



January 18, 2018

Municipal Stormwater Comments
WA Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

RE: Comment letter on the Preliminary Draft 2019-2024 NPDES Phase II Permit

Dear Comment Committee:

The City of Oak Harbor appreciates the opportunity to comment on the preliminary draft of the NPDES II Permit for the 2019-2024 permit cycle. While we understand the continuing vision and purpose of clean water in our community, we observe several areas of concern with the preliminary permit document pertaining to both existing components of the current permit being carried-over to the preliminary version, as well as two new sections addressing "Source Control Program for Existing Development" and "Long-term Municipal Storm Water Planning.

These details of these concerns are listed as follows:

1) Regarding modifications to carry-over language – Controlling Runoff from New Development, Redevelopment, and Construction Sites.

OUR COMMENTS:

- a) We would propose the allowance of increased flexibility for adjustment to Best Management Practices (BMPs) based on local precipitation rates. The 2012/2014 Stormwater Management Manual for Western Washington requires projects utilizing Lists 1 or 2 for On-site Stormwater Management implement prescriptive BMPs that are sized for all of Western Washington - independent of differences in local precipitation rates. Two examples are the Full Dispersion minimum land ratios and the Downspout Full Infiltration minimum trench sizes. These are prescriptively "sized" the same for all communities regardless of local precipitation rates. This uniform sizing places the same requirements on permittees in a rain shadow as permittees located in a rain forest. Both the permit and the manual need to include clear language allowing for modification of the prescriptive BMP parameters based upon reduced local precipitations instead of a "one size fits all" approach.
- b) Department of Ecology (DOE) should provide a clearer definition of the term "Road Related Project". Many inexperienced engineers are having difficulty knowing when the "Road Related Project" box of Figure 2.4.2 applies. They are attempting to use it in application to commercial

developments that have required road frontage improvements as a separate project. More clarification on when and how this box in the flow chart applies is necessary.

2) Regarding modifications to carry-over language - Public Education and Outreach (WWA Phase II)

OUR COMMENTS:

- a) Permit section S5.C.1.a.i(a) should be specific in allowing for a narrower entity focus statement than “all businesses” or “all of the general public”. This broad based generalization groups all entities into similar categories regardless of risk exposure. Better statewide program efficiencies could be achieved by focusing on those entities at higher risk of polluting than others. For example, spending significant resources to find and educate a single accountant working at a home office is likely to have negligible results compared to utilizing the limited resources educating restaurant staff or auto repair shop staff.
- b) Permit sections S5.C.1.a.i(a) and S5.C.1.a.ii(a) should include parking lot owner’s or manager’s as a target audience group. Section S5.C.1.a.ii(a) should also include a corresponding spill control retrofit BMP for the behavioral change category. For example, older parking lots that were constructed prior to stormwater regulations can be significant sources of pollutants due to the potential high volume of usage and lack of control over the condition of a vehicle that uses the parking facility. A spill control retrofit BMP would be an easy metric to measure, and the collective pollution prevention to the Puget Sound could be substantial, as well as the clean-up cost savings.

3) New Section: Phase II – S5.C Source Control Program for Existing Development

It is our interpretation that this proposed program is intended to be a proactive, inspection based process focused on addressing pollution from existing land use activities. This program relies on local jurisdictions to inspect businesses and properties, and if necessary, requires the jurisdiction to impose additional operational or structural source control BMPs.

As an impacted jurisdiction, our responsibilities under this new section would include:

- Authority to require the use of BMPs to address pollution from existing land use activities;
- Develop an inventory of businesses or properties;
- Inspect, at a minimum, 20% of the businesses annually; and
- Design and implement a progressive compliance strategy to enforce deficient sites to fall into compliance with the proposed standards.

OUR COMMENTS:

- a) The proposed source control program would require local jurisdictions, such as Oak Harbor, to inspect existing commercial businesses and possibly require them to change their business practices and/or construct physical improvements with the aim of further controlling potential stormwater runoff. This is after the use has already been legally established under a prior set of regulations. This will obviously be viewed as government intrusion into their businesses and has the possibility to financially impact those businesses.

