

Attachment 1

City of Bellevue February 3, 2012 Comment Letter for the Draft 2012 Ecology Stormwater Management Manual for Western Washington

This is an excerpt from Bellevue's February 3, 2012 comment letter on the draft NPDES (2013-2018) Western Washington Phase II Municipal Stormwater Permit. These comments and recommendations also apply to the draft Manual.

PRIMARY AREAS OF CONCERN AND RECOMMENDATIONS

1. Ecology's Public Review Process

We recognize the legislature's actions imposed challenges for the review process, and in response, Ecology implemented a concurrent public review process for the draft Phase II Permit and the draft 2012 Ecology Stormwater Management Manual for Western Washington (draft Manual) in order to meet the legislative deadline for draft Phase II Permit issuance. The City of Bellevue has expressed concerns multiple times since June 2011 with this concurrent public review process. We continue to have serious concerns with this approach.

Recommendations

Bellevue requests Ecology conduct separate, consecutive public review processes for the draft Manual and the draft Phase II Permit. In order to allow time to do this, Bellevue requests Ecology reissue and extend the current NPDES Permit to early 2015 and revise the issuance and effective permit dates for the new NPDES Phase II permit, with the effective date of the new NPDES Phase II permit beginning in early 2015.

The City's recommendations are consistent with Ecology's approach for Phase I Permits. The current Phase II Permit is Phase II municipalities' first NPDES permit. Ecology reissued the first Phase I Permit several times for a total of 12 years while Ecology worked with stakeholders to develop the second Phase I Permit. We are asking for the same consideration.

Concerns and Rationale for Recommendations

Bellevue has the following concerns with this concurrent process:

- Conflicts with Administrative Procedures Act. The concurrent process likely conflicts with the state's Administrative Procedures Act for rulemaking, Ch. 34.05 RCW. Based on documentation, including Ecology's website and focus sheets, Ecology's intent is that the draft Manual be used as an enforceable regulatory document. This requires that draft Manual's adoption comply with the appropriate rulemaking processes.
- Incomplete Regulatory Documentation. The draft Manual is incomplete and references documents that were made available late in the review process, such as a draft Low Impact Development Technical Guide for Puget Sound (draft LID Technical Guide). The over 400 page draft LID Technical Guide was released only 19 working days before the comment deadline for the draft Manual. The 40-page Appendix 1 of the draft Phase II Permit is not adequate to assess and make informed comments on the draft Phase II Permit.

- Lack of Required Economic Analysis. Ecology has not conducted the required economic impact assessment pursuant to Ch. 19.85 RCW.
- Inadequate Review Period. Municipalities are being asked to concurrently review lengthy, complex, technical, and incomplete documents in an unreasonable and abbreviated period of time. Municipalities cannot produce informed comments based on incomplete regulatory packages and unreasonable review periods.

2. New Low Impact Development (LID) Stormwater Best Management Practices (BMPs) Requirement

This section addresses proposed Condition S5.C.4.a (page 29-30), Appendix 1, and the draft Manual.

Low Impact Development stormwater best management practices (LID stormwater BMPs) are being implemented where feasible under the current Phase II Permit stormwater development requirements and through planning initiatives (Attachment A). The stormwater and development community continues to learn from successes and failures. Experience with the implementation of the various LID stormwater BMPs, especially large scale use over an extended period of time, is limited, both locally and nationally. Current research and pilot projects are providing new information about the use of LID stormwater BMPs including feasibility criteria, design, construction, performance and life safety issues, operation and maintenance requirements and life cycle costs.

Recommendations

Bellevue strongly recommends a phased approach to increased LID stormwater BMP requirements for the draft Phase II Permit. This is necessary to allow for more industry experience, better understanding of challenges with implementing LID stormwater BMPs, especially in the urban environment, economic conditions to improve, and for consistency with the Pollution Control Hearings Board (PCHB) Phase II LID decision.

Concerns and Rationale for Recommendations

- Relatively New Stormwater Tool. LID stormwater BMPs have the potential to improve water quality and flow control but, in practice, it is a relatively new stormwater management tool. As a result, there are many technical, institutional and implementation challenges and potential for unintended consequences, such as groundwater contamination, that need to be addressed before Ecology mandates their use on all development and redevelopment projects. (Attachment B).
- Urban Environment. The opportunity to use LID stormwater BMPs and their effectiveness are more limited in developed areas due to competing urban density. Appropriate use of LID stormwater BMPs in an urban environment must take into account site, engineering, and cost considerations while accommodating growth and density.
- Economic Impacts. Bellevue hired HDR Engineering to estimate the change in stormwater costs for private and public development and redevelopment projects in Bellevue based on the proposed new LID stormwater BMP requirements. The results show that the cost of the new stormwater requirements will vary depending on the development type, site-specific feasibility for LID

stormwater BMPs, and the City's policies and plans for implementing LID. The analysis shows that stormwater costs increase significantly for the following types of development projects:

- Commercial development projects increase between 17% and 248%; and
- Transportation projects increase up to 106%.

Economic conditions make these increases a hardship. Attachment C contains more information on the stormwater costs impact analysis.

- Draft Phase II Permit Escalates LID Requirements on Par with Phase I Permit. Ecology proposes requiring Phase II permittees to implement the same LID stormwater BMP requirements as Phase I permittees even though the PCHB recognized that Phase II jurisdictions are factually and legally different from Phase I jurisdictions, thus justifying different requirements and a different time schedule for Phase II jurisdictions. [Puget Soundkeeper Alliance v. Ecology, PCHB Nos. 07-022, 07-023 (Feb. 2, 2009, Conclusions of Law 3-6)].