



King County

Water and Land Resources Division

Department of Natural Resources and Parks

King Street Center

201 South Jackson Street, Suite 600

Seattle, WA 98104-3855

206.296.6519 Fax 206.296.0192

TTY Relay: 711

February 2, 2012

Bill Moore
Municipal Permit Comments
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

RE: Comments on the 5-year and 1-year Phase I Municipal Stormwater General Permits issued for review on October 19, 2011

Dear Mr. Moore:

Thank you for the opportunity to provide comments on the Final Draft Language for the Phase I 5-year and 1-year Municipal Stormwater General Permit, released for public comment on October 19, 2011. This new 5-year permit is a critical tool in the region's effort to reverse the environmental degradation caused by stormwater runoff. King County is a strong regional advocate of comprehensive stormwater management and believes that this permit is an essential element for improving the region's environmental health. The Puget Sound region needs effective, integrated stormwater management programs which not only protect the water quality of local streams, lakes, wetlands, and Puget Sound but also serves to protect the public safety and welfare of the region's citizens and properties.

Phase I – Five Year Permit

This permit includes some excellent advances in stormwater management that will encourage municipalities to manage stormwater in closer cooperation. King County is particularly supportive of the new regional monitoring approach and believes that with proper implementation, it can help us determine the effectiveness of the region's stormwater management programs and provide important data to further improve service delivery and inform future priorities. King County is also supportive of the permit's intent to advance the appropriate use of Low Impact Development (LID) techniques as a stormwater management tool, and the advancement of basin planning to establish the best mix of all available tools at a basin scale for protecting and restoring water quality and aquatic resources.

King County believes that the draft permit will improve stormwater management and advance the region a step closer toward meeting its Puget Sound recovery goals. However, particularly

in a time of economic challenge, all local governments must be wise and deliberate in managing limited public resources available for stormwater management. Consequently it is vital that the actions required by the permit be cost effective, feasible and flexible to address the most pressing water quality and runoff problems in our jurisdictions.

In light of these considerations, we offer our comments with the following principles in mind:

- 1) Allow jurisdictions to use limited public funds for the most important actions to solve water quality problems and give us flexibility in achieving the intended outcomes in a cost efficient and effective manner.
- 2) Hold us accountable for achieving outcomes as measured by the regional monitoring framework, not by prescribing a particular requirement that may be the wrong tool for local conditions.
- 3) Ensure that permit conditions are technically feasible and solve the most pressing problems we face and foster solutions that are long term and practicable.

This letter contains comments on several topics that we want to particularly bring to the attention of Ecology. Additionally, detailed comments relating to specific sections of the draft permit language are provided in the enclosed spreadsheet that is organized by permit section, using page and line numbers per your request.

Improve the integration with other state laws: Improving stormwater management requires broad long-term changes across the Puget Sound landscape. However, the draft permit should be better integrated with state land use and vesting laws. For example, the permit's requirement seeking to apply newly adopted stormwater standards to previously approved developments that have not started construction (S5.C.5.a.iii) may in a particular instance conflict with state vesting law. The inclusion of this requirement places the County in a legal dilemma, i.e. comply with the permit or comply with state vesting laws.

The County supports Ecology's effort to integrate land use and stormwater management through the application of LID principles in the permit. However, in some instances the use of prescribed LID methods appear to be the equivalent of direct land use control. Please clarify if it is the intent to mandate certain land use practices or development standards under these permits. Land use management is a critical component to effective stormwater management but should not supersede all other considerations, including the need to meet the goals and requirements of the Growth Management Act and Shoreline Management Act.

Deadlines and Timelines: The efforts to balance the pace of implementation with the ability of the permittees to absorb and implement additional actions are appreciated. But attaining some of the timelines is not feasible and is dependent on local legislative decision-making processes. Changes in code and ordinances that require an equivalency process with Ecology staff and then a legislative and rule-making approval process will take more time than allowed by the permit.

The timeline for the basin planning requirement is insufficient to allow local jurisdictions time to seek the significant funding necessary and cost share agreements with participating municipalities necessary and to effectively engage the community to prepare and adopt the basin plan. We request this requirement be moved out at least one year and longer if the municipal relief bill currently in the state legislature that would delay this requirement for Phase 2 jurisdictions is adopted.

Finally, we would urge Ecology to consider, particularly in light of the PCHB's decision in the Rosemere Appeal, to have the permit explicitly authorize Ecology to grant extensions to permit deadlines for individual permittees without formally modifying the permit, upon request by the permittees and for good cause show. "Good cause" could include demonstrations by the permittee that it has diligently undertaken actions to meet the permit deadline, but due to circumstances beyond the permittee's control, it is unable to meet the deadline.

