



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 10**

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OFFICE OF  
WATER AND  
WATERSHEDS

July 14, 2015

Reply To: OWW-135

Municipal Permit Comments  
Washington State Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Dear Ecology Municipal Permit Program:

The purpose of this letter is provide EPA's comments on Ecology's May 14, 2015 Stormwater Control Transfer Program draft guidance. In general, the EPA supports the draft guidance and the ability for local jurisdictions to develop and implement a Stormwater Control Transfer Program. If done correctly, a Stormwater Control Transfer Program should result in accelerated environmental improvements in priority watersheds. However, the EPA believes Ecology should proceed cautiously and gain experience with a few early adopter jurisdictions to ensure the local programs achieve the intended results prior to broader application. The following are EPA's comments on the draft guidance:

- The EPA supports the statement on Ecology's website stating Ecology's approval of a local Stormwater Control Transfer Program will be made public and subject to appeal. The final guidance should include an explanation of the public review and appeal processes, including the administrative mechanism Ecology will follow when approving a Stormwater Control Transfer Program under Section 7 of Appendix A of the Municipal Stormwater Permits.
- The EPA is concerned about the use of state and federal grant funds to support a local Stormwater Control Transfer Program and recommends the use of grants funds be addressed in the final guidance. In general, the EPA recommends stormwater facilities built with state or federal grants should not be allowed to be used as credits as part of a Stormwater Control Transfer Program. In discussions with Ecology staff, it has been suggested that it may be appropriate to use grants funds to build an initial stormwater retrofit facility to serve as credits along with a "fee-in-lieu" program that would generate private funds from re-developments in sending areas to pay for a second and subsequent facilities built later in time. The concern with this approach is that stormwater improvements would be built later as compared to the current approach where the developer makes improvements at the re-developed site and a grant funds a separate stormwater retrofit facility. This delay in stormwater improvements is why the EPA does not recommend grant funds be allowed to be used in the above scenario. At the very least, EPA recommends that in the above scenario, a state grant should be limited to funding a

small percentage of the initial stormwater facility (e.g., less than 25%), with local funds covering the rest.

- The EPA strongly supports language in the Overview Statement stating that a Stormwater Control Transfer Program cannot serve to meet a municipal Permittees' obligation to implement a structural retrofit program required by the Phase I permit.
- The EPA believes the transfer of flow control requirements may be the most useful aspect of a local Stormwater Control Transfer Program. The scenario where such as transfer may be most useful is for re-developments projects in areas zoned for high density development with minimal or zero building setbacks that are in watersheds with flow altered streams from urban runoff. In these locations, stormwater flow control facilities (e.g., underground vaults) may be relatively costly and the marginal environmental benefit to the receiving water may be low. In such situations, if the flow control requirement is transferred to a higher priority watershed, the equivalent amount of flow control can provide greater environmental benefit at less cost. Additionally, this scenario complements the State's Growth Management Act objectives of focusing new development in urban centers and minimizing urban sprawl. Accordingly, EPA recommends that this scenario be highlighted in the final guidance as an illustrated example where application of a Stormwater Control Transfer Program may be most beneficial.
- The EPA has concerns about the transfer of treatment requirements. One concern is the potential for treatment requirements be transferred from an area with high levels of toxic pollutant runoff to an area with low levels of toxic pollutant runoff, which could result in the transfer removing less amount of overall pollutants. This potential is possible because the treatment requirement in the Municipal Stormwater Permits only requires BMPs to meet a percent reduction in total suspended solids. The EPA recommends that the statement in the draft guidance on page 5 stating "Providing runoff treatment in areas with higher pollution potential than the project sites is preferred" be significantly strengthened. Due to the potential for the scenario of concern noted above to occur, it's important that safeguards are included to ensure a beneficial outcome (i.e., equal or more pollutants removed as a result of the transfers). The EPA also has environmental justice concerns with the transfer of treatment requirements. Thus, the EPA recommends the final guidance include a requirement that the local jurisdiction provide a reasonable demonstration that the transfer of treatment requirements will likely result in an equal or more amount of pollutants removed and will not raise concerns of unequal environmental protection.
- The EPA also has concerns with the transfer of on-site stormwater management (LID) requirements. If transfer of LID requirements were to become wide-spread, it could undercut the intent and requirement of the Municipal Stormwater Permits to have "LID be the preferred and commonly used approach to site development." Incorporating LID into site development is a fundamental change in development practice and it would be counterproductive to have large areas where traditional site development is encouraged vis-à-vis a transfer of LID requirements. Further, even in urban centers where flow control transfers could be beneficial as described above, LID can be successfully incorporated. For instance, greenscapes and vegetative areas are important in urban design, which provide opportunity for integrated LID design. However, given that the draft guidance only allows LID transfers based on the LID performance standard, it is

unlikely that developers will seek LID transfers in very many situations because it will be cheaper to meet the LID requirements on site. In summary, considering the above, the EPA questions the value of including LID transfers as part of the program.

- The EPA sees an advantage of the Stormwater Transfer Control Program primarily focusing on flow control transfers because treatment and LID requirements applied at redeveloped sites would still provide environmental improvements in sending watersheds and associated downstream waters even though the flow control requirement is transferred. This helps address the concern of delayed environmental protection for sending areas.
- The EPA supports incorporating the work done in the Washington State Department of Commerce's Building Cities in the Rain project in regards to guidelines on selecting priority watersheds for receiving areas. This project has developed more in-depth guidance and criteria for selecting priority watersheds than what is in the draft Stormwater Control Transfer Program guidance. Incorporating this information in the final guidance would be helpful and would avoid duplicative and potentially confusing state guidance related to Stormwater Control Transfer Programs.
- The EPA supports the general principal #6 on page stating that a Stormwater Control Transfer Program does not shield the Permittee from additional requirements associated with TMDLs, S4.F.3 adaptive management plans, future stormwater requirements, or other enforceable mechanisms. However, there are some questions related to 303(d) listings and TMDLs that the EPA recommends be addressed in the final guidance. For example, if a stream is listed or if a TMDL is completed that relates to stormwater runoff, should that stream's watershed be eligible as a sending area? Or if a TMDL assigns responsibility to the municipal Permittee for stormwater runoff improvements for a stream, can that stream serve as a receiving area and accept a transfer from another watershed?

In summary, with the incorporation of the above recommendations, the EPA believes local Stormwater Control Transfer Programs based on the guidance can accelerate watershed benefits in priority areas and supports testing this approach over the next several years. The EPA emphasizes, however, that Stormwater Control Transfer Programs do not substitute for an aggressive retrofit program to restore priority watersheds impacted by urban development. Rather, the EPA views Stormwater Control Transfer Programs as being complementary to a larger stormwater retrofit effort that likely will grow in significance in the future.

Thank you for the opportunity to provide comments on the draft guidance. If you have any questions, please contact me at 206-553-6521.

Sincerely,

/s/

John Palmer, Senior Policy Advisor  
Office of Water and Watersheds