



City of Seattle

Gregory J. Nickels, Mayor

Seattle Public Utilities

Chuck Clarke, Director

July 16, 2008

VIA ELECTRONIC MAIL AND U.S. POST

Rachel McCrae, Municipal Stormwater Specialist
NPDES Municipal Stormwater Permit Manager
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, Washington 98008-5452

RE: NPDES MUNICIPAL STORMWATER PERMIT (WAR04-4503) – NOTIFICATION OF ANTICIPATED NONCOMPLIANCE AND REQUEST FOR DEADLINE EXTENSION

Under the provisions of the National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Discharges from Large and Medium Municipal Separate Storm Sewer Systems (Permit No. WAR04-4503) issued to Seattle by the Department of Ecology (Ecology) on January 17, 2007, the City of Seattle (City) is required, within 18 months of the effective date of the permit, to adopt ordinances or other enforceable documents that have been determined by Ecology to be equivalent to Appendix 1 of the permit and the *Stormwater Management Manual for Western Washington*¹. Special Condition S5.C.5.b provides for automatic extension based on Ecology written response. Additionally, within 18 months of the effective date of the permit, the City is required to implement programs, perform inspections, conduct maintenance, and execute enforcement actions that are based on these adopted ordinances and other enforceable documents.

The purpose of this letter is to notify Ecology, in accordance with General Condition 20 of the permit, that the City will be unable to fully comply with these terms and conditions of the permit. Enclosure (1) summarizes the permit terms that Seattle has identified with which it will be unable to fully comply by the required dates. Specifically, the City will be unable to adopt the specified ordinances and other enforceable documents by the deadline established by Ecology, nor will the City be able to conduct the various programmatic activities in accordance with the ordinances and other enforceable documents until they become effective. The City became aware of its inability to fully meet the permit conditions on approximately June 18, 2008, and verbally notified Ecology soon thereafter. In addition to General Condition 20 of the permit, Special Condition S5.C.5.b.iv requires that Permittees notify Ecology and request an extension if circumstances beyond the Permittee's control occur that may result in noncompliance with the requirements of the sections specifically related to adoption of ordinances or other enforceable documents equivalent to Appendix 1 for new development, redevelopment, and construction sites. This letter constitutes that notification and a request for an extension.

The underlying circumstances include the following:

¹ In a letter dated May 20, 2008, Ecology established September 21, 2008, as Seattle's deadline for adoption.

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1. Despite diligent, responsive, and professional efforts conducted in good faith by both the City and Ecology to develop, prepare, submit, and review Seattle's proposed Stormwater Code and Directors' Rules, a body of work remains to be completed to achieve equivalency with Appendix 1 of the permit and Ecology's *Stormwater Management Manual for Western Washington*. This includes reviewing comments, evaluating alternatives, developing recommendations, obtaining approval from the City's leadership for any major changes, redrafting text, and completing Ecology's subsequent review and approval. This work is expected to extend at least into August 2008.
2. A significant level of effort has been invested to lay the groundwork for the legislative process, including advance briefings and reviews with the Department of Finance, City Attorney's Office, Mayor's Office, and the City Council's President. Additionally, documentation necessary to support the legislative process have been drafted, including covering letters, fiscal analyses, the SEPA checklist and decision, and reports required under the State's Growth Management Act (GMA). After Ecology has transmitted its final determination of equivalency, all previously drafted supporting documents must be cross-checked for accuracy. This work is expected to require between one and two weeks.
3. Seattle's legislative process, beginning from the time the proposed ordinance is first submitted to the City Attorney's Office for review until final Executive action is taken, generally requires at least four months. During this period, the legislation must be: (1) reviewed and approved by the City Attorney's Office, the City's Department of Finance, and the Mayor's Office; (2) delivered to the City Clerk's Office for submittal to the Full Council; (3) introduced by Full Council and referred to Council Committee; (4) briefed to Council Committee with at least one and, more likely, two public hearings conducted; (5) acted on by Council Committee and referred to Full Council; (6) acted on by Full Council and forwarded to the Mayor; and (7) acted on by the Mayor. Note that Council will not accept or act upon transmitted legislation until the SEPA decision has been published and the three-week appeal period is completed.
4. Any proposed changes received during the legislative process that may have bearing on Ecology's determination of equivalency will have to be reviewed and approved by Ecology, which will add time to the process. Additionally, given the complexities of the Stormwater Code, the bulk of supporting material to review, and the potential level of interest by both internal and external stakeholders, additional time may be required to ensure a full and fair public process is accomplished.
5. Most City ordinances are effective 30 days after the Mayor has signed and approved the bill. The programmatic activities called for in the permit, including reviews, inspections, and enforcement actions, cannot be implemented until the new Stormwater Code and Directors' Rules are effective.

