

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

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STORMWATER

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Harriet Beale
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

Comment Letter: "Draft 2013 – 2018 Western WA Phase II Municipal Stormwater Permit"

Dear Ms. Beale:

Whatcom County appreciates the opportunity to provide comment on the "DRAFT Western Washington Phase II Municipal Stormwater Permit". We fully support the need to provide for clean water in Whatcom County and Western Washington, and in pursuit of that need we along with our regional, state, and federal partners have been investing significantly in preventing stormwater pollution, and we will continue to do so.

Whatcom County has experienced the full weight of the economic downturn for several years now. We have had to make significant staff reductions while at the same time significantly increasing stormwater treatment infrastructure and programmatic efforts. Therefore, we are seeking recognition of our financial and technical capacities at this time. The issues we raise primarily pertain to realistic resource allocation and the timing of phasing in new requirements. In many instances we are struggling to meet existing permit requirements, and the additional costs to implement the new requirements proposed in this draft permit seem unrealistic and may be unattainable. In addition to a lack of financial resources, we do not currently believe technical resources (LID feasibility) and statutory legal structures (requirements to assure access for County inspectors on private property) to implement this permit as written even exist. Lastly, many requirements (MS4 coverage area designations, LID, stormwater review thresholds, monitoring, etc.) identified in this permit, go beyond those mandated by the federal Clean Water Act, the basis for the NPDES requirements.

Below are our specific areas of concern with the proposed draft permit:

1. Permit Coverage Area:

S1.A.2 Page 5 lines 17 & 18: "For Whatcom County, the geographic area of coverage also includes the Lake Whatcom watershed."

Comment:

The inclusion of the entire Lake Whatcom Watershed does not meet the intent of the Clean Water Act (CWA) NPDES stormwater source control protections for the following reasons:

- As it pertains to the permit coverage area, Whatcom County is concerned that the inclusion of the entire Lake Whatcom Watershed is unwarranted and premature. Most of the watershed lies outside the urbanized area as established through the 2010 federal census and these portions are not yet subject to a TMDL. The footnote to the sentence in the proposed permit that provides for such inclusion notes that the expansion of coverage area has been proposed "pending submittal and EPA approval of the Lake Whatcom TMDL before the final permit is issued in June 2012." It appears to the County that it is unlikely that the EPA will finalize its approval of the Lake Whatcom TMDL before or by June 2012, and that the inclusion of the additional portions of the watershed within the permit coverage area should await the finalization of the EPA's approval of the Lake Whatcom TMDL. In fact, DOE staff explained their understanding that permit coverage of the additional areas of the watershed would not be effectuated until the TMDL was approved. Another part of the difficulty this presents the County is that the permit as proposed purports to place the County under the requirements of a TMDL, the contents of which are not yet fully known. It is not fair, in terms of exposure to fines, penalties, or other liability, to place the County in a position of surmising prospectively the specific content of requirements to which it may be subject, even as comment on those requirements is being solicited by DOE through this process. Also, significant portions of the watershed that are proposed for inclusion are zoned for commercial forestry and thus are exempt from County environmental regulation. To include them, as DOE proposes, creates a false expectation on the part of others that the County is in a position to regulate activities upon them and is the governmental party responsible when activity there is undertaken. Such a false expectation is precisely what good regulation should try to avoid.
- The portion of the watershed that is not currently covered by our permit is overwhelmingly designated for forestry for which the County has little or no authority to regulate.
- The intent of the CWA is to manage and treat stormwater discharges from urbanized or dense residential development not rural roads, rural levels of housing and forestry.
- The inclusion of the entire watershed could hamper effective response to the proposed TMDL by boxing the County into prescriptions designed for urbanized areas instead of trying to respond to historical poor forestry practices and potential land acquisition.

2. Review Process:

Comment:

We believe the concurrent review process for the combined review of the draft permit language and the supporting technical documents (2012 Stormwater Management Manual for Western Washington and the LID Guidance Manuals) is the wrong approach. These documents are interrelated and changes to one will likely affect the other, the existing comment period does not allow adequate time for review of these regulatory and technical documents.

Recommendation: Delay permit issuance to allow for sequential review of the documents, beginning with the technical documents.

