

PHASE I MUNICIPAL STORMWATER GENERAL PERMIT

PERMIT MODIFICATION

FACT SHEET

National Pollutant Discharge Elimination System and
State Waste Discharge General Permit
For discharges from
Large and Medium Municipal Separate Storm Sewer Systems

April 21, 2010

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
OLYMPIA, WASHINGTON 98504-7600

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INTRODUCTION

This Fact Sheet accompanies the proposed permit modification for the National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Stormwater Permit covering Large and Medium Municipal Separate Storm Sewers (the permit). The proposed modification refers to Ecology's decision to approve the enforceable documents as equivalent to what is required by the Phase I Permit.

The Washington Department of Ecology (Ecology) issued this permit on January 17, 2007 and it became effective on February 16, 2007. The permit was first modified in 2009 (effective June 17, 2009) to address resolutions of appeals under two settlement agreements and as remanded by the Pollution Control Hearings Board (PCHB) in accordance with WAC 173-220-190(1). Copies of past appeals, settlements and PCHB rulings are available at:

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/appeals.html>

The purpose for this permit modification (with the public comment review period beginning April 21, 2010) is to incorporate Ecology's equivalency determination of Clark County's Alternative Flow Control Program by updating Appendix 10 of the Phase I permit. Ecology is also incorporating minor updates to King County and the City of Seattle equivalency documents.

This Fact Sheet documents the legal, technical, and administrative decisions Ecology has made in the process of modifying the Phase I Municipal Stormwater Permit.

I. Public Involvement Opportunities

Public Comment Period

Ecology invites the public to comment on the proposed permit modification and fact sheet from April 21, 2010 until 5:00 p.m. on June 7, 2010. Ecology welcomes all comments that address the proposed permit modification in the formal draft documents. To provide comments adequately and effectively, include the following information with each comment:

- The specific permit language used in the draft modification that your comment refers to.
- A brief, concise comment including the basis for the comment, and in particular the legal, technical, administrative, or other basis for the concern.
- Suggested permit language or a conceptual alternative that will address your concern.

The scope of this permit modification is limited to Ecology's equivalency determination, which is Ecology's decision to approve the enforceable documents as equivalent to what is required by the Phase I Permit. Broader issues related to Ecology's manual, permit conditions listed in

S5.C.5 and Appendix 1 are not the subject of this permit modification. Comments outside of this equivalency determination will not be responded to or addressed.

Reviewers can find documentation of Ecology's decision-making process for each manual on Ecology's website at

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/Phase1equivalentstormwatermanualsWestern.html>

Comments can be sent to Ecology in any of the following 3 ways:

1. by e-mail to: SWPermitComments@ecy.wa.gov
2. by postal mail to:

Municipal Permit Comments
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

3. People can make oral comments by attending and testifying at the public hearing:

Workshop/Public Hearing Date and Location:

May 27, 2010, at 1 PM

**Water Resources Center
4600 SE Columbia Way,
Vancouver, WA 98661
(360) 487-7111**

Public Workshop and Hearing

The purpose of the workshop is to explain the proposed changes to the permit, and to answer questions about the proposed changes. The hearing will immediately follow the workshop and provide an opportunity for formal comments on the proposed permit modification. Ecology will accept formal oral testimony or comments on the draft permit modification and/or fact sheet after the public workshop during the hearing.

Ecology will issue the final permit modification after receiving and considering all public comments. If public comments cause a substantial change in the permit condition from the

final draft permit modifications, another public notice of draft modification and comment period may be required. Ecology expects to issue the final permit modification in September 2010, effective 30 days after issuance. Ecology will send a copy of the Notice of Issuance to all persons who submitted written comment or gave oral testimony at the public hearing. Ecology will address comments submitted during the public comment period in a document named *Response to Comments* which will be included in the final permit modification. When Ecology issues the final permit modification, the response to comments will become part of the fact sheet. People who submit comments will receive a notice on how to obtain copies of the final permit and Ecology's response to comments.

You may download copies of the proposed permit modification documents and submit comments online at:

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/permitMOD.html>.

You may direct questions about the **workshop/hearing** and request printed copies of the draft permit modification and Fact Sheet to Jocelyn Winz (360) 407-7529 or jwin461@ecy.wa.gov

You should direct questions about the **Public Notice**, the **Draft Permit Modification** or **Fact Sheet** to the Ecology contact listed below:

Julie Lowe
Phase I Municipal Stormwater Planner
Water Quality Program
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6470
E-mail address: jlow461@ecy.wa.gov

II. Phase I Municipal Stormwater Permit, Second Modification

Ecology proposes to modify the Phase I permit originally issued on January 17, 2007 and first modified on June 17, 2009. The proposed modification implements the outcome of Ecology's equivalency determination that the enforceable documents, including codes, ordinances, director's rules, public rules and/or manuals, listed in Appendix 10 are functionally equivalent to Appendix I of the Phase I permit and the required portions of Ecology's 2005 *Stormwater Management Manual for Western Washington*.

