SKAGIT COUNTY
PUBLIC WORKS DEPARTMENT

1800 Continental Place, Mount Vernon, WA 98273-5625
(360) 336-9400 FAX (360) 336-9478

August 17, 2005

Department of Ecology
Water Quality Program
AUG 22 2005

Bill Moore
WA State Department of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: NPDES Western Washington Phase II Draft Permit Comments

Dear Mr. Moore:

Skagit County appreciates the opportunity to comment on the First Preliminary Draft of the Proposed Municipal Stormwater NPDES General Permit for Western Washington Phase II Small Municipal Separate Stormwater Sewer Systems. Skagit County reviewed the draft document marked Version 6 issued May 16, 2005. Our detailed comments are attached in a separate document.

In addition to the detailed comments there are several general areas of concern we feel must be addressed:

- **2005 Stormwater Manual** - Permittees should not be required to adopt the entire 2005 Stormwater Management Manual for Western Washington by reference alone.
    - Ecology has always maintained the stormwater manual is not a regulatory instrument. All recent versions have stated this and described the manual's role as technical guidance.
    - The scope of NPDES is to require permits for discharge of "pollutants". There is no reference in the permit to controlling flow rates, volumes, or many of the other technical features that are contained in the Stormwater manual.
    - Ecology must ensure wherever the permittee is directed to the Stormwater manual, the language include only the relevant sections of the manual, and not the recommended sections or appendices.
    - Appendix I of this permit needs to be reviewed to ensure all parts referenced in the text body are relevant to the permit and contained within the appendix itself, not somewhere else in the Stormwater manual.
    - Many jurisdictions believe they have a better ability to judge the necessary level of regulation to protect the environment and govern development in their locale than a State agency. It is not Ecology's responsibility to create local land-use rules.
- **Private Property** - The municipal NPDES permit is intended to regulate the operations and functions of municipal stormwater systems.
    - It is beyond the purview of this permit to regulate land-use of private property or the effects on receiving waters of discharges from private property.
    - There are numerous action items in this permit that would require the permittee to trespass on private property to accomplish. The permittees should not have the

duty to enter private property in pursuit of implementation of this permit, inspections, or testing.
    - The conditions of this permit need to be within the compliance ability of the permittees and the regulators.
- **Presumptive approach** - The NPDES permit is intended to be a narrative program based on using certain best management practices to meet a maximum extent practicable (MEP) compliance standard. In other words, if you take certain actions you are presumed to be in compliance with the permit.
    - Including TMDL fulfillment, as a feature of Phase II compliance, opens the door to jurisdictions being required to meet quantitative, hard number water quality targets to be in compliance with this permit.
    - Language should be added to this permit to insure the compliance standard remains MEP not numeric targets.
- **Urban vs. Rural standards** - It is clear these standards were written to regulate urban style stormdrain systems (curb, gutter, buried pipe).
    - While the areas covered by the permit may be defined as "urbanized" by the census, many of the stormdrain systems are very much rural in nature.
    - Many of the required standards are inappropriate for rural style drainage systems.
- **Staffing Requirements** - Implementing as ambitious a program as this permit requires will have a significant impact on the staff and budget of small jurisdictions.
    - Regardless of the EPA statement that permit compliance negates this being an unfunded mandate, this permit will require significant resources to be spent by local governments.
    - Without additional sources of State and Federal funds many small jurisdictions will have no chance at funding the complete program required by this permit.

We wish to express our thanks and appreciation for the opportunity for this review. We look forward to working with you on the implementation of this permit in a way that provides protection to the environment and is attainable by local governments.

