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Public Works Department

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February 2, 2012

Ms. Harriet Beale
WA Department of Ecology
Water Quality Program
P.O. Box 48696
Olympia, WA 98504-7696

Re: Draft Western Washington Phase II Municipal Stormwater Permit Comments for the One Year Permit (Aug. 1, 2012 – July 31, 2013) and Five Year Permit (August 1, 2013 – July 31, 2018)

Dear Ms. Beale,

The City of Port Orchard would like to thank you for the opportunity to comment on the draft municipal stormwater permits. The City has reviewed the aforementioned drafts and has the following comments:

One Year Permit, Stormwater Management Plan (Pg. 15, Line Nos. 24-26, S5.A.1)

“The SWMP shall be developed and implemented in accordance with the schedules contained in this section and shall be fully developed and implemented no later than 180 days prior to the expiration date of this Permit.”

Comment: The SWMP has already been developed under the current permit and would not need to be redeveloped since the permit is reissued. Continued implementation of the SWMP during the permit cycle would make more sense.

Suggestion: “The SWMP shall continue to be implemented in accordance with this section and shall remain fully implemented until the expiration date of this Permit.”

One Year Permit, Public Involvement and Participation (Pg. 18, Line Nos. 29-32, S5.C.2.a)

“No later than one year from the effective date of this Permit, all permittees shall create opportunities for the public to participate in the decision-making process involving the development, implementation and update of the Permittee’s entire SWMP.”

Comment: The one year uses the entire permit term. Just as the permit is expiring jurisdictions would have to create more opportunities for public involvement.

Suggestion: “Permittee’s shall continue to create opportunities for the public to participate in the decision-making process involving the development, implementation, and update of the Permittee’s entire SWMP.”

One Year Permit, Illicit Discharge Detection and Elimination (Pg. 19, Line Nos. 12-14, S5.C.3)
“Permittees shall fully implement an ongoing illicit discharge detection and elimination program no later than 180 days prior to the expiration date of this Permit.”

Comment: Program has already been fully implemented prior to this permit.

Suggestion: “Permittees shall continue an ongoing illicit discharge detection and elimination program developed under the permit that was effective on February 16, 2007 until the expiration date of this Permit.”

One Year Permit, Illicit Discharge Detection and Elimination (Pg. 23, Line Nos. 13-15, S5.C.3.d)
“No later than 180 days prior to the expiration of this Permit, distribute appropriate information to target audiences identified pursuant to S5.C.1.”

Comment: Please clarify this point since this has already been completed once. Would the information be required again or an update to the information be sent out?

Suggestion: “If information distributed to target audiences identified pursuant to S5.C.1 has changed, then update the information and route again prior to the expiration of this Permit.”

One Year Permit, Catch Basin Cleaning (Pg. 29, Line Nos. 32-33, S5.C.5.d)
“Inspection of all catch basins and inlets owned or operated by the Permittee at least once before the end of the permit term.”

Comment: Since the “permit term” will be one year from August of 2012 to July of 2013, you are requesting that the entire system be inspected time frame much shorter than the current permit cycle or the proposed cycle in the permit for 2013 to 2018. Even with the circuit approach, there could be an excessive amount of work proposed during this permit cycle.

Suggestion: “Permittee shall inspect at least 50% of system in highest pollution generating areas before the end of the permit term.”

One Year Permit, Annual Report (Pg. 43, Line Nos. 16-18, S9)
“No later than March 31 of each year beginning in 2008, each Permittee shall submit an annual report. The reporting period for the first annual report will be from the effective date of this permit through December 31, 2007.”

Comment: Permit date for the annual report does not take into account the reissuance of this permit.

Suggestion: “The reporting period for the first annual report will be from the effective date of this permit through December 31, 2012.”

One Year Permit, Duty to Reapply (Pg. 52, Line Nos. 7-8, G18)
“The Permittee must apply for permit renewal at least 180 days prior to the specified expiration date of this permit.”

Comment: Jurisdictions already have met this requirement for the permit cycle from 2013 through 2018.

Suggestion: “The Permittee must apply for permit renewal, if this requirement hasn’t been previously completed, at least 180 days prior to the expiration date of this permit.”

One Year Permit, Certification and Signature (Pg. 52, Line Nos. 23-28, G19.C)

“Changes to authorization. If an authorization under condition G19.B.2 is no longer accurate because a different individual or position has responsibility for the overall development and implementation of the stormwater management program, a new authorization satisfying the requirements of condition G19.B.2 must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.”

Comment: Due to reissuing the permit, any jurisdiction that has delegated authorities for any part of the permit, will have to redo these in mid-2012 and again in mid-2013 due to the succession of the permits.