External Document Requirements: The permit requires permittees to adopt external documents or equivalent processes. These include Ecology's Western Washington Stormwater Management Manual; Puget Sound Partnership's Processes for Adoption of LID Code; Washington Stormwater Center's LID Design Manual; and, the Center for Watershed Protection's Outfall Reconnaissance Protocols. The guidance and supporting information that are contained in these documents is helpful but should be considered as guidance documents, not permit requirements.

Ecology should extend the time for review of these associated documents currently in review. The timing of concurrent technical reviews has strained resources throughout the region. The quality and effectiveness of these documents and regulations would greatly benefit from input from the public and technical expertise of the permittees staff.

Cost: There are significant costs associated with implementing this permit that will be challenging to meet with existing resources. We estimate increased costs to be between \$1.5 to 3.5 Million per year through the 5-year life of the permit. The new requirements that drive these cost increases include those for increased water quality protection in four Total Maximum Daily Load (TMDL) basins; adoption of regulations to implement new LID requirements; one new basin plan; and mapping and outfall screening. We are in a time of declining surface water management revenues due to annexations and incorporations. These increased costs will mean either significant reductions to other stormwater services or a significant rate increase. Extending the deadlines for these requirements and phasing in these programs would reduce the financial strain caused by the permit, and enable us to evaluate priorities and work through the public and legislative process to develop and build support for a rate proposal. Also, please clarify the intent of Section 5.B; it appears to mandate expenditures for activities not otherwise required by the permit.

Total Maximum Daily Load (TMDL): King County is looking for flexibility in the permit to be able to use the mapping and outfall screening done to meet the TMDL requirements to also meet the mapping (S5.C.2) and outfall screening (S5.C.8) requirements in the permit. The draft

permit contains new permit requirements for four basins in King County with TMDLs where the surface waters are impaired due to fecal coliform or nutrients. The implementation of three of these TMDLs includes requirements for extensive outfall screening using fecal coliform sampling, source tracing, and related mapping activities. These efforts will require significant staff, technology, and laboratory resources. Yet mapping and outfall reconnaissance requirements in the permit focus King County's efforts in urban residential sub-basins rather than the TMDL basins which are primarily composed of rural sub-basins. King County desires the flexibility to focus its mapping and outfall reconnaissance efforts not on the urban residential sub-basins, but rather on the TMDL rural sub-basins, which currently have no mapping or outfall reconnaissance requirements in the body of the permit.

King County is concerned about the inclusion of the Clark Creek TMDL in this draft permit. This TMDL is being developed using flows as a surrogate parameter instead of the problem pollutant as the basis for the TMDL remediation requirements. TMDLs need to be developed based on science, technical feasibility, and efficient use of ratepayer dollars. We believe that the scientific foundation of this TMDL is flawed and is founded on insufficient data and modeling and will require significant funding (\$30-60 million are some of the initial estimates) for an untested control strategy. We recommend that a more robust analysis be done to support and refine the strategy and that it be tested on a small sub-basin of the Clark Creek watershed to confirm the strategy's effectiveness before applying it to the full watershed.

Low Impact Development (LID) Best Management Practice (BMP) Requirements: King County is supportive of the use of LID BMPs as a stormwater management tool and is looking for opportunities to work with Ecology to develop effective inspection standards, long term maintenance requirements, and protective source control requirements that assure that the BMPs function effectively over their life span. This support is tempered with caution as the feasibility, effectiveness, and applicability of many BMPs are still under study by research programs such as Washington State University's LID Stormwater Research Program. New design and maintenance standards will be included in the Low Impact Development Guidance Manual for Puget Sound which has just been released for review. Despite the fact that this body of work is not completed, its findings are being proposed for inclusion in the new permit.

We believe the shift from "allowing" to "requiring" the use of LID BMPs as the mandatory primary stormwater management tool is premature. Such a shift would place more stormwater treatment and flow control from impervious surface on decentralized, privately-owned and maintained systems as opposed to centralized stormwater control facilities maintained by local governments. Design, construction, maintenance, inspection and enforcement of these LID BMPs are all essential for ensuring functional systems. However, most of these systems will be on single family residential home sites and the owners are unlikely to have the training or equipment to maintain such systems. In addition, the standards for maintenance for many of these systems are undefined or have not been evaluated over time.