Sincerely,

Chal A. Martin, P.E.
Director / County Engineer

CAM/ea

SKAGIT COUNTY
PUBLIC WORKS DEPARTMENT

1800 Continental Place, Mount Vernon, WA 98273-5625
(360) 336-9400 FAX (360) 336-9478

Department of Ecology
Water Quality Program
AUG 22 2005

Comments from Skagit County Public Works on the Preliminary Draft of the Municipal Phase II Permits

Special Condition 1 – PERMIT COVERAGE AND CRITERIA

S1. A.2. - For all Counties required to obtain coverage under this permit, the requirements of this permit shall be applicable and shall be implemented throughout the urbanized area and the urban growth areas associated with cities within or connected to the urbanized areas which are under the jurisdictional control of the entity.
There is no mention of urban growth areas in either the EPA or Ecology's definition of a regulated MS4. Many of these UGAs extend beyond the urbanized areas. What is Ecology's basis for widening the footprint of these regulations?
Suggested language: *Delete* "and the urban growth areas associated with cities within or connected to the urbanized areas which are under the jurisdictional control of the entity".

S1. B.1. - A small MS4 is a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and/or storm drains which is:
Confusing – Are naturally occurring drainage paths (swales...) part of the MS4? What if man-made channels flow both into and out of these natural channels? What if they have been manipulated by man? Stormwater systems tend to be located at the low spots in the terrain (where the natural channels are located).
Clarify how natural channels fit into these regulations.

S1. B.1.a. - Owned or operated by a city, town, county, district, association or other public body (created pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer districts, flood control districts or drainage districts, or similar entity;
Solid waste regulations regulate wastes. This permit is intended to regulate stormwater discharges.
Suggested language: *Delete* "industrial wastes" and "or other wastes" Clarify that this permit is addressing only stormwater related to these entities, such as substituting "discharges" for "waste".

S1. B.2.a. – Is located within, or partially located within, an urbanized area as defined....
Confusing – What if a MS4 is located outside an urbanized area but the flow it conveys originates within the urbanized area? What if the flow from the MS4 is into the urbanized area?
Clarify how MS4s adjacent to the urbanized area are regulated.

S1. D.2.a – All Cities and Counties operating regulated small MS4s shall apply as either a Permittee or Co-permittee.
Working together, sharing resources, and sharing costs would likely require Interlocal Agreements between jurisdictions. These take time to negotiate and approve.
Clarify – Can jurisdictions choose to be "Co-permittees" at a later date, if and when these agreements can be arranged?

Special Condition 2 – AUTHORIZED DISCHARGES

S2. C. - This permit authorizes discharges from fire fighting activities, except training exercises, unless the discharges from fire fighting activities are identified as significant sources of pollutants to waters of the State.
Firefighting activities cannot cease simply because runoff from their hoses is causing water quality exceedences. This would create a colossal public safety hazard.
Suggested language: *Delete* "unless the discharges from fire fighting activities are identified as significant sources of pollutants to waters of the State".

Special Condition 3 – RESPONSIBLITITES OF PERMITTEE, CO-PERMITTEE & SECONDARY PERMITTEE

S3. C. – Unless otherwise noted, all appendices to this permit are by this reference as if set forth fully within this permit.
Appendices VI, VII, & VIII were not available to review prior to this comment period.

Special Condition 4 – TOTAL MAXIMUM DAILY LOAD ALLOCATIONS

S4. D. – The Department may modify this permit to incorporate requirements from TMDLs completed after the issuance of this permit if the Department determines implementation of actions, monitoring or reporting necessary to demonstrate reasonable further progress toward achieving TMDL waste load allocations, and other targets, are not occurring and must be implemented during the term of this permit.
The NPDES municipal stormwater program is a narrative program based on the presumptive approach using best management practices (BMPs) and all known and reasonable technologies (AKART) with a compliance standard of Maximum Extent Practicable (MEP).
Including goals of waste load allocations and other numeric targets in this permit is counter to the nature of this program, requiring jurisdictions to meet quantitative goals to be in compliance with this permit.
Suggested language: *Replace* "TMDL waste load allocations, and other targets," with "water quality improvements".

