IMPLEMENTING AGREEMENT

BETWEEN

WASHINGTON STATE DEPARTMENT OF ECOLOGY
and
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

REGARDING APPLICATION OF THE HIGHWAY RUNOFF MANUAL

This implementing agreement is being adopted in accordance with the Memorandum of Understanding between the Washington State Departments of Ecology and Transportation Regarding Environmental Issues under Department of Ecology Jurisdiction, executed August 4, 1988. This MOU states in part “Authority is hereby granted…to develop and execute program specific implementing agreements”.

I. Background

In 1987, Congress amended the Clean Water Act to include stormwater discharges in the National Pollutant Discharge Elimination System (NPDES) permit program. This program requires permits for municipal stormwater discharges to surface waters. Under the program, NPDES and State Waste Discharge General Permits cover discharges from municipal separate storm sewer systems (MS4s) that are owned or operated by a governmental entity. An MS4 is defined as any pipe, ditch or gully, or system of pipes, ditches, or gullies that are used for collecting and conveying storm water: roads and highways with drainage systems; and impervious surfaces such as parking lots that convey stormwater runoff.

The U.S. Environmental Protection Agency (EPA) delegated the authority to the Department of Ecology (Ecology) to develop and issue these permits in Washington State. EPA adopted rules to implement the new stormwater requirements in two phases:

Phase I

In 1990, EPA issued NPDES Phase I rules that applied to cities and counties with populations greater than 100,000. Ecology issued permits in 1995 to seven Phase I jurisdictions: Snohomish, King, Pierce, and Clark counties; the cities of Seattle and Tacoma; and the Washington State Department of Transportation (WSDOT) for its facilities within those jurisdictions.

The Department of Ecology (Ecology) reissued the “National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Discharges from Large and Medium Municipal Separate Stormwater Sewers” on January 17, 2007 to all the original permittees except WSDOT. The permit is also referred to as the “Phase I Permit.”

The Washington State Department of Transportation maintains NPDES coverage under the 1995 permit until such time the WSDOT permit is issued.
Phase II

In 1999, EPA issued NPDES Phase II rules regulating municipally-owned separate storm sewer systems within census-defined urban areas. These are areas that generally have more than 1,000 people per square mile. Ecology has developed separate Phase II general permits for eastern and western Washington, issued January 17, 2007.

Phase II rules require publicly-owned stormwater systems to obtain NPDES permits for their stormwater discharges. The federal rules also require:

- Fulfilling the requirements of a TMDL and its implementation plan.
- Record keeping, evaluation, and reporting on the progress of the program.

II. Purpose and Scope

The Department of Ecology developed separate Stormwater Management Manuals for Western Washington and Eastern Washington. The objective of the manuals is to provide guidance on the measures necessary to control the quantity and quality of stormwater produced by new development and redevelopment. The manuals are the required technical guidance documents for the Phase I and Phase II permits.

The manuals provide guidance on how to prepare and implement stormwater site plans. These requirements are, in turn, satisfied by the application of Best Management Practices (BMPs). Projects that follow this approach will apply reasonable, technology-based BMPs and water quality-based BMPs to reduce the adverse impacts of stormwater. The manuals apply to all types of land development – including residential, commercial, industrial, and roads.

Manuals with a more-specific focus, such as WSDOT’s Highway Runoff Manual (HRM), that have been determined to be equivalent to Ecology’s manuals, may provide more focused guidance to specific types of development. WSDOT first adopted the HRM in 1995 in response to Chapter 173-270 WAC (Puget Sound highway runoff program), and since then the manual has expanded to statewide use as a result of various regulatory drivers.

III. WSDOT Permit Coverage

Ecology issued an NPDES general stormwater permit to WSDOT on February 4th, 2009. The permit regulates stormwater discharges from activities and facilities in Phase I, Phase II, and applicable TMDL areas in Washington State. This permit applies to WSDOT’s stormwater conveyance and treatment systems in areas defined in the January 17, 2007 Phase I and II permits.

Under the permit, WSDOT must apply the technical standards from the June 2008 Washington State Highway Runoff Manual (HRM) for the planning, design, and operation and maintenance of stormwater facilities in Phase I, Phase II, and TMDL areas. However, during the course of permit development, questions emerged as to the appropriate mechanism to address stormwater discharges from WSDOT’s stormwater conveyance and treatment systems for new and redeveloped facilities located outside of Phase I, Phase II, and TMDL areas. This Implementing Agreement addresses these areas.
IV. HRM Equivalency

V. Commitments

A. Washington State Department of Transportation
WSDOT has the responsibility to construct and operate safe transportation facilities that comply with federal and state laws, regulations, and policies. To manage its stormwater discharges to protect water quality, beneficial uses of the state’s waters and the aquatic environment in general, WSDOT shall apply the June 2008 version of the HRM throughout Washington State to direct the planning, design, construction and maintenance of stormwater management facilities for new and redeveloped Washington State highways, rest areas, park-and-ride lots, ferry terminals, and highway maintenance facilities. One year from issuance of the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION MUNICIPAL STORMWATER PERMIT, projects advertised for bids shall comply with the June 2008 HRM. The exception is that projects requiring an individual Section 401 Water Quality Certification must comply with the June 2008 HRM upon execution of this Implementing Agreement. Furthermore, projects requiring an individual Section 401 Water Quality Certification may be subject to additional stormwater requirements if, based on site specific information, the use of the June 2008 HRM will not result in compliance with State Water Quality Standards.

