

PUBLIC WORKS ADMINISTRATION

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February 3, 2012

Ed O'Brien
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PO Box 47696
Olympia, WA 98504-7696

RE: Comments on the Draft Phase II Municipal Stormwater Permits

Dear Mr. O'Brien:

Thank you for considering the city of Kent's comments on the draft Stormwater Management Manual of Western Washington. These comments are a compilation from design and development-review engineers, planners, maintenance staff, and environmental specialists. The city of Kent takes seriously its obligation to protect water quality and is committed to full involvement with the development and implementation of Ecology's stormwater management standards. That said; concerns about the content of the SWMMWW and the review process remain.

Ecology is asking municipalities of all sizes to comment on far too many important regulatory and technical documents in too short of time period. These documents include:

- Draft 2012 – 2013 NPDES Municipal Permit
- Draft 2013 – 2018 NPDES Municipal Permit
- Draft Stormwater Management Manual for Western Washington
- Draft LID Technical Guidance Manual
- Draft Integrating LID into Local Codes Manual
- Draft NPDES Industrial Permit modification

In many municipalities, the same staff is responsible for reviewing all of these documents. What this means is that many municipalities will be unable to give each document the attention necessary for thoughtful review and substantive comment. Regardless, Kent has endeavored to provide comments on all documents, and SWMMWW comments are below.

General SWMMWW Comments

Review process

Comment - The city of Kent believes that the concurrent review process for the draft 2012 Stormwater Management Manual for Western Washington and the

NPDES Municipal Permits and associated LID documents puts an undue burden on permittees and does not allow time for a methodical, thorough review of the SWMMWW and permit documents. Because these documents are interrelated and changes to one will affect the other, the existing comment period does not allow adequate time for review.

Kent requests the SWMMWW update be delayed at least until the feasibility of proposed low impact development requirements are thoroughly vetted.

ESHB 1478 (WA State Legislature 2011)

Comment - This bill was overwhelmingly passed by the State Legislature during the 2011 session. This bill was intended to reduce the economic burden on municipalities already struggling during the ongoing economic downturn. We believe Ecology should factor in the overarching intent of ESHB 1478 and provide adequate time to review all documents.

Economic Impact Analysis

Comment - Given the significant economic impact the new requirements within the draft SWMMWW would have on municipalities and developers, the city of Kent believes that the Department of Ecology should thoroughly analyze these impacts prior to mandating adoption of a revised SWMMWW. In addition, Ecology should conduct a small business economic impact statement as required by 19.85 RCW.

Too Much; Too Fast

Comment – In the last two years, permittees have been required to use stormwater site development standards equivalent to the 2005 Ecology manual for sites disturbing one acre or more. There are signs that the stormwater management practices in the current SWMMWW are making significant improvements in the protection of surface water quality and water resources. While it may be reasonable to expand the use of these 2005 SWMMWW to smaller sites, it seems premature and untimely to make drastic changes to the SWMMWW just as many municipalities are adjusting to the use of these standards.

Ecology actually sent out a survey asking the stormwater community whether they believed now was a good time to make “minor” adjustments to the SWMMWW. Even though “minor” was emphasized, the municipal stormwater community responded that, with the new NPDES Municipal permits being reissued, it was NOT a good time for a significant SWMMWW update.

Please delay this update and allow for another round of public review and comment that does not directly conflict with municipalities’ task of reviewing the Ecology-issued NPDES Municipal permits.

Volume I SWMMWW

2.5.5 Minimum Requirement #5: On-site Stormwater Management (pgs 2-34 – 2-38)

Comment - The design, installation, maintenance, and life-cycle costs of LID features in the Northwest are not well-documented. LID should be encouraged and incentivized rather than required.

Comment – Ecology should initiate a structured, wide-spread pilot program focused on installing and monitoring LID facilities. This would help determine the feasibility of these techniques over the long term, which is particularly important given the diverse topography, hydrology, soils, and geology of the region.