Elements of the Stormwater Management Program (SWMP):

No.	Location	Comment/Question
3.	S4.F.3.a.i pg 15 line 5	Comment: Add "...Best Management Practices..." before "...BMPs...", and add parentheses around "...BMPs..." (Note: BMP acronym not previously described.)
4.	S5.A.1 pg 16 line 34	Comment: Add "...Stormwater Management Program..." before "...SWMP...", and add parentheses around "...SWMP..." (Note: Previous initial description of SWMP acronym at line 17 now deleted, therefore need to describe at next occurrence).
5.	S5.A.4 pg 17 lines 31-36	Question: What if a Permittee adopts local stormwater management requirements <u>after</u> the Permit effective date (i.e., they are not "existing" at that time) that prove more strict than the Permit's requirements for "...prohibiting non-stormwater discharges and for new development and redevelopment sites."?
6.	S.5.C.1.b&c Page 20 lines 9-19	Comment: The timelines for further expanding Public Education and Outreach activities are unrealistic, particularly for County Permittees. Counties unlike cities have dramatically different types of areas to serve that require different responses. Until the economic climate improves it will be difficult to create these tailored solutions. In addition, County Permittees need to be allowed the flexibility to effectively manage their education and outreach programs, by making decisions on whether to reevaluate and update an existing program or evaluate a new program. Recommendation: Please reconsider this provision
7.	S.5.C.3.a.iii Page 21 line 32	Add: "...low impact development..." before "...LID... and add parentheses around "...LID..." (Note: LID acronym not previously described.)
8.	S.5.C.3.c.i Page 25 lines 12-37 Page 26 lines 1-6	Comment: This to be a laudable goal but the timeline is unrealistic with the other additional requirements contained within the permit and the proposed expansion of our permit coverage area. Recommendation: Deadline should be rolled back to 2017 or later.
9.	S.5.C.3.c.i v Page 27 lines 18-21	Questions: Who determines the urgency? Are Permittees now required to provide 24/7 coverage for highly trained staff to determine urgency?
10.	S.5.C.4 Page 29 lines 21-24	Delete parentheses from all instances of "(i)", "(ii)", and "(iii)" to match actual paragraph leader markings, or add parentheses to paragraph leader markings.
11.	S.5.C.4 Page 29 lines 23-26	For consistency with state land use vesting laws and numerous related State Court decisions regarding same, delete altogether, replace with following: "The local program adopted to meet the requirements of S5.C.5.a.i through iii below shall apply to all new development and redevelopment applications whose official complete application submission date is after the effective date of said ordinance or other enforceable mechanism."

No.	Location	Comment/Question
12.	S.5.C.4.a.i Page 30 lines 7 & 8	Insert: "... or better..." after "...equal..." each line.
13.	S5.C.4.c. Page 32 lines 3-7	Comment: We believe the timeline for changing County Code is problematic and unattainable. Recommendation: Deadline should be rolled back to 2016 or later.
14.	S5.C.4.c. ii Page 32 lines 19-23 Page 33 lines 1-4	Comment: We believe this requirement is onerous and unattainable. Recommendation: Please remove or reconsider this provision
15.	S5.C.4.g Page 34 Lines 20-34	Delete altogether, replace with following: "g. LID code-related requirements. NOTE: This section applies only to those Permit geographic coverage areas where the Permittee's local stormwater management requirements that are in effect on December 31, 2016 within those Permit geographic coverage areas prove less strict than the LID principles and LID Best Management Practices (BMPs) from <cite reference here> that are in effect on the Permit effective date, or prove less strict than the requirements of paragraph S5.C.4.a.i." <u>Rationale:</u> Proposed revised Whatcom County code for the Lake Whatcom watershed will only allow (1) Full Infiltration per current WSDOE SWMMWW Volume III Chapter III Section 3.3.9(a), or (2) Full Dispersion per current WSDOE SWMMWW Volume V Chapter 5 BMP T5.30 and Volume III Appendix C paragraphs 7.2.1., 7.2.2, and 7.2.4, or (3) an engineered system that is phosphorus neutral compared to the site in a native vegetated state, for permanent stormwater management purposes. If using either Full Infiltration or an engineered system, a developer can theoretically create unlimited impervious surfaces and retain/establish no native vegetation and still satisfy all regulatory stormwater flow control and quality requirements. Mandating LID BMPs would therefore subvert the goal of the proposed code revision.

Definitions and Acronyms:

No.	Location	Comment/Question
16.	Definitions and Acronyms Page 75 lines 38-39	Comment: In regard to "discharges associated with illicit connections, and infiltration/exfiltration of non-stormwater that takes place in pipe bedding". This language creates a quagmire of potential litigation between permittees, sanitary sewer utilities and citizens, even if a causal relationship could be made between sanitary sewer exfiltration and subsequent entry to the MS4 via pipe bedding, the two points could be a such significant distance from one another to make it virtually impossible to locate. Recommendation: Remove this section of the definition in its entirety.

- 17. Definitions and Acronyms section
 - Add definition for: "complete application submission date".
 - Add definition for: "new development".
 - Add definition for: "redevelopment".
 - Add definition for: "construction site activities".

