MASTER BUILDERS
ASSOCIATION
of King and Snohomish Counties

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Jeff Killelea
Department of Ecology
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Dear Jeff,

On behalf of the 4,000 member companies of the Master Builders Association of King and Snohomish Counties (MBA), I have several concerns regarding the draft Construction Stormwater General Permit.

We understand that the Washington State Department of Ecology (DOE) is implementing this permit in compliance with RCW Chapter 90.48 and USC Title 33, Section 1251 and that many of the requirements of the permit come from state and federal laws that DOE has no authority to modify.

Our comments: 1) highlight the impacts that the state and federal requirements will have on the home building industry; 2) offer suggestions to DOE for permit implementation to help reduce the impact on our industry; and 3) raise questions that we have for DOE about the draft permit.

Impacts of the regulations on the home building industry
This permit is going to hit small builders the hardest, who are already struggling with existing regulations and the ever-increasing cost of building. A number of project sites under five acres will likely be deemed noncompliant because the developer may not understand the scope or be able to meet the demands of planning, sampling, monitoring, reporting and recordkeeping. It is unreasonable to expect builders and property owners of less than five acres to learn a new regulatory process and satisfy lengthy paperwork requirements. They are already struggling with confusing and often redundant regulations at the local level. Requiring an application for permit renewal six months prior to expiration is unreasonable for smaller projects under five acres that may not anticipate the delay or do not have the resources to take action so far in advance.

Violations of this permit have serious consequences, including large fines and/or jail time. In essence, the proposed regulations set the applicants with less than five acres up for failure.

MBA is concerned about the ability of small contractors and property owners to develop individual stormwater pollution prevention plans (SWPPPs) that meet the extensive, prescriptive, and subjective standards of section S9.D. While we are hopeful that DOE will be able to develop a SWPPP template, until that time we are concerned about requiring sites under five acres to develop technical and confusing SWPPPs for which they are liable. This is a concern because the permit does not indicate a baseline for what an "adequate" SWPPP entails. Moreover, permit applicants could be endlessly delayed by public requests and appeals of SWPPPs under section S2. We believe the appeal process could be misused to stall or stop important projects, such as schools, housing and hospitals.

Our association advocates for affordable housing, and any additional permitting costs and delays such as those mentioned above push lot prices higher. We are concerned that this will drive the cost of purchasing a house out of the affordable range for the average working family. We request that DOE show detailed evidence that the additional costs and regulations proposed are necessary to protect the potential risks to the environment.

Suggestions to DOE for permit implementation

We estimate that the Construction Stormwater General permit is going to more than triple the number of permits through DOE, meaning more delays and additional costs to taxpayers. We understand that no additional employees will be hired to process permits but that DOE will be hiring four additional inspectors, for a total of ten statewide. This could cause a potential backlog in permit processing, given the number of sites that will need to apply with the threshold being changed from five acres to one. We urge DOE to spend its resources wisely to accommodate the higher volume of permits anticipated upon implementation of the new permit.

Monitoring and sampling requirements are proposed in the draft permit, however federal law does not require sampling and we therefore request that the sampling requirements be removed. If they are not removed, they should be used only for informative and research purposes to determine necessity of limits being set. Further, if sampling and daily inspections are required, then SWPPPs should not be required. Another alternative would be to require SWPPPs with reduced requirements and remove sampling and daily inspections. The layers of requirements being proposed in the draft permit are drifting away from the intended purpose of a general permit towards an individual permit.

The Washington general permit is similar to the general permit adopted by the EPA. Washington allows for public comments and input during the creation of the general permit. Allowing the public to further comment on an applicant's SWPPP and allowing the process to be held up is contrary to Washington law. By requiring an applicant to provide the SWPPP at the time of applying for the general permit and allowing for an additional public hearing, DOE is eviscerating the administrative efficiency inherent in

the general permit and is making the general permit no different than the process for obtaining an individual permit. MBA urges DOE to reconsider the requirements under S2.A.9. Such a requirement could lead to litigation, further tying up the already delayed permit issuance.