- b) This proposal is a significant shift from current practices. Currently, identification of illicit discharges may prompt implementation of operational BMPs and/or structural spill control BMPs through enforcement. This is in response to a detected illicit discharge (Permittees are required to have an active illicit discharge detection program). The proposed change incorporates an enhanced, proactive approach in which the permittee will be required to enforce implementation of operational or structural BMPs even when an illicit discharge has either not occurred or may have little probability of occurring. Education, outreach, and incentives are less intrusive methods to achieve the same goal for permittees with limited resources, and is a less intrusive approach to the issue.
- c) If the State wants to enforce BMPs on existing business owners that have not caused illicit discharges, the State of Washington should pass and enforce state laws for the identified businesses to enact the BMPs. The State should not place this burden on small municipalities with limited resources to create and enforce these regulations. A good example as to why these laws should be state laws, is the case of gas stations. If a gas station is just outside the permittee's border, they would not be subject to the same source control BMPs as a neighboring gas station just inside the permittee's border even though they drain to the same water body. The application of these enforcement standards in this example are, therefore, not equitable.

4) New Section: Phase I & Phase II - Long-term MS4 Municipal Stormwater Planning to Protect and Recover Receiving Waters

It is our interpretation that, imbedded in this proposed new section, is the concern of DOE that existing standards are deficient in protecting water quality conditions:

“The science is clear that a site and subdivision approach to controlling stormwater runoff from developed and developing areas still falls short of protecting receiving water quality conditions. Further, requirements based on new and redevelopment will have little impact on runoff from existing development without innovative program overlays (such as regional facilities or a flow control transfer program).”

Accordingly, it is DOE's desire that the proposed permit intends to support a prioritization and planning process that results in targeted investments in BMPs and capital actions that contribute to preventing and reducing impact to receiving waters. DOE's stated objective appears to “help permittees make informed decisions about how and when to address existing and anticipated flow and water quality problems” by developing an inventory of basins that are all or partially inside the permittee's jurisdictional boundaries, by using existing information to prioritize basins and assess data gaps, by identifying catchment areas for planning within priority basins; and by identifying specific approaches to apply within catchment areas.

As an impacted jurisdiction, our responsibilities would include:

- Our convening an interdisciplinary team of City employees and scientific and technical experts to conduct and coordinate this effort – which may require the City to contract for certain technical expertise;

- A watershed inventory with key characteristics of each basin;
- The development of a proposed plan, including our rationale, for selected BMPs/actions as well as an estimated budget or funding approach; and
- Compliance with due dates for these deliverables at a date not yet determined.

OUR COMMENTS:

- a) Small to medium-sized jurisdictions do not typically have scientific experts on staff. Requiring such individuals to be part of the interdisciplinary team means an added cost burden to the City. In addition, the additional workload requirements of this section place an increase level of workload on the City’s Planning, Engineering, and Public Works operational functions. Again, there is no funding being provided for the implementation of this functions within the City organization.
- b) The proposal includes the provision that:

“The plan developed for the catchment areas will include consideration of the following MS4 and complementary strategies at a minimum: capital projects including regional facilities; land acquisition and/or conservation easements; land use or zoning code adjustments; new critical area designations; protected, enhanced, or restored riparian buffers; enhanced MS4 maintenance; education and outreach”. (at 21-25, page 3)

This proposed wording has significant implications for the City. Without new funding sources, the acquisition of land and/or conservation easements for stormwater purposes seems an unrealistic option for the City. While there exist various sources of funding to assist with these acquisitions, they are typically competitive and not sufficient in size to offset the costs. Implementing this concept also has the side-effect of removing land from the property tax rolls, further eroding our ability to fund city government core operations

