditional” stormwater management. These facilities will also often be located on private property that City staff may not be able to freely access. Furthermore, with the increased number of facilities there will be a corresponding increase in the staff time required to inspect these facilities. This is a difficult proposition in a time when most jurisdictions are operating at or below minimum staff capacity.

Again, thank you for allowing Permittees to review and comment on the preliminary draft. I look forward to continuing to work with the Department of Ecology to create a permit that protects our water quality and allows responsible growth in our community.

Sincerely,

R. James Niggemyer
Assistant City Engineer
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cc: Larry Waters, P.E. Public Works Director
Patricia Love, Assistant Community Development Director