

Transcript of Public Hearing Testimony
Draft Phase I and
Western Washington Phase II Municipal Stormwater Permit
Lacey, Washington
January 9, 2012

Let the record show that it is 1:35 p.m. on Monday, January 9, 2012. This hearing is being held at the Department of Ecology's Head Quarter building in 300 Desmond Drive in Lacey, Washington. The purpose of this hearing is to receive public comments about the draft Phase I and Phase II Municipal Stormwater General Permits.

Letters were sent to each permittee, the EPA, the tribe, government agencies, and the government agencies required by the Washington Administrative Code. The hearings were announced, published in the state register on October 4th. The state register number is 11-20-087. We did email and send, I think, emails and letters to 43 interested parties which included the previous [REDACTED] and commenters, etc. etc. We also released a press release on October 19th; we created a website where we posted the hearing information. It was also posted on the public involvement calendar. We also did send it out on 5 major Ecology list serves reaching probably about 3500 people.

And I think that's all my official business here. So why don't I go ahead, we'll call up Bruce, you can come on up, again followed by Chris. And we'll go ahead and get started here. You can have a seat right there, I know. Please state your name for the record.

For the record, Bruce Wishart, here on behalf of People for Puget Sound. Thank you for the opportunity to comment. I'll be relatively brief. We are preparing written comment.

So we can give you more detail there. Here to express, you know, our support for movement forward on low impact development regional monitoring, and some other important elements of these permits. As, at least from our standpoint, stormwater represents probably the single greatest threat to ecological problems in Puget Sound and other waters of the state. So this is an important move forward. But having said that we do have quite a few concerns with the permits. And I am going to touch on some of the more important ones today. And I am going

to start with low impact development. Again, very important step forward from our standpoint. Traditional methods for managing stormwater have failed. Curb and gutter collection systems, retention ponds have not been successful. And that's, I think, evidenced in the recent toxics loading studies that were completed by Department of Ecology.

Something new is needed. And what we think the answer is, is really to embrace low impact development. But we do have problems with, or concerns with the path that you've outlined in the permit.

First, this new standard fails to embrace some of the most significant LID techniques available. And I am speaking particularly about retaining vegetation on site, and reduction of impervious surfaces. And while the permits touch on these areas, we don't feel that they've taken full advantage of the opportunity here. Experts agree these are the most effective ways of dealing with runoff from any given site. And without this core element in the LID standard, we think you're unlikely, we're all unlikely to succeed in really addressing water quality and ecological problems in Puget Sound and elsewhere.

Moreover, the permit contains no requirement to consider some very important LID techniques such as water reuse, and standards for green roofs are very weak. It's non-existent when it comes to residential green roofs. So those techniques do not get credit under the standard that is outlined here. So this leaves rain gardens, pervious pavement, engineered techniques as the main vehicle for addressing problems. Unfortunately, they may not be applicable to all sites, which means we are going to have problems. And to make matters worse, and this is a particular concern, the draft, the new draft utilizes an extremely conservative soil standard. So even when we are talking about the use of pervious pavement and rain gardens, it is going to be very limited application.

The second problem that we have with the LID standard has to do with the very broad, and very broad feasibility and competing needs exemptions. And while we support fully the need for flexibility in the application of the new standard, and some site specific flexibility, we think these exemptions, because of how open ended they are and how vague the language is create significant loopholes and they significantly undermine the LID requirements. So these, these are very serious problems and we hope that we will be able to address them in the final version.

Having said that, I also want to mention that the updated local codes and the watershed planning elements are important steps forward, we very much support the updated local codes. We are still reviewing the guidance document that has been released, but we think that's a step forward. Having said it, having said that it does rely heavily on this guidance documents, these

are not permit requirements, and we prefer that there was a little bit more of a mandatory approach taken here.

On watershed planning, basin planning, their requirement in S5C –5C suggests that it be, you know, or a step forward really. But from our standpoint it's more of a pilot approach. And I will say that eventually we need much more than a pilot approach. We need to do this state wide, certainly region wide. And so we would like to see that expanded. But we do see this as a step forward.

