



February 3, 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:

The City of Shoreline (“City”) appreciates the opportunity to provide comments on the draft Western Washington Phase II municipal stormwater permits. We fully support the need to provide for clean water across the state, and recognize the role that stormwater management plays in reaching that goal. However, the City has several concerns about the requirements in the new draft permits. The City has compiled a list of concerns and questions. Please see our comments below.

2012 – 2013 Draft Western Washington Phase II Municipal Stormwater Permit

General Comments

1. As an interim measure, the City believes that Ecology should reissue the current permit for a longer period of time and modify the effective date of the new Permit to early 2015. This is consistent with the approach that was taken with the initial Phase I permits, where the first permit was in effect for 12 years while Ecology worked with stakeholders to develop the second permit. The rationales for this request are below:

The concurrent public review process for the draft Permit and the draft Manual potentially conflicts with the state’s Administrative Procedures Act for rulemaking. The draft Manual contains stormwater development standards that will become requirements in the new Permit. Typically, Ecology would have completed a separate public review process on the draft Manual before embedding standards in the draft Permit as proposed requirements. In addition, the draft Manual is incomplete, reference documents not yet available, and Ecology has not conducted a cost-benefit analysis of the draft Manual or draft Permit.

DOE's request for jurisdictions to review three large, detailed, interrelated documents in such a short time period (3 months) does not allow for sufficient review of documents that will have very significant impacts on the jurisdictions' budgets and staff. The City requests that review and comment timelines be extended. It is unreasonable for jurisdictions to provide comments on the draft permit language without having a reasonable review period for the documents that are referenced in the permit for new requirements (LID manual and Western Washington Manual). The draft permit and associated manuals would be greatly improved if the schedule was extended to allow reviewers affected by the draft policy requirements to provide a higher level of quality of detailed comments.

2. The City thinks that Ecology misinterpreted the 2011 legislature direction (ESHB 1478) to reissue the existing Phase II permits without changes for a one-year permit. The deadlines for implementation remain the same from the existing permit. Some of these deadlines state that the item must be implemented "180 days before the expiration of the permit". This may lead the public to believe that the City must accomplish those activities again before the expiration of the permit in 2013. It has been made clear by Ecology that this was not their intent, but we believe this should be explicitly stated for the public. This could be accomplished simply by removing all of the dates in the permit and making a blanket statement in the beginning to the effect that "all activities herein were accomplished under the previous permit term. The purpose of this permit is to legally require that those activities continue to be implemented until the new permit goes into effect in 2013."

2013 – 2018 Draft Western Washington Phase II Municipal Stormwater Permit
S5.C.3 Illicit Discharge Detection and Elimination

3. *S5.C.3.a .iii – Mapping of LID BMPs within the City*

Does this only apply to the BMPs that the City controls, or are local jurisdictions expected to use as-builts to map private LID BMPs? The City requests DOE clarify this requirement.

S5.C.3.a.iv - Land use and associated drainage areas must be mapped.

In our review, it was unclear whether DOE meant Land Use or Zoning. The City's Planning and Community Development Department sees a difference between these two separate terms; the City is uncertain about Ecology's intention here. The City requests DOE to provide a definition or clarification to the term "land use."

4. *S5.C.3.a.vi – The City is required to map all "Geographic areas served by our MS4 that do not discharge into surface waters."*

The term "geographic area" can be interpreted in many ways. Is Ecology referring to closed basins or individual parcels with zero discharge? The difference in scale would directly impact the workload anticipated by the City. Please provide a definition for "geographic area" that includes specifically stating the minimum size expected to be mapped.

5. *S5.C.3.b.i – The City has two questions about items on the list of allowable discharges.*

(1) How are "foundation drains" and "footing drains" different? The City requests clarification to aid in implementation of the permit. (2) The City also requests clarification regarding "water from crawl space pumps." The previous Western Washington Manual did not allow for discharge

from crawl space pumps to be directly connected to the City's MS4. Is there something new in the 2012 Manual that allows such connections, or is Ecology referring to overland discharges?

6. *S5.C.3.b.ii – Conditionally allowed discharges.*

The City agrees with the addition of pools, spa and hot tub discharges to the swimming pool requirements. However, the City has questions about the conditions placed on these discharges. The City requests that Ecology set clear limits and definitions for "thermally controlled," pH and dissolved oxygen limits and "velocity controlled". Without clear definitions, it will be very difficult or impossible to monitor and enforce compliance with these conditions. Without a clear temperature range, the water to be discharged could be tested against, determining that compliance with this provision would require that someone test the receiving water body during the period in which the water is being discharged to make sure there is no increase in temperature. This process would require significant time and incur a significant cost. The provisions for Dissolved Oxygen and pH state that the water must be "pH-adjusted and reoxygenated if necessary." Without numerical limits and ranges on these, it would be hard to determine when adjustment is necessary. Limits or ranges would make it clear when the discharge falls outside of this range. If Ecology's intention is that this discharge must comply with the State Water Quality Standards, then that should be explicitly stated. If not, please provide a numerical value. The term "velocity controlled" is very ambiguous. How slow does the water have to enter our system to have no perceived impact on the downstream system and receiving water body? Many factors could be affected by the velocity of the discharged water. Sediments could be resuspended in the MS4 system, or increased velocities could scour streambeds at the point of discharge.