Applicants will need to hire a Certified Erosion and Sediment Control Lead. DOE has placed this requirement in the permit, however, it is not required by federal law. This is a great expense for small builders or property owners, particularly those with seasonal workers. This is an expense they will likely have to pass on to homebuyers. Builders will also have to prepare a SWPPP, which will likely require hiring an engineer. In addition, applicants will need to maintain daily log books over the life of the permit. This is another requirement set by DOE that is not federally required. Not only do these requirements create additional costs, they will cause the application and SWPPP to be treated more like an individual permit application, defeating the purpose of having a general permit, as mentioned above. We request that the changes proposed by DOE that are not federally mandated be removed from the permit.

Under section S9.D.4.a, a sediment pond or other appropriate sediment removal BMP is required prior to stormwater runoff leaving the construction site or discharging into an infiltration facility. Under federal law, this requirement is only necessary for sites greater than ten acres. We request that this section is rewritten to reflect this.

We would like to formally request uniform application and enforcement from DOE upon permit implementation. A few of our members have expressed concern with past experiences working with DOE under the existing permit where your agency requested information that was not required. We also have members who have reported businesses that were clearly in violation of their permit, and DOE did nothing to enforce it. DOE needs to make sure it is consistent with enforcement and permit requirements across the state.

Qualified Local Programs (QLPs) are a valuable opportunity to eliminate local and state regulatory redundancy. However, jurisdictions may view this section as a regulatory burden without adequate funding. MBA is concerned that if a QLP is deemed insufficient, then all projects covered under that program will have to apply to DOE for permit coverage and pay an additional permit fee. The general permit should prevent this duplicate process. We request that DOE initiate the efforts to work with local jurisdictions to create QLPs and assist them in making the process smooth and efficient. Doing this successfully would help to reduce the redundancy and duplication of the efforts that this new permit will surely create. For instance, King County has a Phase I permit that has requirements similar to those in Phase II; they have current programs in place to address stormwater pollutants. We request that when DOE reissues Phase I permits, that they provide the public an opportunity to comment. Jurisdictions such as King County should then be designated as QLP's automatically. In addition, small municipalities that have MS4 permits should also qualify as a QLP once they implement their Stormwater Management Plan.

Questions for DOE
Please describe the process used to determine "significant contributor" and "reasonably expects to cause a violation of any water quality standard" in section S1.E. This section needs clarification, as it is a trigger for requiring a permit.

Will DOE comment on preliminary permit applications? If not, a developer is redesigning at the final engineering stage. This creates a problem, as property is usually bought based on the preliminary application, so the buyer will have to eat the cost or worse, not be able to build if the permit is denied.

How many permits does DOE anticipate receiving once this permit is implemented? How does DOE plan to process them in a timely manner without hiring additional staff? At what point will DOE look at hiring staff? What is the maximum number of days review time per permit? According to S2.C, coverage under the permit begins 31 days after DOE receives a complete permit. What will DOE do if there are a number of permits being submitting that cause the review time to exceed a 31-day turnaround?

What is the average cost of permit compliance for sites under one acre? How much does it cost to prepare an acceptable SWPPP for a site under one acre? What will the collected permit fees be used for?

How have the benchmark values been set and justified to the public? The benchmark value set by DOE for turbidity is 25 NTU but the state water quality standard is 50 NTU. We would like to know if DOE believes that the benchmark values set can be routinely met?

What will DOE do with the data submitted? If DOE issues the permit as written, which we strongly discourage, we request DOE to review the data collected one year after implementation to determine if this is the most effective way to protect the environment.

Thank you for the opportunity to comment on the draft Construction Stormwater General Permit. We look forward to working with DOE on successful implementation of this permit.

Please feel free to call me if you have any questions at 425.460.8240.

Sincerely,

Jennifer Jerabek

Jennifer Jerabek
South Snohomish County Manager
Government Affairs