On the monitoring requirements in the permit, again transitioning away from LID, very important step forward. It seems to recognize and incorporate the work of the stormwater workgroup. Which People from Puget Sound and other groups worked for many years to reach the point where we could agree on that approach. This is a much more cost effective way of monitoring and, and I think it's of benefit to all of us involved in this debate. However, having said that, the funding that were the fees that were identified under monitoring option 1 which is the opt-in approach are insufficient to really do the type of monitoring that's necessary to adequately evaluate the success of our stormwater program. So that, that remains a big problem.

And finally, I do want to indicate support for the one acre exemption changes in the Phase II Permit, we strongly support the decision by Ecology to harmonize the Phase I and Phase II Permits, and to, to get consistency in terms of the types and size of the projects that are being regulated. And with that I'll conclude, and thank you for the opportunity to speak.

Thanks Bruce.

O.K., next up we have Chris. And again, I'll just remind you to state your name and affiliation for the record.

Thank you. Chris Wilke, Executive Director, Puget Soundkeeper Alliance. O.K. Thank you for the opportunity to comment on the draft Stormwater Permits. And thank you for a robust publically inclusive process. Puget Soundkeeper Alliance was plaintiff in the PCHB Appeal and the resulting decision to require permit revisions, requiring implementation of low impact development where feasible. Puget Soundkeeper will submit detailed written comments on these draft permits and I'd like to focus my testimony today on several over-arching themes. And the importance of having strong municipal stormwater permits that protect water quality. Our waterways are suffering. Impervious surfaces from our built environment cause significant

degradation of Puget Sound and other state water ways. Pollution from stormwater is the single largest source of toxic loading in Puget Sound, and contains dangerous levels of petroleum, heavy metals, bacteria, and nutrients.

In its 2008 and 2009 rulings, the Pollution Control Hearings Board recognized that not enough was being done to protect our waterways, and that onsite stormwater management through low impact development was the most effective way to deal with stormwater pollution and flows. It also recognized that low impact development was reasonable and practical under state and federal law.

Will low impact development make a difference in the recovery of Puget Sound and other state waters? Perhaps. If low impact development is implemented broadly, it will slow the rate of degradation by requiring new and re-development to incorporate these proven techniques; preventing future injury, if you will. It is only with widespread application of stormwater retrofits that we will begin to actually restore degraded waters. Stop the bleeding and heal the patient, if you will. Puget Soundkeeper believes we are not yet healing the patient with these new draft permits. However, incorporating LID into new development is crucial because it will avoid the high cost of future retrofits.

There is some criticism that we may be moving too fast with these new requirements. I would like to remind Ecology that the permits that came out in 2007 were ruled to be inadequate in 2008 and 2009 by the Pollution Control Hearings Board. We believe that permit modifications were eminent before the next permit cycle began. And we, however, we agreed to wait until this cycle. Washington State is not the first state to implement low impact development requirements. West Virginia and Southern California both have LID requirements. Buffalo, New York is using LID successfully to address combined sewer overflow discharges.

Now we have another one year delay with the implementation of one year permits before a five year cycle. And we note that many of the permit requirements do not take effect until 2015, 2016, or even 2017 – a nearly 10 year lag from the inadequate permits of the last cycle. We do support a number of the draft permit requirements, including the inclusion of low impact development, expanded monitoring, and expanded coverage, including the elimination of the one acre threshold. As well as requirements for updating local codes.

However, we feel there are certain areas these permits may be strengthened. Our primary concerns are around the list of exemptions and for feasibility and competing needs for low impact development requirements. While we recognize that some flexibility is needed to deal with challenging site conditions, we feel the current list of exemptions is too permissive and will allow developers a menu of ways to avoid LID requirements. We also feel the BMP list does not emphasize some of the most effective methods, including preserving vegetation, reducing

impervious surfaces, and rainwater harvesting. Finally, there's no requirement for mitigation. Projects exempted from LID requirements should pay into mitigation within the watershed, including providing funds for much needed retrofits. This is the only way we will get at the largest ongoing source of pollution into our waters. There's also an economic argument.