Special Condition 5 – COMPLIANCE WITH STANDARDS

S5. B. - To meet the requirement to reduce the discharge of pollutants to the MEP, each Permittee shall comply with the requirements of this permit.
It must be clearly stated that meeting the terms and conditions of this permit is fulfilling MEP. As a result of this statement, the permit language must be precise and eliminate "open-ended" requirements that can allow the permit to be changed or modified without permittee review.
Suggested language: *Replace* "To meet the requirement to reduce the discharge of pollutants to the MEP, each Permittee shall comply with the requirements of this permit" with "The permittee will have met the requirement of using best management practices (BMPs) to the maximum extent practicable (MEP) using all known and reasonable technologies (AKART) by fulfilling the terms and conditions of this permit."

S5. C.1.a. - That new stormwater discharges are not allowed to cause or contribute to a violation of applicable surface water, ground water and sediment management standards...
The language in this section infers that the municipality needs to determine if a violation is occurring. Contributions to violations are addressed in the TMDL program not this permit. If discharge is meeting BMP requirements using MEP and AKART then the presumption is that no violation is occurring.
Suggested language: *Delete* entire paragraph (S5. C.1.a.)

S5. C.2. - The additional controls determined necessary to protect beneficial uses must be in place prior to the discharge from the new stormwater source or outfall.
Under the current definitions any new source in a MS4 system will cause an existing outfall to become a new outfall and will cause the permittee to be out of compliance with this permit.
Suggested language: *Delete* "or outfall"

S5. D. - Ecology may modify or revoke and reissue this general permit in accordance with General Condition G14., if Ecology becomes aware of additional control measures, management practices or other actions beyond what is required in this permit, that are necessary to reduce the discharge of pollutants to the MEP or to protect water quality.
Repetitive of General Condition 14, confuses specific reasons Ecology can take these actions with "that are necessary to reduce the discharge of pollutants to the MEP or to protect water quality" language.
Suggested language: *Delete* entire paragraph (S5. D.)

Special Condition 6 – MONITORING

S6. Box. - Ecology is requesting comments on the objectives of the proposed monitoring program. We are interested in assessing the effect of implementing the stormwater management programs required under this permit. This includes looking at receiving waters, stormwater quality and BMP effectiveness. The information gained will be used to provide feedback for local stormwater management programs and Ecology's permitting program. Should Ecology require integrated, collaborative, WRIA-scale monitoring programs? WRIA scale monitoring programs could eventually integrate monitoring among all municipal stormwater permittees, Phase I, Phase II and WSDOT. Or are independent monitoring programs adequate to development the information basis for providing feedback on stormwater management programs?
Monitoring the water quality of receiving waters is often outside of local control. Ecology should not require monitoring source controls that are beyond the legal control of the permittee either. Collaborative, WRIA scale monitoring of BMP effectiveness seems to be the only way more than a handful of BMPs will ever be studied. Asking individual local governments to tackle comprehensive, thorough effectiveness monitoring of the dozens of possible BMPs would be a huge undertaking for each jurisdiction.

Special Condition 7 – STORMWATER MANAGEMENT PROGRAM

There are many instances where Ecology has included requirements in this permit that exceed the specifics in the EPA's Storm Water Phase II Final Rule. This permit should follow the EPA minimum measures and organization. There are a number of different deadlines within this program, meeting these deadlines is problematic for many municipalities. The various numbers of deadlines may not align with local jurisdictional budget schedules or legislative processes.

S7. A.1 - A SWMP is a set of actions and activities comprising the components listed in S7.B, S7.D.1 through S7.D.6, and any additional actions necessary to meet the requirements of applicable TMDLs.
There is no S7.D.1-S7.D.6. Looking at the Phase I permit it could be that this should read S7.C.1 through S7.C.5. The sentence "and any additional actions necessary to meet the requirements of applicable TMDLs." is too broad and exceeds the minimum measures of EPA and the (MEP) standard.
Suggested language: *Change* "and any additional actions necessary to meet the requirements of applicable TMDLs." to "and actions necessary to meet the requirements of Section S4."

