

GENERAL COMMENTS

Ecology’s “Stormwater Control Transfer Program - Out of the Basin” guidance was prepared, for the most part, to respond to the Phase 2 Permit appeal (PCHB No. 12-097c) whereby the State PCHB in the Stipulation and Agreed Order of Dismissal required Ecology to “*continue to work with Phase II Coalition members, other permittees, and the Washington State Department of Commerce to explore options for meeting stormwater development/flow control standards on small, redevelopment sites in urban growth centers*”.

PCHB order was supposed to create additional and practical options for small redevelopment sites that need to meet the Permit requirements. However, Ecology’s guidance fails to address this because the guidance requires 1) hundreds of thousands of public dollars and several years to develop a watershed plan approved by Ecology, 2) many millions of public dollars and several additional years to permit and construct a regional facility for a fee-in-lieu program for properties to transfer stormwater mitigation into, and 3) a significant critical mass of large property owners within a sending area to economically justify a regional facility. It also requires property owners to be totally dependent on local jurisdictions to implement a Transfer Program, few of which have the resources to support this large and costly effort.

This guidance leaves a vast void in finding immediate and practical stormwater solutions at urban redevelopment projects, whether it be a stand-alone redevelopment project that can’t ever expect to be included in a Transfer Program due to lack of a local critical mass needing such help, a large urban area that has no local jurisdiction willing or capable of funding a Transfer Program (probably most jurisdictions), or an urban area that just doesn’t have any opportunities for a Transfer Program (e.g., Lynnwood).

SPECIFIC COMMENTS

General Stormwater Control Transfer Program Principles (Page 2)

“2. A Stormwater Control Transfer Program must accelerate environmental improvements in high priority watersheds”.

This statement appears to significantly expands the regulatory scope of the Permit, creating additional requirements for Permittees currently not authorized the in the Permit. This statement should mirror the current relevant Permit policy as stated in S5.C.4: “More stringent requirements may be used, and/or certain requirements may be tailored to local circumstances through the use of Ecology-approved basin plans or other similar water quality and quantity planning efforts. Such local requirements and

thresholds shall provide equal protection of receiving waters and equal levels of pollutant control to those provided in Appendix 1.”

“5. A municipality must evaluate its watersheds and establish a prioritization scheme prior to implementing a Stormwater Control Transfer Program.”

This principle and associated new technical requirements for stormwater mitigation creates additional Ecology regulatory oversight over stormwater permitting. This new policy is inappropriate in a guidance document, in that it places additional restrictions through the Permit on how stormwater mitigation is approved by local governments. In meetings with Ecology on the draft guidance they admitted that the prioritization scheme can end up being arbitrary, as it really comes down to a Permittees preference for selecting sending and receiving sites. Thus, prioritization should be left to the Permittee to identify and propose, following a general principle that the resulting Transfer Program will result in equal or better protection of pollutant control.

“6. Ecology approval of a Stormwater Control Transfer Plan does not shield the Permittee from additional or more stringent requirements associated with TMDLs, S4.F.3 adaptive management plans, future stormwater requirements, or other enforceable mechanisms.”

This principle implies that a Transfer Plan and associated regional facilities that are constructed under it carry no vesting for stormwater requirements. This is contrary to the vesting that is provided by the Permit for other permitted development actions. Most Permittees wouldn't accept taking on that risk knowing that a fee-in-lieu program could be invalidated in the future by a simple change in the Permit. Regional facilities should carry vesting that they were designed to accommodate.

Specific Guidelines re: Minimum Requirement 7 Flow Control (Page 4)

“2. Flow control transfers will be based on land cover on an area basis for each type of land cover (i.e., impervious surfaces, other hard surfaces, lawn/landscape, and pasture).”

Attempting to track lawn/landscape and pasture land covers separately is unnecessary detail that significantly complicates the tracking process and limits the flexibility of regional facilities accepting fee-in-lieu transfers. Parameters that define what is transferred must be simple to provide such flexibility. We recommend total impervious surfaces and total pervious surfaces because it will effectively achieve the same flow control results. Simple conversion factors between impervious and pervious surfaces should also be allowed, if backed up by modeling.

Specific Guidelines re: Minimum Requirement 5 OnSite Stormwater Management (Page 6)

“1. Transferring MR #5: On-site Stormwater Management is allowed only by using the LID performance standard option. The “mandatory list” option is not available under a Stormwater Control Transfer Program”.

Requiring the LID performance standard to be used where it is otherwise not required (i.e., in the UGA) shouldn't be required. We believe Ecology does have the ability to develop and defend guidance for transfer of mandatory list requirements. Otherwise, few (if any) jurisdictions would include LID in a Transfer Program because it would significantly increase the cost of regional facilities due to the significantly greater amount of detention storage needed (2x to 3x) to meet the 8% to 50% flow duration standard.