Suggestion: “If an authorization under condition G19.B.2 has changed from the permit originally effective on February 16, 2007 is no longer accurate because a different individual or position ...”

Five Year Permit, Public Education and Outreach (Pg. 19, Line No. 31, S5.C.1.a.iii)

“Dumpster maintenance for property owners”

Comment: The indication of property owners is too limiting, it does not take into account leasees, renters, or not for profit organizations.

Suggestion: “Dumpster maintenance on private property” or “Dumpster maintenance for any individual, association, organization, partnership, firm, corporation, business, leasee, or other entity recognized by law acting as either the owner or owner’s agent, and/or having responsibility, charge, and/or control over any property”

Five Year Permit, Public Education and Outreach, (Pg. 20, Line No. 15, S5.C.1.c)

“. . . new targeted audience in at least one new subject area.”

Comment: The use of the word “new” limits jurisdictions flexibility to effectively manage their education and outreach programs. We are forced to look at a new program when a little more work on an existing program would reach the results that were intended before moving to another program.

Suggestion: “. . . targeted audience in at least one subject area.”

Five Year Permit, IDDE (Pg. 21, Line Nos. 13-14, S5.C.3)

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

Comment: Preventing illicit discharges is not always possible. Please remove the word prevent.

Suggestion: “The SWMP shall include an ongoing program to detect, identify, and remove illicit connections and illicit discharges into the MS4.”

Five Year Permit, Field Screening (Pg. 26, Line Nos. 3-6, S5.C.3.c.i)

“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.”

Comment: If you are screening at the outfall instead of within the conveyance systems, the City's workload would triple. Also, by adding conveyances which are already addressed in S5.C.5.d, when inspections are performed on catch basins and cleaning is needed, the conveyance system falls within that inspection and cleaning since it is connected to the catch basin. The annual inspections used to be based on water bodies instead of the entire system, this adds significantly to jurisdictions with shoreline areas. Also, jurisdictions were required under the current NPDES Permit to develop tools for identifying illicit discharges through business inspection and education programs, but the proposed method will not address intermittent discharges and will undermine the programs' jurisdictions' have already placed into working order. The due date of February for streams and water bodies is unreasonable since most streams are at their high flow points during that time. Perhaps adjusting the timeframe for the due date would alleviate this problem and allow inspections to be completed during dry weather.

Suggestion: "Permittees shall prioritize and visually inspect water bodies and outfalls for three high priority water bodies within their permit coverage area no later than October 31, 2016. One high priority water body shall be inspected each year thereafter."

Five Year Permit, IDDE Program (Pg. 27, Line No. 36, S5.C.3.D.iv)
"All illicit connections to the MS4 shall be eliminated."

Comment: The City can only remove what it knows; it cannot remove nor have a property owner remove an illicit connection if they do not know about it.

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

Five Year Permit Removal of the One Acre Threshold for Permitting (Pg. 29, Line Nos. 7-10, S5.C.4)
"This program shall be applied to all sites that disturb a land area of 1 acre or greater, including projects less than one acre that are part of a larger common plan of the development or sale."

Comment: Removal of the one acre threshold or projects that are part of a common plan of development makes it more labor intensive for jurisdictional staffing. Permitting small projects like one or two residences within City Limits will cause an increase in necessary inspections, which will drive permitting fees and utility fees up for smaller jurisdictions which currently do not permit below the one acre threshold currently in place.

Suggestion: Keep the threshold at one acre for the first three years, then lower it to give jurisdictions time to adjust gradually with their citizens instead of an all at once increase to necessary fees and staffing to meet this requirement.

Five Year Permit, Ordinance for Runoff from New Development, Redevelopment, and Construction Site Projects (Pg. 29, Line Nos. 20-26, S5.C.4.a)
"The ordinance or other enforceable mechanism to implement (i) through (iii) below, shall be adopted and effective no later than December 31, 2015. The local program adopted to meet the requirements of S5.C.5.a(i) through (iii), below shall apply to all applications submitted after January 1, 2016 and shall apply to projects approved prior to January 1, 2016, which have not started construction by January 1, 2021."

Comment: The last sentence contradicts the City's adopted municipal code and Washington State law regarding the time a permit can be held open. The City has consistently used the time frame for the applicability of active permits of "a maximum of three years from the date of

issuance.” At three years the applicant shall stop work and reapply for a new permit to bring them current with all regulations and standards in effect at that time. Additionally, projects may be submitted for review prior to January 1, 2016, but are not issued a permit until after January 1, 2016, but this language does not address which codes the applicant would be required to adhere to. Additionally, there is not an acknowledgement of legal precedent and state law that has been previously set.