S7. A.4. - The SWMP shall include an ongoing program for gathering, maintaining, and using information to track SWMP development and implementation, evaluate permit compliance/non-compliance, and to determine the effectiveness of the SWMP implementation.
Isn't the evaluation of compliance and noncompliance Ecology's responsibility, not the permittees.
Suggested language: *Delete* - "evaluate permit compliance/non compliance."

S7. C.1.b. – Each Permittee shall develop and implement a public education and outreach program designed to reach 100% of the target audiences...
Expecting to reach 100% of the target audience is unrealistic.
Suggested language: *Replace* - "100%" with "a majority"

S7. C.3. - Illicit Discharge Detection and Elimination
There needs to be additional clarification regarding the spill program that is required in this section. Historically, spills and releases to the environment are issues that Ecology has been mandated to address. Shifting this responsibility to local governments could have extremely high costs for those governments. Staff would have to be specially trained to meet L&I requirements. Costs for this program could vary significantly year to year. If the cleanup and disposal costs were solely the responsibility of the local jurisdiction, without help from Ecology, one midnight dump of a hazardous waste could wipe out a municipalities maintenance budget.
Suggested language: *Delete* – "including spills" throughout section S7. C.3.

S7. C.3.b. - Each Permittee shall develop and implement an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illegal discharges, and/or dumping into the Permittee's municipal separate storm sewer system to the maximum extent allowable under State law.
Who decided a particular municipality's stormwater sewer system was not designed and intended to accommodate flows other than rain and snowmelt? If a jurisdiction can demonstrate a drainage system <u>was</u> designed and intended to convey non-stormwater flows can it be exempted from the regulated MS4? Any number of other water sources are perfectly acceptable sources of flow to most jurisdictions. We are unaware of a single jurisdiction that is concerned if water from a hose flows to the stormdrain (providing you're not washing your car with it at the time). Prohibiting illegal discharges and toxic dumping makes perfect sense, but the stormdrain is often the only available, practical place for other types of flows.
Suggested language: *Delete* - "non-stormwater"

S7. C.3.b.i. - Effectively prohibit all types of non-stormwater discharges into the MS4 operated by the Permittee other than: those authorized under a separate NPDES permit. The categories of non-stormwater discharges listed below must be addressed only if identified as a significant contributor of pollution to the regulated small MS4. As necessary, the Permittee(s) shall incorporate appropriate control measures in the permittee's SWMP to ensure these discharges are not significant sources of pollutants to waters of the state. Non-stormwater discharge categories include:
Many of the non-stormwater discharges listed here are naturally occurring phenomena. Local governments have no control over "rising ground water" or "springs" or "flows from riparian habitats and wetlands". If any of these are identified as a significant contributor of pollution, how is the local government supposed to "effectively prohibit" it from entering the stormwater system?
Prohibiting many of the human activities from getting into the stormwater system is also unrealistic, i.e., lawn watering and irrigation water. Both of these are likely candidates to be found as significant contributors, yet local government is being told to create a law that makes it illegal to allow this water to get into the local ditches? Just where is that water supposed to go?
Requiring local governments to create a law they cannot enforce is nonsensical.
Suggested language: *Delete* - all of S7. C.3.b.i

S7. C.3.D.ii. - All municipal field staff, which as part of their normal job responsibilities might come into contact with or otherwise observe an illicit discharge or illicit connection to the storm sewer system shall be trained on the identification of an illicit discharge/connection and on the proper procedures for reporting the illicit discharge/connection. Initial training shall be completed no later than 2 years from the effective date of this permit. Permittees shall conduct refresher training on an annual basis thereafter.
To be effective in their jobs, many local government employees need to share a level of trust with the community. The public needs to know the staff are not there to "tattle" on them. Most jurisdictions have specific personnel that handle enforcement issues. Other workers provide other, non enforcement, services. Requiring all field staff to identify and report all illicit discharges would undermine that essential trust. Training staff to identify problems and provide information to the public on how to resolve the problem may be a suitable alternative.
Suggested language: *Replace* "All municipal field staff" with "Appropriate municipal field staff"

S7. C.4.a.iii. - Permittees who choose to use the site planning process, and BMP selection and design criteria in the 2005 *Stormwater Management Manual for Western Washington*, or an equivalent manual approved by the Department, may cite this choice as their sole documentation to meet this requirement.
Permittees should not be required to adopt the entire 2005 manual.
Suggested language: *Add* - Permittees who choose to use "the relevant portion of the" 2005 Stormwater Manual....