“6. For new impervious surfaces and converted vegetation areas, the project must control flows at the project site to match flows produced by the pre-project land cover within the range of 1% to 10% frequency of exceedance flow rates predicted for the pre-project land cover. The project may transfer the LID improvement requirement of controlling flows produced by the pre-project land cover to flows produced by the pre-developed land cover within the range of 8% to 50% of the pre-developed 2-year flows “.

This guidance is confusing. Where does the “1% to 10% frequency of exceedance flow rates” criteria come from? Control of flow frequencies is a flow control standard, not an LID standard. The 1% exceedance frequency is the 100-year storm and the 10% frequency is the 10-year storm. Is Ecology raising the flow control standard to the 100-year storm, up from the current 50-year storm?

III. Considerations for Developing an Effectiveness Monitoring Plan for Stormwater Control Transfer programs (Page 11)

“The Washington State Pollution Control Hearings Board ruled (PCHB No. 10-013) that a monitoring program is necessary to confirm the equivalency of a stormwater control transfer approach concerning compliance with default stormwater management requirements in the Phase I Municipal Stormwater Permit.”

It is unclear where in the PCHB ruling a requirement for a monitoring program is mandated. It appears that the PCHB's statements on this (and other items) were used solely in the context of rejecting Clark County's transfer program, and not to change the content of the Phase 1 permit to require individual facility performance monitoring (which it didn't).

Regardless, a post-construction monitoring program for structural BMPs is very problematic. Performance monitoring is both inappropriate and ineffective:

- 1. This guidance will set precedence on requiring costly, labor-intensive and largely ineffective programs at all stormwater facilities authorized under the Permit.*

2. *The regional monitoring program which all Permittees are part of already meets the monitoring objectives for all permit activities. Adding a new requirement is unnecessary and costly to Permittees.*
3. *The guidance describes various monitoring approaches as potential ways to discern changes in stream flow and pollutant loading in receiving streams in response to adding a stormwater management facility within a watershed. However, due to the inherent hydrologic variability and pollutant loading characteristics of stormwater runoff, it is scientifically impossible to generate any meaningful data or conclusions on the performance of an individual stormwater facility using these approaches. There are too many other uncontrollable factors in hydrologic systems that cannot be controlled to allow effects of a single stormwater management facility to be detected with any level of confidence. The accepted hydrologic modeling methods that are currently being used to design such facilities provides much more accurate information on benefits of flow control because it eliminates those independent factors.*

Tracking/Storing Stormwater Obligation Transfers (Page 15)

“The project applicant will submit, and the municipality shall retain, tables for each development/redevelopment project proposing a stormwater transfer”.

Ecology is requiring submittal of development permitting detail that is otherwise not required for other permitting activities. This level of reporting is inappropriate. Ecology’s annual report can simply include questions asking how many transfer facilities are in operation, how many development project bought into it, or other basic data. It is the duty of Permittees to track all their permitted activities, but annual reporting to Ecology specifically excludes the details.

Allowable Regional and Equivalent Facilities (Page 17).

“B. Runoff Treatment

There are several types of facilities that can serve either as equivalent facilities or as banks with acreage credits that can be purchased by development projects to meet their stormwater transfer obligation. The runoff treatment facility type must either be listed in Chapter 2 of Volume V of the SWMMWW, or on the TAPE website (<http://www.wastormwatercenter.org/tape/>) as approved for General Use. Basic Treatment facilities can only receive transfers from sites that require only Basic Treatment. Enhanced Treatment facilities can receive transfers from sites that require Basic or Enhanced Treatment.”

The transfer program for runoff treatment should also include Phosphorus treatment. For all alternative treatment technologies, Conditional Use facilities should also be allowed because they are currently allowed by the Permit for use at any site.

FINAL COMMENTS

Ecology needs to develop more relevant and useful guidance in response to PCHB's ruling. Ecology's approach for requiring a regional facility to be built as the only approach for addressing the issues of redevelopment of small, urban site provides no immediate or practical benefit. What is needed are Permit options and flexibility that small redevelopment sites can use immediately, not 10 years from now, in a cost effective manner and without dependence on the local jurisdiction and many other property owners to implement.

Ecology can develop guidance that provides real flexibility in densely developed urban areas. For example, one possible approach can be to achieve primary water quality goals (e.g., removal of pollutants from stormwater) while providing relief from the costly and much more difficult mitigation requirements that have relatively lower benefit on downstream water quality (e.g., flow control to forested pre-developed condition). Such hydrologic mitigation can be easily replaced by other actions, such as open space preservation and habitat restoration, to achieve comparable – and probably much more effective - improvements in receiving waters. This approach will require Ecology to place less reliance on the quantitative criteria and numerical hydrologic models that forms the core of the Permit Appendix 1, and more on being open to holistic analyses of stream and watershed processes and alternative means to improve beneficial uses.