



**CITY OF SUMNER**  
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Public Works

February 3, 2012

Municipal Permit Comments  
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 Permits

To whom it may concern:

The City of Sumner would like to thank the Department of Ecology (DOE) for the opportunity to submit comments on the Draft Phase II Stormwater NPDES Permits. While there are several lengthy, complex and technical documents out for comment and a small window of opportunity for review, analysis and submittal of comments, it is our intent to provide Ecology with constructive feedback on the draft language currently posted. Below are the City of Sumner's comments pertaining to the 2012-2013 Draft Phase II Stormwater Permit, the 2013-2018 Draft Phase II Stormwater Permit and supplemental documents.

2012-2013 Draft Phase II Stormwater Permit Comments:

- The 2012-2013 Phase II Permit should be revised to reflect the transfer of a 5-year cycle to a 1-year Permit cycle. Since the 1-year Permit is not an extension, but rather a re-issuance, requirements will need to be examined and modified to reflect the compressed 1-year term. Certain costly requirements, such as catch basin maintenance S5.C.5.d within the Permit are scheduled to be completed once throughout the Permit cycle. These types of obligations should be altered before re-issuance to avoid repetition of time consuming and expensive tasks.

2013-2018 Draft Phase II Stormwater Permit Comments:

- The City is requesting a delay in the issuance of the 2013-2018 Phase II Stormwater Permit due to the number of extensive documents pertaining to and including the Phase II Stormwater Permit that are currently experiencing revisions, and the time constraint for public comment. The time allotted for review and analysis of all documents is insufficient to address the economic and operating impacts of the revised Permit components. The extension would provide an opportunity for ecology and permittees to fully examine and develop a Permit that establishes

informative, cost-effective guidelines and requirements as well as allow for additional research of Low Impact Development technologies.

- **S5.C.3 Illicit Discharge Detection and Elimination & S4.F**

Usage and interpretation of the word “prevent” when referenced in sections S4.F and S5.C.3 could present legal ramifications and result in third party lawsuits for many jurisdictions attempting to comply with these requirements. When undefined and in context of water quality, the word “prevent” provides an opportunity for interested third parties to develop private principals and standards of prevention. We suggest a language modification to incorporate wording such as: an *intent to* or program *designed to* prevent the degradation of water quality when referenced in these sections to decrease the potential for judicial contention.

- **S5. C.4.a**

The condition that mandates compliance with the local program requirements for all applications received before Jan 1, 2016 which have not started construction by January 1, 2021 is contrary to state and local vesting rules and law. City Code allows vesting building permits to the code in effect upon the date which a complete building permit application is received by the City. See SMC 18.56.190. The Washington State Supreme Court has held that the vested rights doctrine "refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application's submission." *Noble Manor v. Pierce County*, 133 Wn.2d 269, 275 (1997). As written, the condition subjects the City to a classic *Hobsonian Choice* – either not to take action against the permit applicant and face enforcement action from Ecology under the provisions of the City’s phase II permit -- or take enforcement action against the permit applicant and face a countersuit from permit applicant insisting that the provisions are not applicable as their development is vested under state and local law. Therefore, the City is requesting that the provision be stricken and only mandate compliance on all applications received after January 1, 2016.

- **S5.C.4.g – Low impact development code-related requirements**

Incorporating Low Impact Development (LID) into City policy, standards and code is a burdensome task. Many cities do not possess the experience and knowledge related to LID in order to develop educated comments regarding the feasibility of applying LID within their geographic region.

New technologies such as permeable pavement are emerging in the new Permit as an applicable BMP. The requirement of implementing permeable pavement presents several concerns related to costs. Maintenance, clean-up and repair are some of the initial concerns. Other concerns include the necessity and cost to acquire and mobilize new equipment and become proficient at performing new methods for activities such as refinishing to extend the life of the road surface. Additional information on the subject of maintenance, repair, costs and equipment is necessary prior to requiring permeable pavement as a viable LID technology.

Appendix 10 - Funding Agreement between Ecology and Municipal Stormwater Permittee

- The current Permit language allows Permittees to select a pay-in or opt-out monitoring plan. The initial cost allocations for each permittee were developed based on 100% participation and a 10% project contingency. Clarity and further explanation of the project deliverables should be developed in the Permit and/or supplemental documents to address circumstances where the percentage of participants is less than 100% and the correlating jurisdictional cost allocations.
- The pay-in and opt-out monitoring options in each of the three monitoring categories: Status and Trends, Effectiveness and Source I.D. for section S8 and Appendices 9 and 10 of the Phase II Permit appear to be divergent. The monitoring requirements for the pay-in vary from those described in the opt-out options in each category of monitoring. For cities that possess a certified lab and segments of the monitoring equipment necessary to conduct monitoring, the decision to pay-in or opt-out becomes challenging. The status and trends monitoring for the opt-out appears to be a continuous flow monitoring whereas the contracted monitoring for the pay-in option collects instantaneous flow measurements. It is unclear as to why the monitoring pay-in and opt-out options should differ.

Once more we thank you for the opportunity to provide public comment on the Draft Phase II Stormwater Permits and supplemental documents posted on DOE's website.

If you have any questions or concerns, please contact me via email or phone number listed below.

Sincerely,



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cc: William Pugh, P.E. Public Works Director  
Mike Dahlem, P.E. City Engineer