The Phase I Municipal Stormwater Permit (the Permit) requires permittees to develop and implement a program designed to prevent and control the impacts of runoff from new development, redevelopment and construction sites as part of the Stormwater Management Program (SWMP). Special Condition S5.C.5 of the permit specifically requires permittees to meet the minimum requirements, thresholds, and definitions in Appendix 1. The same permit condition requires the permittee to submit their proposed enforceable documents to Ecology for equivalency review and approval. The permit also allows more stringent requirements to be used, and/or certain requirements to be tailored to local circumstances by using basin plans or other similar water quality and quantity planning efforts. These local requirements and thresholds shall provide equal or similar protection of receiving waters and equal or similar levels of pollutant control as compared to Appendix 1. These elements were required to have been adopted by August 17, 2008.

Ecology's Flow Control Requirement

Minimum Requirement #7 in Appendix 1 requires permittees to control stormwater flows from development and redevelopment projects that meet specific thresholds. If the project meets a specific threshold, it is required to match historical pre-developed conditions. The standard flow control requirement indicates that the pre-developed condition is forested land cover unless certain specified conditions are met. The methods to conduct this analysis are described in the SWMMWW. The approach typically followed by permittees to meet the flow control objective is to require developers of eligible development and redevelopment projects to construct flow control facilities. Ecology has acknowledged that there are other approaches that can provide an equivalent level of flow control for the protection of aquatic resources and that the Permit allows alternative planning efforts.

2009 Phase I Permit Modification

On March 18, 2009, Ecology began a Phase I permit modification to implement a Pollution Control Hearings Board (PCHB) decision (*Summary Judgment and Order on Dispositive Rulings for Phase I appeals* on April 8, 2008). The PCHB remanded the Phase I permit to Ecology to modify the permit under WAC 173-220-190 to allow public review, comment and appeal of Ecology's determination that any alternatives to Appendix 1 or the SWMMWW proposed by Phase I Permittees are functionally equivalent. The Order required Ecology to name approved alternative manuals within the permit in order to allow, through the major permit modification requirements in WAC 173-220-060, a public review, public comment and appeal process on Ecology's decision.

Ecology implemented the PCHB's decision in 2009 by including a list of approved documents in a new appendix to the Phase I permit, Appendix 10 (Equivalent Programs for Runoff Controls for New and Redevelopment and Construction Sites). Appendix 10 listed enforceable

documents, including codes, ordinances, director's rules, public rules and/or manuals, where Ecology deemed these documents to be functionally equivalent to Appendix I and the required portions of Ecology's 2005 *Stormwater Management Manual for Western Washington*. Ecology also included conditions in Appendix 10 where the equivalency determination was conditioned, meaning the Permittee must comply with listed conditions in order to achieve equivalency and comply with associated permit requirements. The Phase I permit modification became effective June 17, 2009.

Links to documents listed in Appendix 10 can be found on Ecology's website at:

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/Phase1equivalentstormwatermanualsWestern.html>

During the 2009 Phase I permit modification, Appendix 10 listed the manual and ordinance packages from five Phase I Permittees: King County, the City of Seattle, Pierce County, the City of Tacoma, and Clark County. In some cases, Appendix 10 listed special conditions that must be met to be fully compliant with permit requirements.

III. Explanation of Proposed Permit Changes

For this permit modification, Ecology proposes to modify Appendix 10 for Clark County, King County and the City of Seattle. Only minor edits are proposed to the King County and City of Seattle sections to correspond with recent updates to the enforceable documents named in Appendix 10.

The following sections contain information specific to Clark County, King County and the City of Seattle, providing Ecology's justification for the proposed permit modification.

