

February 3, 2012

Via E-Mail

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Re: 2012 Draft Stormwater Management Manual for Western Washington

Please consider the following comments on the 2012 Draft Stormwater Management Manual for Western Washington

1. Ecology should clarify the activities that trigger coverage under the CSWGP.

The SWMMWW description in Volume I, section 1.6.9, of what activities trigger the need for CSWGP coverage omits “clearing, grading and/or excavation on sites smaller than one acre that are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more and discharge stormwater to surface waters of the State.” CSWGP S1.B.1.a. It likewise omits the remainder of CSWGP S1.B. Similarly, the description in Volume II, section 1.1, does not mirror the scope of coverage in the CSWGP.

2. Ecology Should Explain That The SWMM Does Not Yet Apply to Permittees Under the CSWGP or ISGP.

Ecology should add language to the SWMMWW clarifying that the SWMMWW does not apply to permittees until those permits explicitly incorporate the SWMMWW. This change must occur through a permit modification, including an opportunity for public notice and comment.

3. When Does the Revised SWMMWW Affect CSWGP Permittees?

The CSWGP is ambiguous as to whether permittees must alter their BMPs for consistency with revisions to the SWMMWW. The Ecology website states CSWGP “Permittees have the option to continue using the 2005 SWMMWW or the final 2012 SWMMWW.”¹ The

¹<http://www.ecy.wa.gov/programs/wq/stormwater/wwstormwatermanual/2012draft/2012draftSWMMWW.htm>

revised SWMMWW states that BMPs must be drawn from stormwater management manuals published or approved by Ecology, or BMPs that are demonstrably equivalent.

The CSWGP, in contrast, states BMPs must be consistent with the “(most recent edition)” of the applicable SWMM. The current SWMMWW states that dischargers must select BMPs from the SWMM if that Manual was available 120 days before the BMP was chosen. The revised SWMMWW in Volume I, section 1.6.9 appears to require dischargers under the existing CSWGP to immediately comply with BMPs contained in any revised edition of the SWMM.

4. When Are Discharges to Groundwater Subject to the CSWGP?

Ecology’s proposed definition of “receiving water” may be more expansive than the definition in the CSWGP. The proposed SWMMWW includes this new language in the definition of “receiving water”: “Ground water to which surface runoff is directed by infiltration”. Volume I, at 2-9. In contrast, under the CSWGP, a discharge is not to groundwater if the discharge is initially to a system designed “primarily for other purposes”:

Receiving water means the water body at the point of discharge. If the discharge is to a storm sewer system, either surface or subsurface, the receiving water is the water body to which the storm system discharges. *Systems designed primarily for other purposes* such as for ground water drainage, redirecting stream natural flows, or for conveyance of irrigation water/return flows that coincidentally convey stormwater *are considered the receiving water.*

CSWGP, at 50 (emphasis added).

5. Does the SWMMWW impose a SWPPP requirement, taken from the CSWGP, on sites that would not otherwise be required to obtain a CSWGP?

The SWMMWW states that the Manual has “no independent regulatory authority”:

The *Stormwater Management Manual for Western Washington* is not a regulation. The Manual does not have any independent regulatory authority and it does not establish new environmental regulatory requirements. Its “Requirements” and BMP’s become required through:

- Ordinances and rules established by local governments; and
- Permits and other authorizations issued by local, state, and federal authorities.

Volume I, §1.6.

However, the SWMMWW appears to demand that all new development and redevelopment sites meet the “minimum requirements” of that Chapter. *See* Vol. I, Ch. 2. This includes sites that are not required to seek coverage under the CSWGP (e.g., sites smaller than 1 acre). The SWMMWW appears to require development of a SWPPP that mirrors the provisions of the CSWGP. *See* SWMMWW Volume I, §§ 2.4, 2.5.

Ecology’s authority to impose these minimum requirements on CSWGP holders is unclear. The CSWGP contains no cross-reference to the “Minimum Requirements” in section 2.5 of the SWMMWW, Volume I. Ecology should clarify whether these requirements apply only through local permitting authorities.

6. Does the SWMMWW Impose a Additional Requirements on CSWGP Holders?

The SWMMWW imposes requirements for new development and redevelopment that go beyond those described in the CSWGP. Sites subject to the new development redevelopment requirements, based on the SWMMWW thresholds, may separately be subject to the CSWGP.² This creates the potential for confusion by permit holders and contradictory interpretation by Ecology under the CSWGP and the local governments under the SWMMWW.

- According to the SWMMWW, “Local permitting authorities may also review Construction SWPPPs.” Vol. II, §2.1, 2-1. In instances where local permitting authorities impose additional or contradictory requirements through Construction SWPPPs on CSWGP holders, how are these requirements resolved?
- The SWMMWW has 13 “minimum requirement” elements. Section 2.5.2. The thirteenth, “Protect Low Impact Development BMPs” is not itself a condition of the CSWGP. The SWMMWW indicates that the thirteenth element “is not listed in the 2010 Construction Stormwater General Permit.” Vol. II, §1.3, 1-3. However, the SWMMWW does not indicate that the thirteenth element is not a requirement of the CSWGP. In fact, the SWMMM implies that a local jurisdiction can add to the requirements of the CSWGP: “The Construction SWPPP must include all of the permit’s 12 elements (13 elements if the local jurisdiction requires it) described in Chapter 3.” Vol. II, §2.2. The CSWGP requires implementation of “applicable and appropriate” BMPs contained in the SWMMWW. Condition S3.C. Ecology should clarify under what circumstances, and authority, local governments can add to the requirements of the CSWGP.

² For example, “[t]he thresholds apply to a common plan of development or sale as defined in the glossary.” SWMMWW Vol. I, §2.4.

- Under the SWMMWW, the “primary project proponent” must develop its SWPPP “with input from utilities and other contractors”. Vol. I, §2.5.2, 2-32. This is not a requirement in the CSWGP. The extent of this input should be clarified.

7. The Draft SWMMWW Is Not Consistent With the Proposed Revisions to the ISGP and RCW 90.48.555

According to Vol. I, section 1.6.8, ISGP permittees must meet benchmarks, and to meet benchmarks facilities should consider BMPs that are demonstrably equivalent, as defined by the ISGP. This expectation is not consistent with the presumption of compliance in RCW 90.48.555.

8. The Draft SWMMWW Is Not Consistent with Ecology’s Frequently Asked Questions for the ISGP.

According to Ecology’s Industrial Stormwater General Permit Frequently Asked Questions, installation of an engineered structure requires that permittees “A Statement, expressing sound engineering justification through the use of pilot plant data, results from similar installations, and/or scientific evidence that the proposed treatment will meet the permit benchmarks. WAC 173-240-130(q)”. A#51.

The cited WAC provision requires that an industrial wastewater facility submit “A statement expressing sound engineering justification through the use of pilot plant data, results from other similar installations, or scientific evidence from the literature, or both, that the effluent from the proposed facility will meet applicable *permit effluent limitations or pretreatment standards or both*”. WAC 173-240-130(q) (emphasis added).

Ecology’s discussion of the ISGP in Volume I, section 1.6.8 does not make any reference to the obligation to submit an engineering justification. Likewise, there is no reference to this obligation in the SWMMWW’s discussion of the presumptive approach to protecting water quality in Volume I, section 1.6.3. Ecology should explain the significance, if any, of the omission of this requirement from the ISGP FAQ document.

Sincerely,

TUPPER MACK WELLS PLLC

s/ Brad Doll

BRADFORD DOLL