7. *S5.C.3.c.i – Ecology has added to the permit the requirement that "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."*

Ecology refers both to outfalls and to the general MS4 in this statement. The City asks that Ecology modify this statement to make it clear if the intention is that the City screen 40% of the known municipally-owned outfalls or 40% of the entire system, including ponds, tanks, pipes, catch basins and outfalls. Either way, The City would also like to make a note about this requirement. The general consensus among permittees is that "outfall screening" has not been very effective in discovering illicit dumping and connections. Source control inspections have proven significantly more effective. The City requests that the outfall screening of this requirement be removed. In addition, the City requests that Ecology clarify what constitutes screening of the MS4? S5.C.3.d.iv, regarding the last sentence in that section page 27; the City requests this sentence be changed to, "All KNOWN illicit connections to the MS4 shall be eliminated" instead of just "All illicit connections." The City cannot eliminate what is not known to exist. The previous permit included the qualifier of "known" when referring to mapping of city-owned outfalls.

S5.C.4 Controlling Runoff from New Development, Redevelopment and Construction sites.

8. *S5.C.4.a*

The requirements of this section may conflict with state law. For example, it may conflict with the timing of site development and right-of-way permits for sub divisions required in the state law. The City requests that Ecology check the requirements in the draft permit against the state requirements

and either confirm that there are no conflicts, or state explicitly that the requirements in this permit would supersede the state law. The City also requests that the permit language is as clear as possible, so jurisdictions do not have to interpret the language. For example, what does "approved" mean, in "projects approved prior to January 1, 2016"? Additionally, footnote 20 gives a definition of "started construction" that requires interpretation as written. For example, what if there is an approved Master Site Plan and construction has started for a portion of the development, but not the rest of the site? Another possibility is an approved development agreement where regional roads and utilities are installed, but future project sites in the development have not been started.

The City suggests the permit language be revised to state that the "started construction" includes development agreements or master site plans where ANY grading or utility work has begun.

9. *S5.C.4.c.ii – Ecology states that the City must perform “inspection every 6 months until 90% of the LOTS are constructed.”*

The term lot could mean several different things such as short plats and parcels, subdivision, condos, townhouses or planned residential developments. Each of these definitions would have a different impact on the City’s inspection program. The City requests that Ecology define the term “lot.”

10. *S5.C.4.c.iii – The City requests substantial clarification regarding the maintenance responsibility for private properties.*

Several questions and concerns include: who is responsible for stormwater facility maintenance on private property if the private owner fails to maintain such facilities? Does Ecology expect the City to maintain these private facilities and thus be financially responsible for the maintenance? Does Ecology expect that the City leverage fines against business owners that do not maintain their system to the standards outlined in the Stormwater Manual for Western Washington? Also, is Ecology requiring that the City inspect all privately owned BMPs within the City regardless of when they were installed or improved? The City currently inspects privately-owned commercial facilities that require a water quality or flow control structure. Any requirement that may require the City to inspect all private facilities would require substantial increases in resources (staff and budget).

11. *S5.C.4.g.ii - #2 states “measures to minimize loss of NATIVE vegetation.”*

Most of the vegetation within the City of Shoreline is not native. The City understands that the likely intention is to preserve established ground cover, so the City thinks it might be more appropriate to substitute “established vegetation” for “native vegetation.” If the term “native vegetation” remains, the ramifications could be that an entire lot could be cleared of vegetation because it is not native. Alternately, Ecology could better define the term “native vegetation” that includes existing vegetation that is not considered a noxious plant.

S.8 Monitoring Requirements

General Comments

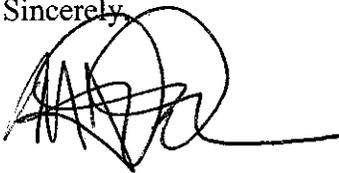
12. The cost for this level of monitoring efforts is too onerous for jurisdictions in a time when many jurisdictions are being asked to make budget cuts. The “opt out” option is not really an option because it would be more expensive than the cost to participate in the regional program. The City already pays an approximately \$26,000 permit fee to Ecology for annual permit oversight. The

additional monitoring costs would more than double what the City pays out of pocket to \$63,591 total. This increase is in addition to the extra costs the City will incur to implement all of the new permit requirements. The City suggests postponing the monitoring until the next permit term or scaling back currently proposed scope and efforts, thus lowering the cost to participate in the program.

13. The City is concerned about the reliability of fees quoted for each jurisdiction in the draft permit. If some jurisdictions choose to opt out, will that raise the per jurisdiction fee for the remaining jurisdictions? Will these fees increase annually or remain static for the permit term?

Thank you for the opportunity for this review. We look forward to working with you on various approaches that provide protection to the environment, using solutions that are effective and obtainable by our jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Relph', with a large, circular flourish above the name.

Mark Relph
City of Shoreline
Public Works Director