



May 1, 2009

Municipal Stormwater Comments – W. WA Phase II Modification
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

Re: Comments on the Spring 2009 Modifications to the NPDES Phase II Stormwater Permit for Western Washington

We appreciate both the considerable work that Ecology has expended to draft and now modify the Phase II permit and the difficult issues the department must address. As one of the municipalities subject to the Phase II permit, we are concerned about the impact the proposed permit will have on our community. This permit burdens municipalities with goals and performance standards which are clearly in excess of the federal Phase II rule and in excess of the Phase II permits issued in many other states.

The City shares Ecology's commitment to improving surface water quality, but believes the proposed permit is setting up smaller municipalities for eventual exposure to violations of the federal Clean Water Act and third party lawsuits over information gathering rather than water quality improvement. Some of the information-gathering permit requirements are designed to provide Ecology with information that it feels would be useful, but two years after permit issuance, it is still unclear how that data will result in any improvement in water quality. To this end, please:

- Change "shall track the cost" to "should track the cost" in S5 C A 3 a. Longview is willing to provide cost information at the program level upon request; but it is an abuse of authority to include cost accounting as a permit condition subject to violations and the penalties of the Clean Water Act. Note that this requirement requires sustained cooperation among departments and resources to manage.

- Strike "designed to inspect all sites and achieving at least 95% of scheduled inspections" from S5 C 4 b v. Ecology has done a poor job publicizing and enforcing their general construction stormwater permit, so they effectively required cities to assume a parallel enforcement role and meet the 95% inspection rate of their dreams. How can Ecology demand that Permittees with markedly less resources and expertise, perform significantly better than Ecology's own record of enforcement? Many (if not most) Phase II cities have no such inspector(s), and some don't even have a stormwater manager. Longview just hired its first inspector last year in response to this – something that would be out of the question today given its dire budget imbalance. The irony is that for all its inspectors, Ecology has not met (and proly cannot achieve) this 95% inspection requirement. Longview will inspect, but it does not need this added liability, at least during this permit cycle. In the meantime, even NPDES permits for industrial dischargers and point dischargers rely on self-monitoring and self-certification, with spot checking for compliance. Mandating day-to-day assignments of small Permittees like this is unreasonable and highly hypocritical.
- For similar reasons, strike "...designed to inspect all sites and achieving inspection of 95% of all sites" from S5 C 5 e. Demonstrating in court that 95% of all catch basins and inlets were inspected is just may be too expensive technically. Moreover, after a 10-year event, operations are crazy. Post-event documentation errors would be inevitable and could make the 95% criteria equally difficult to meet.
- Please consider two options for S5 C 1 b:
 - a) Delete the requirement (to measure understanding and adoption). Populations in many parts of Washington are not static. Population growth and turnover will make compliance tenuous, as measured improvements among current residents are rendered statistically non-significant by the influx and exodus of residents and workers. Grandiose compliance metrics have already wasted precious outreach dollars and time on consultants and surveys that don't reveal anything substantive for the long term – only for that snapshot in time and for that segment of the community sampled. Ecology should use its annual permit fees revenue to commission the studies and the advertisement campaigns it desires. This approach would be more efficient and cost effective for us all and could yield useful information; or,
 - b) Change S5 C 1 b to read: "...measure the understanding and adoption of ~~the~~ targeted behaviors among ~~the~~ targeted audience." This way, jurisdictions could survey with less questions and therefore less cost.
- To the S5 C 3 b ii conditionally exempt non-stormwater discharges, add residential car washing, provided that the permittee minimizes these discharges through a public education and outreach campaign.
- From S5 C 3 c v, reconsider the language requiring termination of the illicit connection within 180 days. This may be immensely difficult in some cases and will be draconian in some cases. If the discharger resists the Permittee's enforcement efforts and court action is required to enforce the local ordinance, 180-days may not be adequate. Consider adding the following language to the end of the paragraph: "Final enforcement actions required to effect

the termination shall be exempted from the 180-day limit, provided the Permittee notifies Ecology of the case's status in advance of the deadline.”

- Please review the attached summary sheets for the SWMWW and consider similar such upgrades.

If you have any questions, please contact me at (360) 442-5210.

Sincerely,

Josh Johnson, PE
Street/Stormwater Manager

FIGURE 2.1.2: **STATE REQUIREMENTS (SUPPLEMENTAL FOR RE/DEVELOPMENT ≥1 ACRE)**
 (or disturbing <1 acre if part of a larger plan of development or sale)