Clark County

Ecology proposes to modify Appendix 10 by removing Clark County's *Conditions* listed in Appendix 10, adding new equivalent documents and adding new conditions to Clark County's Alternative Flow Control Program. Ecology previously reviewed and approved some of Clark County's enforceable documents which were listed in Appendix 10 during the June 2009 permit modification. Since that time, the County has provided enforceable documents through an Agreed Order between Ecology and Clark County to satisfy the "conditions" that were added to Appendix 10 during the first modification of the Phase I Permit (effective June 17, 2009). Ecology believes that the proposed program for controlling runoff from new and redevelopment projects and construction sites will provide an equivalent level of flow control to that required in S5.C.5 of the permit. This approach is consistent with the Phase I permit

wherein permittees are allowed the option of proposing alternative methods for achieving the flow control standards. Alternative approaches are authorized through Ecology review and incorporation of equivalent manuals into Appendix 10 of the permit through a permit modification or reissuance. Background information about the Agreed Order and Clark County's Alternative Flow Control Program can be found in the next section of this Fact Sheet.

Ecology proposes to modify the Clark County Section in Appendix 10 to:

- Remove original flow control conditions¹ to Clark County's enforceable documents
- Add to the list of enforceable documents: Clark County Stormwater Pollution Control Manual – Best Management Practices for Businesses and Government Agencies (2009), Clark County Stormwater Facility Maintenance Manual (2009) and Clark County's Development and Redevelopment Flow Control Mitigation Program (Clark County's Flow Control Program) as equivalent to the Stormwater Management Manual for Western Washington (2005) with conditions.
- Add conditions to Ecology's equivalency determination of Clark County's Flow Control Program including additional requirements Clark County must have in place in order to achieve equivalency and a condition for other permittees interested in adopting Clark County's Flow Control Program. This will include a list of requirements for such a program and a requirement for review by Ecology.
- Add Clark County's Hydrologic Model, as equivalent to the Western Washington Hydrology Model with conditions, to the list of enforceable documents.
- Add conditions to Ecology's equivalency determination of Clark County's Hydrologic Model including data collection for calibration and validation of the model and reporting deadlines to Ecology.

Ecology proposes to remove the existing Clark County flow control conditions in Appendix 10 since Ecology has determined that the County has met these conditions through its Alternative Flow Control Program proposal. In addition, Clark County made revisions to their code on November 24, 2009 as required by Agreed Order No. 7273.

Ecology proposes to include Clark County's Flow Control Program as an equivalent enforceable document in Appendix 10 with conditions. Clark County's Flow Control Program was the originally an Attachment (Attachment A) of Agreed Order No. 7273, a compliance agreement between Ecology and Clark County that describes the framework and criteria for the County's flow control program. Ecology has determined that this program will provide flow control equivalent to Phase 1 Permit Appendix 1 requirements, when implemented according to new

¹ Conditions are listed in Appendix 10 when Ecology's determination of equivalency is conditioned. Permittees must comply with listed conditions, if applicable, in order to achieve equivalency and comply with associated permit requirements.

conditions listed in 7.a and 7.b of Appendix 10 and contents of Clark County's Flow Control Program.

In addition, Ecology proposes to insert a condition to Clark County's Flow Control Program for permittees interested in adopting this program. This requirement applies to Phase I or Phase II permittees in Western Washington. It requires that permittees proposing to adopt Clark County's Flow Control Program submit program elements and documentation to Ecology for review. In order to successfully develop and implement Clark County's Flow Control Program, permittees must have the requirements for the program in place prior to implementation. Ecology lists these proposed requirements in the permit modification. The development and approval of Clark County's Flow Control Program was a rigorous process involving participation from Ecology and the County. Ecology encourages permittees interested in adopting this program to understand which program elements must be in place prior to adoption and implementation of such a program. Those interested in adopting Clark County's Flow Control Program are encouraged to contact and engage Ecology early in the development process. Specifically, for those interested in adopting this program, the permittee must also comply with the same requirements for Clark County as indicated in Clark County's Flow Control Program and the listed conditions to this program found in 7.a through 7.c of Appendix 10.

Ecology proposes to add Clark County's Hydrologic Model to the list of equivalent programs. Ecology has determined Clark County's Hydrologic Model to be equivalent to the Western Washington Hydrologic Model (WWHM). Ecology proposes to list conditions for Clark County's Model for calibrating and validating the model and reporting information to Ecology. Clark County chose to calibrate the WWHM model parameters for some prevalent soil types in the county. For this effort, adjustments were made to internal equations in the program with the intent to more accurately estimate the rainfall/runoff relationship for soil types and land surfaces typically found in Clark County. Clark County also updated information from a number of local precipitation gages and used them to complement the calibration effort. The Clark County version of WWHM includes updated precipitation data from 15 gages throughout the county instead of the one gage (Portland Airport) used by the default WWHM for the County. The intent of the Clark County version of the WWHM is for use only in Clark County. It is not authorized for use in other areas of Western Washington.