S7. C4.a.iv. - The program shall include legal authority, through approval of new development, to inspect private stormwater facilities.
Is this intended to only include new private stormwater facilities created after this permit is issued, perhaps requiring drainage easements during the permit process? Creating legal authority to enter private property to inspect existing private stormwater facilities is beyond the normal exercise of power of local government.
Suggested language: *Add* – to inspect "new" private stormwater.....

S7. C.4.c.i. – Adoption of maintenance standards that are as protective or more protective than those specified in Chapter 4 of Volume V of the Stormwater Management Manual for Western Washington (2005).
Permittees should not be required to adopt the entire 2005 manual.
Suggested language: *Add* – "more protective than those specified in "the relevant parts of" Chapter 4..."

S7. C4.c.ii. – Annual inspection of all stormwater treatment and flow control facilities to ensure compliance with the adopted maintenance standards.
All stormwater facilities? Many, if not most, of the existing private stormwater facilities are on private property with no legal access granted to the local government.
Suggested language: *Add* – ...inspection of all "public and legally accessible" stormwater...

S7. C.4.c.iv. – Compliance with the inspection requirements in (ii) and (iii) above shall be determined by the presence of an established inspection program designed to inspect all sites.
Suggested language: *Add* – "with legal access" to the end of the sentence.

S7. C.5.a. – Adoption of maintenance standards that are as protective or more protective than those specified in Chapter 4 of Volume V of the Stormwater Management Manual for Western Washington (2005).
Permittees should not be required to adopt the entire 2005 manual.

Suggested language: *Add* – "more protective than those specified in "the relevant sections of "..

S7. C.5.c. – Conducting spot checks of potentially damaged treatment and flow control facilities after major storm events. If spot checks indicate widespread damage/maintenance needs, inspect all stormwater treatment and flow control facilities that may be affected. Conduct repairs or take appropriate maintenance action in accordance with maintenance standards established above, based on the results of the inspections.
Need a definition of a "major" storm event. 0.5 inches in a 24 hour period? 100 year storm?

S7. C.5.g – Establishment and implementation of policies and procedures to reduce pollutants in discharges from all lands owned or maintained by the Permittee, including but not limited to: parks, open space, road right-of-way, maintenance yards, and at stormwater treatment and flow control facilities. These policies and procedures must address, but are not limited to: Application of fertilizer, pesticides, and herbicides including the development of integrated pest management program.
Developing a documented integrated pest management program for every parcel owned or maintained by a jurisdiction would be an enormous undertaking and is completely outside the scope of this permit.
Suggested language: *Delete* – "including the development of integrated pest management program"

Special Condition 8 – STORMWATER MANAGEMENT PROGRAM FOR SECONDARY PERMITTEES

No comments.

Special Condition 9 – REPORTING REQUIREMENTS

No comments.

GENERAL CONDITIONS

G5. D. – The Permittee shall allow....To inspect at reasonable times any collection, treatment, pollution management, or discharge facilities.
The municipality does not have the power to allow Ecology staff to inspect facilities on private property.
Suggested language: *Add* –...any "public or legally accessible" collection....

DEFINITIONS AND ACRONYMS

"Existing Storm water Discharge" means a discharge from a municipal separate storm sewer authorized before the effective date of this permit, at the point where it discharges to receiving waters. An existing stormwater discharge serves an area of existing development and does not include new stormwater sources or new stormwater outfalls.
By this definition, a single new source would turn an existing discharge into a new discharge with all the burdens placed on the permittee thereof.
Suggested language: *Delete* – "and does not include new stormwater sources or new stormwater outfalls."