The City requests Ecology grant an extension of the deadline for adoption via a permit modification. Additionally, Seattle requests an extension of the deadline for implementing programmatic activities and actions directly authorized by the new ordinance and Directors' Rules until the new ordinance and its associated Directors' Rules become effective. The City will continue to keep Ecology informed of the status of adoption and project timelines. Our intent is to proceed as quickly as possible to fully meet the terms and conditions of the permit.

Washington State Department of Ecology

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The point of contact for Seattle's Stormwater Code is Robert D. Chandler, Ph.D., P.E., at 206-386-4576 or robert.chandler@seattle.gov. The point of contact for the City's NPDES Municipal Stormwater Permit is Kevin Buckley, at 206-733-9195 or kevin.buckley@seattle.gov.

"I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for willful violation."

Sincerely,



Nancy Ahern, Director
Utility Systems Management Branch
Seattle Public Utilities

Enclosure:

Summary Listing of Permit Elements Directly Related to Revised Stormwater Code

cc:

Chuck Clarke, Director, Seattle Public Utilities
Diane Sugimura, Director, Seattle Department of Planning & Development
Trish Rhay, Director, SPU Drainage & Wastewater Division
Bob Laird, Director of Operations, Seattle Department of Planning and Development
Martin Baker, SPU Corporate Policy & Performance
Theresa Wagner, Seattle Attorney's Office
Robert D. Chandler, Ph.D., P.E., SPU Drainage & Wastewater Division
Kevin Buckley, SPU Drainage & Wastewater Division

Enclosure 1

Summary Listing of Permit Elements Directly Related to Revised Stormwater Code

In the cover letter, the City of Seattle is notifying Ecology that there are terms and conditions of the NPDES Municipal Stormwater Permit with which it will be unable to comply promptly and fully owing to the time required to finish the equivalency process with the Department of Ecology and to complete the legislative process for adopting a revised municipal Stormwater Code and associated Directors' Rules. The items listed below represent Seattle's summary of the specific permit terms and conditions at issue and is provided as informational background to the cover letter. For complete details on the permit terms and conditions, refer to the National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for discharges from Large and Medium Municipal Separate Storm Sewer Systems (Permit No. WAR04-4503).

1. S5.C.5.b.i. Adopt ordinances or other enforceable documents containing Minimum Requirements, thresholds, and definitions determined by Ecology to be equivalent to Appendix 1, for new development, redevelopment, and construction sites;
2. S5.C.5.b.ii. Include in the local requirements a site planning process and Best Management Practice (BMP) selection and design criteria equivalent to the *2005 Stormwater Management Manual for Western Washington*;
3. S5.C.5.b.iii. Implement a program that allows non-structural preventative actions and source reduction approaches such as Low Impact Development Techniques (LID);
4. S5.C.5.b. iv. Adopt a local program that meets the requirements of S5.C.5.b.i through iii, above.
5. S5.C.5.b.v. Implement a program with established legal authority to inspect private stormwater facilities and enforce maintenance standards for new development and redevelopment established in accordance with the adopted ordinances or other enforcement documents of S5.C.5.b.i above;
6. S5.C.5.b.vi. Implement a program that includes a process of permits, plan review, inspections, and enforcement capability to meet standards for both private and public projects that meet the thresholds established in the adopted ordinances or other enforcement documents of S5.C.5.b.i above;
7. S5.C.5.b.viii. Ensure all staff whose primary job duties are implementing the program to Control Stormwater Runoff from new Development, Redevelopment, and Construction Sites, are trained to conduct these activities;
8. S5.C.7.b.i. Adopt and begin enforcement of an ordinance, or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources by using the source control BMPs in Volume IV of the *2005 Stormwater Management Manual for Western Washington*, or a functionally equivalent manual approved by Ecology;
9. S5.C.8.b.ii. update existing ordinances or other regulatory mechanisms to effectively prohibit the listed non-stormwater into the Permittee's municipal separate storm sewer system;
10. S5.C.9.b.i. Establish maintenance standards that are as protective or more protective of facility function than those specified in Chapter 4 of Volume V of the *2005 Stormwater Management Manual for Western Washington*;
11. S5.C.9.b.ii.(1). Evaluate and, if necessary, update existing ordinances or other enforceable documents requiring maintenance of permanent stormwater treatment and flow control facilities in accordance with maintenance standards established in accordance with S5.C.9.b.i above;

Enclosure 1 to City of Seattle letter to Department of Ecology dated July 16, 2008
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12. S5.C.9.b.ii.(2). Develop and implement an inspection schedule to enforces compliance with maintenance standards adopted in accordance with S5.C.9.b.i above.