Ecology is going to hear a lot of comments from cities and counties about limited resources and ability to comply with state mandates. We observe that many developers and designers are ready to go with low impact development. Recent projects show that low impact development is actually cheaper and more effective than traditional approaches. Other developers have told us that their biggest worry is permitting, is a permitting bottleneck with local governments. Not cost or technical hurdles associated with low impact development. By leading the way with establishing strong requirements for widespread implementation of low impact development our state will establish a clear expectation that the developed environment finally must protect water quality. It's our belief that our cities and counties will find the necessary efficiencies and expertise to meet these requirements. Thanks for hearing my testimony.

Thank you, Chris. Now it's Todd, last but not least. Please state your name and affiliation for the record.

Certainly. Good afternoon, and thanks for this opportunity to provide comment. For the record, my name is Todd Bolster, and I am here today on behalf of the Northwest Indian Fisheries Commission. Today we'd just like to provide some general comments and some perspectives from the tribes and we will be following those up with more specific comments on a written record.

So the Commission, first of all I just want to let you know, is comprised of the 20 treaty tribes of Western Washington, who have constitutionally protected rights to manage and harvest various natural resources. Related to the issue before us today, the treaty tribes have treaty reserved rights to manage and catch and collect salmon and shellfish, each of which has been adversely impacted in one form or another by stormwater runoff and its attending deleterious effects. I would like, though, to note that I am not here today to speak on behalf of each and every member tribe. The tribes are sovereigns that have the right to provide their own positions and statements. However, I am here today to provide you some general perspective on how pollution problems associated with stormwater runoff impact the tribes. As sovereign nations, the 20 Indian treaty tribes in Western Washington have signed treaties with the United States, ceding most of the land that is now Western Washington, but reserving rights to harvest salmon and other natural resources. And for those rights to have meaning there must

be salmon available for the tribes to harvest. Today, those fishing rights are being rendered almost meaningless because salmon habitat is being damaged and destroyed faster than we can currently restore it. Salmon populations are currently declining sharply because of the loss of spawning and rearing habitat and the stresses associated with poor water quality. At this time, in 2012, the tribal harvest levels have been now reduced to levels not seen since before the 1974 U.S. v. Washington ruling that re-affirmed the tribes' treaty reserved rights and status as co-managers.

As the salmon disappear, tribal cultures, communities and economies are threatened as never before. Some tribes have even lost their most basic ceremonial and subsistence fisheries, the corner stone of the tribal life. We found that protecting water quality is synonymous with protecting salmon and salmon habitat and is central to the overall salmon recovery effort. It is also essential to keep shellfish beds clean, safe and harvestable.

It is therefore no surprise that the Federal Clean Water Acts sets as an explicit goal, fishable waters. It is also worth noting that the state law protects salmon as being a beneficial use under the meaning of the state's water quality standards. In accordance with this regulatory scheme of the state and federal clean water laws, it is permits such as these municipal stormwater permits which are the primary vehicle to accomplishing these important goals of the law. None the less, the impacts of stormwater runoff continue to take their toll.

Impervious surfaces and other stormwater conveyances deliver a host of metals and toxins which are then introduced into the food chain of salmon. Loss of native vegetation and soils greatly alters the hydrology leading to bank erosion, bed scour, and sediment deposition all of which also destroy salmon habitat. Altered hydrology and polluted runoff also contribute to fluxes in dissolved oxygen levels and stream temperature regimes, which in turn stresses the aquatic life such as salmon and their food sources. Even in the best-case scenarios where habitat gains have flourished through exhaustive cooperative efforts, we have found that the impacts associated with stormwater runoff contribute to undermining what gains we have made.