We need to work on incentives and education for owners to maintain these systems. Without proper long term maintenance, these systems will likely fail and municipalities will be forced to build downstream facilities to replace lost functionality. King County has already seen the challenges of keeping these privately-owned systems functioning through its Flow Control BMP inspection program which has operated since 2005. Over 30 percent of the current inventory is incorrectly built, not present, or in need of maintenance. Until more is known about the long term application and effectiveness of these BMPs, Ecology should consider greater flexibility and more gradual phasing in of this program.

Currently, the draft permit requires inspection and maintenance of LID BMPs only if they are installed in conjunction with required flow control and treatment facilities. The permit does not require this for other required LID BMPs. If LID BMPs are to be required by the permit and expected to provide long term benefit as intended, then the permit should require regular inspection/maintenance regardless of whether they are installed in conjunction with other required facilities. Also, because these BMPs are primarily situated on single family residential home sites, maintenance should be through education and technical assistance to the resident, not through heavy-handed enforcement actions. The development and implementation of such a program will take time and need to be phased in, but if no maintenance or inspection is required the likelihood of failure increases greatly.

Permeable pavement is the first prioritized choice for the application of LID BMPs to pavement areas. Of particular concern is that the increased infiltration of stormwater from pollution-generating surfaces (permeable pavement in particular) may pose a threat to groundwater quality and may have little beneficial effect if the infiltrated water ends up surfacing a short distance downstream due to local geologic conditions. Jurisdictions need to be given the flexibility to apply a range of LID BMPs that are most appropriate for the local site conditions if the use of these BMPs is to be truly efficient and cost effective.

The cost of permeable pavement is approximately 30 percent more where we currently use it in walkways and road shoulders. The cost of construction (including replacement cycle) and maintenance of permeable pavement is more expensive than regular pavement and requires equipment that a municipality may not have. Owners of permeable driveways are even less equipped to maintain them than public entities and may not have the means to replace the driveway when it becomes clogged after 15 to 20 years of use.

Phase I – One year permit

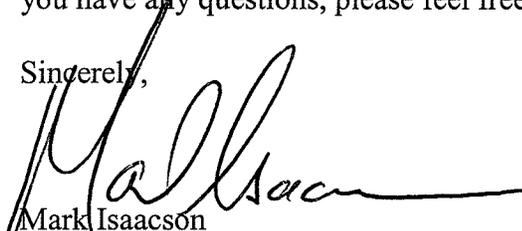
Monitoring: The draft one-year Phase 1 permit contains a requirement to continue the outfall characterization monitoring begun under the existing permit until 3 water years (October 1 through September 30) of data have been collected. This requirement, if implemented, would necessitate us conducting another water year of monitoring since King County will have collected 2.25 years of data by the end of 2011. Continuing the monitoring from January 2012 through October 2012 is estimated to cost \$340,000. Other important customer service and water quality programs would be at risk if the monitoring requirement is included in the one-

year permit. King County has made a significant investment in the Stormwater Monitoring Work Group (SWG) and does not support continuing the outfall monitoring in the one-year draft permit. The monitoring intended to characterize stormwater runoff in the 2007 permit (S8.D) should end at the expiration date of the current permit (February 2012). The results of the SWG's research show that continuation of this monitoring will not improve current information and data used to manage stormwater. Thus its continuation does not seem to be a good use of public funds, as it will simply duplicate information that has already been generated and other more pressing programs would have to be sacrificed. We would like to meet with you to discuss this particular draft requirement in late February.

We strongly believe that these permits are a critical tool to protect the environment and that they can provide stormwater management solutions that are effective and feasible. King County's staff, lead by Joanna Richey, Curt Crawford, and Doug Navetski will work with you in refining the Phase I Municipal NPDES Permit and the other relevant documents and modeling tools. We encourage Ecology to continue to take advantage of the pooled experience of the region's permittees and provide opportunities for collaboration that can create a more effective permit.

In addition to our request to meet with you regarding the continuation of the outfall characterization monitoring in the draft 1-year permit, we would also like to have an opportunity to discuss our comments on the draft 5-year permit with you at your earliest convenience. We look forward to working with you to finalize and implement the permits. If you have any questions, please feel free to contact me at 206-296-6587.

Sincerely,



Mark Isaacson
Division Director

Enclosure

cc: Christie True, Director, Department of Natural Resources and Parks (DNRP)
Joanna Richey, Assistant Division Director, Water and Land Resources Division
(WLRD), DNRP
Curt Crawford, Manager, Stormwater Services (SWS) Section, WLRD, DNRP
Doug Navetski, Engineer IV, SWS, WLRD, DNRP
Megan Smith, Environmental Policy Advisor, King County Executive Office
Joseph B. Rochelle, Senior Deputy Prosecuting Attorney, Civil Division, King County
Prosecuting Attorney's Office