Suggestion: “The ordinance or other enforceable mechanism to implement (i) through (iii) below, shall be adopted and effective no later than December 31, 2015. The local program adopted to meet the requirements of S5.C.5.a(i) through (iii), below shall apply to all applications submitted after January 1, 2016 and shall apply to projects approved prior to January 1, 2016, which have not started construction in accordance with adopted municipal codes, state laws, and legal precedent.”

Five Year Permit, Residential Development, (pg. 32, Line Nos. 19-23, S5.C.4.c.ii)

“Inspections of all new stormwater treatment and flow control BMPs/facilities and catch basins for permanent residential developments every 6 months until 90% of the lots are constructed to identify maintenance needs and enforce compliance with maintenance standards as needed.”

Comment: In cases where jurisdictions have a short plat subdivision, which may only have four lots total, achieving the 90% compliance means that during the economic times we currently face jurisdictions must use already limited staff to perform inspections on developments with little hope of forward movement for quite some time. This is staff time that would be better served meeting other areas of the permit or addressing citizen comments within a jurisdiction.

Suggestion: “Inspections of all new stormwater treatment and flow control BMPs/facilities and catch basins for permanent residential developments every 6 months during the period of heaviest construction (i.e. 1 to 2 years following subdivision approval) to identify maintenance needs and enforce compliance with maintenance standards as needed.”

Five Year Permit, Development Code Revisions (pg. 34, Line Nos. 21-32, S5.C.4.g.i)

“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 principles and LID Best Management Practices (BMPs). The intent of the revisions shall be to make LID the preferred and commonly-used approach to site development. In reviewing the local codes, rules, standards and other enforceable documents, the Permittees shall identify opportunities to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations. Permittees shall conduct a review and revision process similar to the steps and range of issues outlined in the following document: Integrating LID into Local Codes: A Guidebook for Local Governments (Puget Sound Partnership, 2011).”

Comment: The revisions that are required thru this section of the permit constitute almost a complete overhaul of codes for both Public Works and Planning Departments. Through the current economic conditions the City of Port Orchard has maintained a small staff which currently has difficulty some days meeting land use and construction requirements. Furthermore, you are directing changes that contradict the Growth Management Act and the Shoreline Management Act. During your presentations you stated as an organization that the land use vesting and permitting are separate from the stormwater codes and permitting, yet here you request major changes to land use regulations. Additionally, there needs to be some consideration for updates to Comprehensive Plans which are also directly affected due to the requirements. A longer time frame to implement all of the legal changes allowed under a

stormwater driven permit is necessary. Also, consideration of who is to assume the liability invoked from the changes required to the Municipal Codes needs to be taken under advisement. The additions required to the development codes opens jurisdictions to third party and owner/developer based liability and lawsuits.

Suggestion: “No later than December 31, 2017 (or the end of the permit term), Permittees shall review and revise their local development-related codes, . . . “

Five Year Permit, Spot Checks (Pg. 36, Line Nos. 33-35, S5.C.5.c)

“Spot checks of potentially damaged permanent stormwater treatment and flow control BMPs/facilities after major storm events.”

Comment: What is a major storm event in Ecology’s view? Based on the previous permit it was the 10-year recurrence interval rainfall.

Suggestion: Base it on the storm event size, though subjective, it does give a threshold to jurisdictions.

Five Year Permit, Catch Basin Cleaning (Pg. 37, Line Nos. 25-26, S5.C.5.d.ii)

“The Permittee may clean the entire MS4 within a circuit, including all conveyances and catch basins, once during the permit term.”

Comment: Contradicts the language above in S5.C.5.d.i about inspecting every two years. Also, this is not very clear about what conveyances are. Please add additional language in this section to clarify what Ecology considers conveyances or add a definition to the definitions section.

Suggestion: “The Permittee may clean the entire MS4 within all circuits, including all conveyances and catch basins, once during the permit term in lieu of inspections every two years.”

Five Year Permit, Reporting in WA WebDMR (Pg. 63, Line Nos. 22-24, S9)

“Permittees shall submit annual reports electronically using Ecology’s WA WebDMR program available on Ecology’s website at [Draft permit placeholder for link to appropriate Ecology webpage] unless otherwise directed by Ecology.”

Comment: Under General Condition 19 Section B Permittees are able to use a duly authorized representative to act on behalf of the principal executive officer. Access to WebDMR to complete the annual report may require more than one person access to submit data. Please see WebDMR for reporting on Construction NPDES permits.

Suggestion: Please set the program up to allow once person access to submit the report, duly authorized representative or executive official, and other employees access to input and review data, but not submit to Ecology.

Five Year Permit, Appendix 1, New Development (pg. 11, Line No. 2-3, Section 3.2)

“All new development, regardless of size, shall be required to comply with Minimum Requirement #2.”