King County

During the June 17, 2009 Phase I permit modification, Ecology included a footnote approving two provisions for rural areas in the King County Surface Water Design Manual (SWDM) based in part on recognizing the cumulative hydrologic benefits of the clearing restrictions embodied in the language of King County Code Chapter 16.82.150. Since the clearing restrictions have

been invalidated or revoked, Ecology must withdraw our previous approval of the following two provisions in the King County Surface Water Design Manual:

- The “Impervious Surface Percentage Exemption” in Core Requirement #3, and
- The allowance for “Small Project Drainage Review” for projects in the rural residential, agriculture and forestry zones that result in no more than 4% total impervious surface and no more than 15% pervious surface.

In a letter dated March 22, 2010, King County documented their process to eliminate these provisions in a SWDM errata, and their interim solution to notify potential project proponents that these provisions are not allowed. Ecology also proposes to include this letter in the modified Appendix 10 of the Phase I Permit. Ecology proposes to remove the footnote in Appendix 10 associated with this component of the King County program.

City of Seattle

Ecology proposes a minor edit to the City of Seattle equivalent program section since their documents listed in Appendix 10 have been adopted. The June 17, 2009 permit modification noted that the City of Seattle’s equivalent documents were undergoing adoption. The City of Seattle adopted the municipal code chapters listed in Appendix 10 on September 30, 2009. Seattle’s codes and Director’s Rules are now in use. Additionally, the footnote previously listed in Appendix 10 was removed since it contained information regarding changes to Seattle’s document prior to adoption.

IV. Discussion

Clark County

On January 13, 2009, the Clark County Board of County Commissioners passed and adopted ordinance No. 2009-01-01 repealing Clark County Code Chapter 40.380. They then adopted a new Chapter 40.385 amending Clark County Code section 40.450.040 and Section 40.100.070. Clark County submitted its adopted ordinances and manuals to Ecology on January 26, 2009.

Upon review of these documents, Ecology determined that in addition to being late, the County’s ordinances and manual did not meet the criteria contained in Appendix 1 of the permit. Specifically, Clark County’s adopted ordinance and manual did not comply with the standard flow control requirements, the 0.1 cubic foot per second flow threshold and other requirements in Appendix 1 of the permit. Instead, Clark County adopted lesser standards and thresholds for control of runoff from new development and redevelopment which, unless

otherwise mitigated, would not provide an equivalent amount of flow control as required by the permit.

As a response, during the 2009 Phase I Permit modification, Ecology determined the following Clark County enforceable documents were equivalent to Appendix 1 with conditions:

- Clark County Stormwater Manual (2009)
- Clark County Code Chapter 40.35 Stormwater and Erosion Control
- Clark County Code Chapter 13.26A Water Quality
- Clark County Code Chapter 40.450 Wetland Permits
- Clark County Stormwater Pollution Control Manual – Best Management Practices for Businesses and Government Agencies (2009)

Clark County Stormwater Facility Maintenance Manual (2009)

The following conditions applied to Clark County:

1. Adopt a flow control policy that Ecology has deemed equivalent.
2. Adopt as part of the flow control policy a threshold that requires flow control standards on projects that cause a 0.1 cubic feet per second increase in the 100-year flow frequency from a threshold discharge area estimated using the Western Washington Hydrology Model (WWHM) or other approved model.

Clark County had elected to use an alternative method to provide the level of flow control required by the Permit. The County opted to implement a capital flow control mitigation program which, taken together with development and redevelopment regulations, meets the Permit's standard flow control requirement as described in Appendix 1.

Ecology and Clark County Agreed Order

On March 17, 2009, Ecology issued Notice of Violation No. 6514 to the County describing the areas of non-compliance.

On April 8, 2009, the County responded to the Notice of Violation and proposed to enter into a compliance agreement with Ecology. The County proposed using a capital construction flow control mitigation program, in addition to other modifications to its codes and manual, to provide a level of flow control from new development and redevelopment projects equivalent to that required in Appendix 1 of the Permit.

Ecology entered into an Agreed Order with Clark County (Agreed Order No. 7273) to identify the measures necessary to bring the County into compliance with the Permit and Appendix 1. The Agreed Order acknowledged that the County's stormwater program for controlling runoff from new development, redevelopment and construction sites (manual, codes and flow control program) must be incorporated into the Permit through a modification or reissuance. Both

parties understood that any permit modification is subject to public review, comment and appeal. Once Clark County's program is incorporated into the Phase I Permit, the Agreed Order will be terminated.

Further detailed information about Clark County's Flow Control Proposal can be downloaded from Ecology's website at:

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/Phase1equivalentstormwatermanualsWestern.html>