Comment - Before LID becomes the cornerstone of mandated approaches to handling stormwater, regulators need to find a way to address the critical aspect of proper inspection and maintenance. Without doing so, the long-term outlook for LID's effectiveness in addressing storm water is highly questionable and could be detrimental.

Comment – In January of this year, Ecology issued an RFP for developing a maintenance manual for LID BMPs. If LID maintenance standards are not yet fully developed, how are municipalities supposed to fully assess the impact of the proposed LID requirements? The maintenance standards for LID facilities should be clear before municipalities are asked to assess the impacts of requiring LID on a wide-spread basis.

Comment - The regulatory cost of review, inspection and code enforcement for potentially thousands of LID BMP's is burdensome for the jurisdiction and will add significant permitting, construction, and maintenance cost to development; thereby creating constrictions on development, job growth, and the economic recovery. Ongoing maintenance inspection of thousands of privately owned and maintained BMP's is unrealistic. If defects are present, requiring private owners to fix them will result in a code compliance and legal quagmire and will create a significant cost to tax payers via use of city forces.

2.3 Definitions Related to Minimum Requirements (pgs 2-4 – 2-10)

"Converted Pervious Surface"

Comment - New landscape areas should not be included in threshold calculations because they generally allow infiltration and should be encouraged.

"Hard surfaces"

Comment - Pervious pavement should not be included in threshold calculations of new surfaces. While impervious and green roofs effectively are still impervious, permeable pavements, if designed and constructed correctly, do not have the same impact on runoff as impervious surfaces. Additionally, including pervious pavement in the threshold calculations may discourage the use of pervious pavement.

"Pollution Generating Pervious Surfaces"

Comment - Parks should not be included in this list, as a park is not a surface. A park may, and typically will, include several categories of surfaces; so listing a park under this one category is neither accurate nor appropriate. Other items in the same list are also troublesome, as, for example, a "landscaped area" may or may not be pollution-generating, depending on the plant material and the maintenance plan. Likewise, sports fields and lawns should not be included as they may or may not fall under the category, depending on the particulars of the surfacing used as well as on the owner's maintenance practices.

"Replace Impervious Surfaces"

Comment - The definition of "replaced impervious surface" penalizes moving the footprint of impervious surfacing, regardless of the net storm water impact. That could actually discourage responsible reconfiguring of existing impervious surfaces, such as inefficient parking lots, to improve storm drainage handling and treatment.

Comment - Definition should include an exception for rebuilding due to fire damage.

1. Exemptions (pg 1)

"The following road maintenance practices are considered redevelopment, and therefore are not categorically exempt. The extent to which the manual applies is explained for each circumstance. ...Removing and replacing a paved surface to base course or lower, or repairing the roadway base: If impervious surfaces are not expanded, Minimum Requirements #1 - #5 apply."

Comment - Roadway repair, even for large sections of road that excavate down to base course, should not be considered "redevelopment". With the proposed new requirements of Minimum Requirement #5, applying this minimum requirement to roadway maintenance projects is not reasonable or cost effective. All roadway repairs that do not expand the roadway surface should be exempt from all MRs except #2.

Figure 2.4.1 – Flow Chart for Determining Req.s for New Development (pg 2-11)

Comment - This flow chart is confusing. It references converting $\frac{3}{4}$ acre or more of "vegetation" to "landscaped areas" without containing a definition within the document for either term.

2.4.2 - Additional Requirements for Re-development Project Sites (pg 2-13)

Comment - This section only allows for a variance/exception to the application of the flow control requirement due to economic hardship. Since there is a standard presumption that the public sector cannot plead economic hardship, the underlying assumption is that there is never any good reason for the public sector to be exempted from the flow control requirement.

There should be written into the regulation some degree of discretion if it is determined that granting a variance is deemed to be in the public interest. Otherwise, the presumption is that storm water handling is the greatest public good, over every other potential public good, in every circumstance.

4.1 Minimum Requirement #1 (pg 2-17)

Comment - This requirement calls for retaining native vegetation and minimizing impervious surfaces "to the extent feasible". This unclear direction gives regulators too much discretion to decide that it is "feasible" to retain the native vegetation or to minimize impervious surfaces by not building a proposed park improvement in the first place. The verbiage needs to be clearer. At the very least, it should provide guidance for determining feasibility.