Comment: The term “regardless of size” has been added here, yet in Minimum Requirement #2 on Page 13 it only applies to “projects which result in 2,000 sq. ft. or more of new plus replaced hard surface area, or which disturb 7,000 sq. ft. or more.” A person trying to build a small home

on a small lot typically does not reach 2,000 sq. ft. in hard surface area. This requirement just adds additional burdens to owners, developers, and jurisdictions to meet compliance.

Suggestion: "All new development with 2,000 sq. ft. or more of new plus replaced hard surface area, or which disturb 7,000 sq. ft. or more, shall be required to comply with Minimum Requirement #2."

Five Year Permit, Appendix 1, Mandatory List #1 (pg. 25, Line No. 24-31, Roofs Section)

"Roofs:

1. *Full Dispersion in accordance with BMP T5.30 in Chapter 5 of Volume V of the SWMMWW*
2. *Downspout Infiltration Systems in accordance with Section 3.1.1 of the SWMMWW*
3. *Rain Gardens in accordance with design procedures in the "Rain Garden Handbook for Western Washington"*
4. *Downspout Dispersion Systems in accordance with BMP T5.10 of the SWMMWW*

Comment: The list is a good start for a developer when starting with a piece of property that has not had any plat conditions attached to it. However, a homeowner or developer who has a lot within an approved plat needs to look at the conditions of that plat and determine whether disconnecting, or not connecting at all, the downspouts is a viable option to be in compliance with the plat to achieve a Certificate of Occupancy. If a developer or owner wishes to disconnect the downspouts to use one of these techniques in an area where conditions currently state that a closed conveyance system must be used, the owner or developer will be forced to do a plat amendment for the entire plat to modify their piece of property. For most owners or developers this would make this project infeasible due to the amount of time and cost involved.

Suggestion: "Roofs (Please check your plat conditions or consult your local jurisdiction before continuing to make certain a plat amendment will not be necessary):

1. Full Dispersion . . ."

Five Year Permit, Appendix 1, Mandatory List #2 (pg. 26, Line No. 11-25, Roofs Section)

"Roofs:

1. *Full Dispersion in accordance with BMP T5.30 in Chapter 5 of Volume V of the SWMMWW*
2. *Downspout Infiltration Systems in accordance with Section 3.1.1 of the SWMMWW*
3. *Bioretention BMPs (See Chapter 7 of Volume V of the SWMMWW) that have a minimum horizontal projected surface area below the overflow which is at least 5% of the of the total surface area draining to it. If the short-term native soil infiltration rate is less than 0.3 in/hr, do not use this option unless the roof is classified as pollution-generating impervious surface.*
4. *Downspout Dispersion Systems in accordance with Section 3.1.2 of the SWMMWW*
5. *For a commercial building, a vegetated roof or an impervious roof with runoff routed below permeable pavement. If the latter option is not used, a cost analysis is necessary to claim infeasibility of a vegetated roof."*

Comment: The list is a good start for a developer when starting with a piece of property that has not had any plat conditions attached to it. However, a homeowner or developer who has a lot within an approved plat needs to look at the conditions of that plat and determine whether disconnecting, or not connecting at all, the downspouts is a viable option to be in compliance with the plat to achieve a Certificate of Occupancy. If a developer or owner wishes to disconnect the downspouts to use one of these techniques in an area where conditions currently state that a closed conveyance system must be used, the owner or developer will be forced to do a plat

amendment for the entire plat to modify their piece of property. For most owners or developers this would make this project infeasible due to the amount of time and cost involved. Also, a typo in item 3 needs to be addressed “. . . 5% of the total surface area . . .” of the was repeated twice.

Suggestion: “Roofs (Please check your plat conditions or consult your local jurisdiction before continuing to make certain a plat amendment will not be necessary):

1. *Full Dispersion in accordance with BMP T5.30 in Chapter 5 of Volume V of the SWMMWW*
2. *Downspout Infiltration Systems in accordance with Section 3.1.1 of the SWMMWW*
3. *Bioretention BMPs (See Chapter 7 of Volume V of the SWMMWW) that have a minimum horizontal projected surface area below the overflow which is at least 5% of the total surface area . . .”*

Five Year Permit, General Comment, 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 form 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 is concerned with other jurisdictions 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 on the City and other jurisdictions. In addition, prior to instituting such a mandate, a small business economic impact statement is required.

Please feel free to contact my office should you have any questions.

Sincerely,



Andrea Archer, P.E.
Assistant City Engineer/Stormwater Manager

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cc: Tim Matthes, Mayor
Mark R. Dorsey, P.E., Public Works Director/City Engineer
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