Through its HRM, WSDOT establishes minimum requirements and provides uniform technical guidance for avoiding and mitigating impacts to water quality associated with the development of state-owned and -operated transportation infrastructure systems and for reducing and minimizing water quality impacts associated with the redevelopment of those facilities.

As required by the HRM, WSDOT will provide Ecology site-specific stormwater management proposals for review and approval via the demonstrative approach compliance pathway for any requested deviation from the HRM.

Each year, coinciding with the due date of the annual NPDES permit progress report, WSDOT will submit to Ecology the annual statewide list of stormwater management facilities built between July 1 and June 30.

WSDOT will ensure that Ecology has current points of contact for design issues, operations and maintenance, TMDL development, and general stormwater management concerns.

B. Washington State Department of Ecology
Ecology has the responsibility to protect water quality through the implementation of Chapter 90.48 RCW, and Chapters 173-200, 173-201A, and 173-204 WAC. In addition, Ecology has been delegated by the Environmental Protection Agency the authority to issue NPDES permits. To assure water quality protection through the permit process, Ecology will:
1. Administer a stormwater program consistent with federal and state water quality laws and regulations;
2. Establish minimum requirements for the development and redevelopment of projects of all sizes;
3. Provide guidance on preparing and implementing stormwater site plans;
4. As staffing and funding allow, the Water Quality Program will review WSDOT project plan sheets for Section 401 certifications under the demonstrative approach and recommend approval or denial;
5. As staffing and funding allow, the Water Quality Program will participate in a cooperative review of WSDOT site designs for projects that request a variance or exception to the HRM and recommend approval or denial;
6. Annually name a contact person(s) in a written memo to WSDOT for compliance with the WSDOT NPDES Phase I and Phase II general permit, technical review for project and HRM changes, and TMDL development; and
7. Review changes to the HRM for approval, denial, or conditional approval in a timely manner.

C. Washington State Departments of Transportation and Ecology Cooperate
Both agencies have roles and responsibilities to control stormwater runoff: Ecology administers and enforces water quality laws, regulations, and policies; WSDOT implements transportation projects and operates and maintains a transportation system. The two agencies agree to:

1. Appreciate the role each agency serves to the benefit of Washington State citizens;
2. Communicate as colleagues;
3. Collaborate to resolve issues;
4. Submit and review design and modeling tool adjustments in a timely manner.

VI. Duration of Agreement
This agreement will remain in effect for five years beginning at the date of issuance of WSDOT’s NPDES municipal stormwater permit. Either party may terminate this Agreement upon 30-day written notice to the other. Written notice of termination shall include the reasons for the termination. Should WSDOT elect to terminate this agreement to implement the HRM statewide, Ecology will initiate a modification to the permit to include this requirement.

VII. Revisions to the Agreement and Highway Runoff Manual
From time-to-time changes to the HRM may be necessary to reflect an adaptive management approach for the use of the HRM. Substantive changes to the Highway Runoff Manual must be reviewed and approved by Ecology. If those changes necessitate revisions to this Agreement, revisions may be initiated by either party and will become final only after both parties are in agreement and appropriate signatures are attached.

VIII. Dispute Resolution
In the event of a dispute regarding implementation of this agreement, the parties shall make all reasonable efforts to resolve the dispute at the staff level. The parties may request the assistance of a mutually agreed upon facilitator at any time. If the parties engage a facilitator, the timelines will be
adjusted according to a mutually agreed upon schedule. Unresolved disputes will be settled in the following hierarchical process:

1. If disputes cannot be resolved between the immediate staff, staff will document the issue, its nature, timing, background, attempts at resolution, and any other relevant facts. Staff will present a request for resolution to their immediate supervisors.

2. If the dispute cannot be resolved at the immediate supervisors’ level within 20 days, supervisors will document this step and send the entire packet on to the Ecology Water Quality Program Manager and the WSDOT Director of Environmental Services.

3. If the Program Manager and Environmental Services Director cannot resolve the dispute within 20 days, they will document their efforts and send the entire packet sent on to each agency’s director.

4. If Directors cannot resolve the dispute within 30 days they will elevate the issue to the Governor’s Office.

IX. Consistency with Applicable Statutes

Nothing in this Implementing Agreement shall be interpreted as restricting or impairing Ecology’s ability to initiate compliance and enforcement actions under the procedures established in Chapter 90.48 RCW, nor shall it be interpreted as restricting or impairing WSDOT’s legal rights under 90.48 RCW, nor its authorities or responsibilities under Title 47 RCW.

X. Execution

The undersigned hereby acknowledge and agree that the policies, procedures, and activities identified in this document will guide the parties in an effort of mutual support and cooperation, in order that WSDOT and Ecology may achieve full compliance with this agreement, and initiate innovative strategies to protect and manage the quality of Washington State’s waters.

The terms of this agreement are applicable subject to the availability of legislative appropriations or other funding sources.

WASHINGTON STATE  WASHINGTON STATE
DEPARTMENT OF ECOLOGY  DEPARTMENT OF TRANSPORTATION

Jay J. Manning          Paula J. Hammond, P.E.
Director               Secretary of Transportation

Date 2/2/09              Date 2/2/09