4.5 Minimum Requirement #5 (pg 2-34)

Comment - The requirement that small projects must use Low Impact Development BMP's will lead to a massive amount of maintenance and compliance issues in the future. Some of these BMP's have not been proven to function over long periods of time and long term maintenance criteria and procedures have not been adopted. Additionally, the LID performance standard and associated stormwater modeling has not been adequately developed, tested, and utilized in the industry.

4.6 Minimum Requirement #6 (pg 2-38)

Comment - Multifamily residential sites do not have the same pollutant characteristics as commercial or industrial and therefore should not be subject to Enhanced Treatment requirements.

4.8 Minimum Requirement #8 (pg 2-46)

Comment - This entire section (via requirements of guide sheet #3) requires extensive analysis of modeling that is not an industry standard. The relative infancy of these techniques and requirements will be very difficult for private industry to adequately design. Similarly, required plan review efforts by local jurisdictions will be enormous and burdensome. This requirement will put a burden on local jurisdictions regarding mapping and classification of offsite downstream wetlands – you cannot force applicants to trespass on private property to determine classification, etc.

Appendix I-F Feasibility Criteria for Selected Low Impact Development Best Management Practices

Comment - The feasibility assessment criteria includes a lot of "if reasonable" caveats. This is too vague and leaves way too much discretion up to permittees. This can lead to litigation based on differing opinions of what constitutes reasonable.

Comment - Setbacks from slopes should be able to be determined by geotechnical analysis as necessary and approved by the local jurisdiction.

Comment - Individual jurisdictions should be able to decide if they will allow bioretention facilities within building setback lines.

Comment – One-foot of vertical separation between the seasonal high groundwater table and infiltration facilities is not enough, regardless of the amount of impervious surface. Three feet should be the minimum.

Volume II SWMMWW

1.1 Purpose of this Volume (pg 1-1)

"This volume applies to all construction activities. The Construction General Permit applies to projects greater than 1 acre in size and requires use of the BMPs listed below."

Comment – Please clarify that the CGP only applies to project that **disturb 1 acre or more** of earth; NOT all project that are 1 acre in size.

2.2 Construction Stormwater Pollution Prevention Plans (pg 2-7)

"A Construction Stormwater Pollution Prevention Plan (SWPPP) is required if one of the following applies: ...The construction project is located in a municipality covered under one of the following Municipal Stormwater Permits... Western Washington Phase II"

Comment – Please clarify that only projects meeting the thresholds in the Western WA Phase II permits should have a SWPPP. It does not apply to ALL construction projects in Phase II municipalities.

Volume III SWMMWW

Comment – There are substantial changes in runoff modeling requirements and site suitability analyses. These will require a significant amount of training for municipal review and design staff, as well as for engineering consultants and developers. These requirements would also require a significantly increased effort related to plan review. Ecology should thoroughly analyze the economic impacts of these new requirements prior to requiring them from the greater development community. This strengthens the argument that the SWMMWW update process should be re-evaluated and likely delayed, in order to allow for a more thorough analysis by all stakeholders.

Volume V SWMMWW

4.6 Maintenance Standards for Drainage Facilities (table 4.5; pg 4-50)

*"Maintenance Standards **to be added** for newly listed stormwater facility options, including: Bioretention, Compost-amended vegetated filter strips, Permeable pavements, Media filter drain"*

Comment - It is unfortunate that municipalities are being asked to consider such significant changes to development standards when maintenance standards for these new mandated BMPs have not yet been developed. This significant unknown does not allow for adequate assessment of economic impacts of the proposed changes in the SWMMWW.

Thank you for considering the city of Kent's comments. If you should have questions, please contact Shawn Gilbertson, City of Kent NPDES Coordinator, at (253)856-5560.

Sincerely,

Tim LaPorte, P.E.
Deputy Public Works Director
City of Kent