For example, in the Nisqually river with its headwaters in a national park, and its mouth in a national wildlife refuge, is one watershed in Puget Sound where we have actually made significant habitat gains. We have more than 85% of the lower river estuary, where the habitat has been reclaimed through cooperative federal and tribal and state work to remove dikes. Nearly 75% of the main stream river habitat is in permanent stewardship. Yet, despite this massive cooperative effort, research shows that young, ESA listed salmon and steelhead from the Nisqually River are dying before they leave Puget Sound. Less than 7% of the steelhead are making it past Seattle.

Pollution problems associated with stormwater runoff are believed to be a significant contributing factor to the salmon's demise. Therefore we find that in order to protect the salmon resource and honor the constitutionally protected treaty rights, it is essential that these permits apply water quality protections that fully address the many facets of stormwater pollution. This must be done in a manner that fully protects the beneficial uses, including salmon and salmon habitat, and ultimately implements the goals of the authorizing statutes and the treaty reserved obligations to recover and maintain fishable waters.

Now, it is important to note that the tribes are not taking a position that they are interested in stemming the massive population growth anticipated in this region over the coming decades. Nor are they interested in curtailing economic growth. But the tribes are, however, interested in assuring that the associated development is designed and implemented in ways that will better protect salmon and its habitat. And ultimately help insure that salmon can remain a part of their cultures and life ways. The Northwest Indian Fisheries Commission will follow up these comments with a written submission providing specific comment on the specific permit provision prior to the deadline. And again, on behalf of the Commission I would like to thank you for this opportunity today.

Excellent. Thanks, Todd. All right, I am going to open it back up. Give everybody one final chance to decide if you would like to comment on the record. No? O.K. Then I have a couple of more things to read in. I apologize, it's a little lengthy. But I will go ahead and read these as quickly as I can. O.K.

If you would like to send written comments, please remember that they must be received no later than 5:00 p.m. on February 3, 2012. You can send those comments to the Municipal Permit Comments, Washington State Department of Ecology, The Water Quality Program, PO Box 47696, that's Olympia WA, 98504-7696. Or, electronically to swpermitcomments@ecy.wa.gov These addresses are also available on the handouts out back, so you don't have to necessarily write those down. Copies of the draft permit and more information on how to comment, or about more workshops and hearings, you can go to the website, also on the handouts back there – I won't read that in for you. Then, do know that any comments here today have equal weight with the comments that we receive written or electronic. So, not testifying here today doesn't negate your ability to comment by the close, 5:00 p.m. on the 3rd. Hard copies have to be post marked by 5:00 p.m. on the third. Additional workshops will be help in case you care, on January 10, which is tomorrow, at the School for the Blind, down in Vancouver. That meeting starts at 10:00 a.m. The next one is January 17th at the Skagit Transit Center in Mount Vernon. That one also starts at 10:00 a.m. January 24th there'll be a hearing in, at the Renton Community Center in Renton Washington.

That one starts at 9:00 a.m. We will also hold one workshop only where there won't be an opportunity to testify, but you will have the opportunity to hear the presentation again. That one is held on January 19th in Poulsbo, and that one starts at 10:00 a.m. Again, all of that information is on the focus sheet that's in, on the outside table there. So, Ecology will review and incorporate comments where appropriate. And, they will prepare a response. The written summary of and response to comments will be an appendix to the final fact sheet, and also will be posted online.

If you filled out a card here, and your address or an email address is here, that information will be held to contact you, unless of course, we have you on the record somewhere else. If you want to make sure you get your address down here to receive that information, feel free to paw through for your card and fill out the rest of that information. Let's see. If we can be of further help, don't hesitate to ask. Carrie and Harriet will be here as kind of break up. Vince and Lisa are back here as well. And then calling, and emails, address again are on all the handouts. So on the behalf of the Department of Ecology I thank you all for coming. Let the record show that it is 1:55 on January 9, 2012. And this hearing is closed.