Appendix 1:

No.	Location	Comment/Question
18.	Page 2 line 3	Add "development" between "new" and "or".
19.	Page 2 line 8	Add "development" between "new" and "or".
20.	Section 2 Definitions	<p>Add definition for: "measurably" as used in definition for Erodible or leachable materials on pg 3 at lines 9 – 12.</p> <p>Add definition for: "non-vegetated", since gravel shoulders along roadways can become overgrown with vegetation, but are still nevertheless "impervious".</p> <p>Add definition for: "4th Strahler order stream".</p> <p>Add definition for: "effective hard surface".</p> <p>Add definition for: "effective pervious surface".</p>
21.	Page 3 line 9	Delete comma after "Wastes", otherwise all qualifier text after "chemicals" doesn't apply to term "wastes".
22.	Page 3 line 34	Add comma after "evaporation".
23.	Page 3 line 36	<p>Add comma after "practices".</p> <p>Insert: "all" between "are" and "integrated".</p>
24.	Page 4 line 3	Add comma after "evaporation".
25.	Page 4 line 28	Insert before last sentence: "For proposed new subdivisions, short subdivisions, and binding site plan projects, assume, for threshold determination purposes in Figures 3.2 – 3.3, that _____<insert value here> square feet of impervious surface will result on each newly created lot, unless the project proponent has otherwise formally declared other values for each lot in the corresponding complete land division application."
26.	Page 5 line 11	Add at end: "..., or exist in a WSDOE-declared phosphorus-limited or sensitive watershed."
27.	Page 5 line 12	Change: "non-impervious" to "pervious"
28.	Page 7 lines 36-41	Recommend retain vs delete.

No.	Location	Comment/Question
29.	Page 8 lines 1-6	Delete altogether, replace with following: <p style="margin-left: 40px;">“For proposed land division projects, apply the thresholds in sections 3.2 and 3.3 at the time the project proponent submits a complete application for the land division, assuming that _____<insert same value from Comment No 25 above here> square feet of impervious surface will result on each newly created lot, unless the project proponent has otherwise formally declared other values for each lot in the corresponding complete land division application.”.</p>
30.	Page 9 after line 6	WSDOE should declare its position regarding, and include in Figure 3.1 Flowchart accordingly, after due consideration of State law and various State Court decisions about vesting, the applicability of subject Permit requirements on properties that were created under an approved land division (i.e., subdivision, short subdivision, or binding site plan), where the corresponding land division complete application submission date precedes the Permit’s effective date.
31.	Page 13 line 4	Change: “should” to “shall”.
32.	Page 13 line 6	Change: “should” to “shall”.
33.	Page 13 line 7	Insert comma after: “...replaced surfaces...” Change: “and” to “plus”.
34.	Page 13 line 35	“..or more” of what - vegetation?
35.	Pages 21 &22	Element No 12 “Manage the Project” should be Element No 13, and Element No 13 “Protect Low Impact Development BMPs” should be Element No 12.
36.	Page 25 line 19	Delete bullet formatting.
37.	Page 25 under “Roofs” section at line 25	Add: “Full Infiltration in accordance with SMMWW Volume III Chapter III Section 3.3.9(a)”
38.	Page 25 under “Other Hard Surfaces” section line 34	Add: “Full Infiltration in accordance with SMMWW Volume III Chapter III Section 3.3.9(a)”
39.	Page 26 line 9	Delete bullet formatting.
40.	Page 26 under “Roofs” section at line 12	Add: “Full Infiltration in accordance with SMMWW Volume III Chapter III Section 3.3.9(a)”
41.	Page 26 under “Other Hard Surfaces” section line 29	Add: “Full Infiltration in accordance with SMMWW Volume III Chapter III Section 3.3.9(a)”

No.	Location	Comment/Question
42.	Page 27 Table 4.1	Shows as deleted, but text on pg 26 at line 44 states: "...see Table 4.1 below):" - ??
43.	Page 28 line 20	Delete altogether, replace with following: "High Annual Average Daily Traffic (AADT) roads as follows:".
44.	Page 28 line 24	Delete: "Annual Average Daily Traffic". Change: "(AADT) counts" to "an AADT".
45.	Page 39 lines 1-5	Delete altogether, replace with following: "The grade of any porous asphalt section increment exceeds 5%, or the grade of any pervious concrete section increment exceeds 6%. Portions of pervious concrete sections that exceed 5% grade must incorporate design features that prevent drainage from upgradient base courses into its base course.".
46.	Page 39 Section 8.B	Add to list: "Where a road project, using conventional impervious surfacing, can otherwise comply with 2012 WSDOE SWMMWW Volume III paragraph 3.3.9(A) for 100% infiltration or Appendix C paragraph 7.2.4 for full dispersion.".

On behalf Whatcom County Public Works Administration, Attorney, Engineering Services Division and Stormwater Division we thank you for the opportunity to provide our comments and recommendations.

Sincerely,



Charles Anderson
Senior Planner

Cc:

Frank Abart – Director

Daniel Gibson – Assistant Chief Deputy Prosecutor

Jon Hutchings – Assistant Director

Robert "Sandy" Petersen – Engineering Services Manager/Development

Kirk Christensen – Stormwater Manager