- c) It is easy to say “land use or zoning code adjustments” but quite another to identify and implement areas for change. What types of adjustments does Ecology expect? This is possibly one area where the differences between the more urbanized Phase I or II permittees and Oak Harbor will be very evident in terms of the range of implementation options. It is not clear what is meant by “new critical area designations.” Is it designating more land area under the existing designations or the creation of new categories of critical areas? Both of these concepts have the potential to be incredibly problematic for local jurisdictions and land owners alike.
- d) The long term planning concept has the potential to put the NPDES Phase II permit and GMA on a collision course – a conflict which the DOE appears to acknowledge in their proposal. The proposed changes to our community, such as changes to land use and zoning or the designation of new critical areas, seem to ‘establish’ that stormwater issues are the most important issues a community must tackle. We are concerned about both this apparent conflict for obvious reasons, and the corresponding premise that this preliminary permit reflects the environmental state of Puget Sound waters near areas that are larger and significantly more urbanized than Oak Harbor. In addition, each municipality may have its own intrinsic characteristics pertaining to topography or other geographical characteristics. For example, the City of Oak Harbor’s stormwater

infrastructure includes multiple *natural* storage and treatment drainage basins that provide natural treatment to stormwater prior to entering into Puget Sound. We take the position that our natural basins are a more economical and sustainable treatment method than structures in highly developed cities consisting mostly of hard, flat surfaces. We are concerned about both this apparent conflict for obvious reasons, and the corresponding premise that this preliminary permit is the environmental state of Puget Sound waters near areas that are larger and significantly more urbanized than Oak Harbor.

- e) The lack of scalability, based on differences in the size and complexity of different municipalities, combined with a lack of funding for this mandated program, places the proposed changes in direct competition with our ability to economically support our core municipal services – the funding for which is already significantly strained. It is clear that DOE is shifting the funding of these efforts (planning and implementation) to the local jurisdiction. This is simply unacceptable. Acknowledging that it is unrealistic to expect the State to offer funding assistance for capital projects, they should, at a minimum, help fund the planning studies required by this proposal. This would follow similar efforts when cities must complete mandated updates to their GMA or SMP plans. During Oak Harbor’s history, we have received either financial assistance or technical assistance with those updates.
- f) We have a tremendous concern that adopting, implementing and enforcing ever more stringent stormwater standards is in conflict with our ability to provide affordable housing for our community. Whether this conflict is real or perceived, it is essential that DOE acknowledge it and provide local jurisdictions tools to address it. This conflict, and the public discussion of it, cannot be ignored.
- g) The changes propose further restriction of available land for development within the GMA, causing a further erosion of available affordable housing. In fact, current Senate Bill 6077 proposes a minimum allowable density of 6 lots per acre in an attempt to combat the dearth of affordable housing in the greater Puget Sound area.
- h) Any additional encumbrance of land currently planned for in Comprehensive Plan and UGA calculations will further reduce projected housing units or cause up-zoning as rural clustering is not possible at urban densities. Changing land use and zoning is likely to have a ripple effect through all community planning including affecting street and utility planning as well as school and public transportation planning.
- i) The proposed requirements to identify and prioritize basins, implement capital improvement retrofit projects, alter land use or zoning, and restrict land availability through new critical area implementation and/or establishment of riparian areas, is similar to enacting a total maximum daily load (TMDL) on the basin without the cause of the receiving water body actually being impaired. Historically, these types of efforts, now being specified as anticipatory, have been implemented as remedies to the basins of impaired waterbodies where there has been a demonstrated need.
- j) This new proposed permit section appears to be applying circumstances from much larger, mostly developed municipalities to all municipalities in a “one size fits all” approach without recognizing that some smaller communities will have developed much more substantially under the DOE’s Stormwater Management Manual for Western Washington. This is comparing “apples to

oranges” in assessing whether the years of development and redevelopment under the various Stormwater Management Manuals for Western Washington are protecting the receiving waterbodies. Due to growth trends in western Washington, small municipalities are likely to have hit their growth spurt after having adopted utilization of the DOE’s manual and are more likely to have larger percentages of new development constructed under the manual. The larger municipalities are more likely to have had most of their development occur prior to implementation of the DOE’s manual and are more heavily reliant upon redevelopment to retrofit stormwater protections. This is evidenced by certain larger municipalities not being required to implement flow control protections to predeveloped conditions based on the presence of 40% or more impervious surface present in 1985 (2014 DOE Manual, Page 2-34 of Volume I). The DOE should establish a similar limit for this new permit section, exempting smaller communities that have been using a DOE manual, and allowing their growth to occur under the new LID standards. This would give the new LID standards a chance to work before declaring them insufficient.

Conclusion

It is apparent the preliminary draft NPDES II Permit is structured to ensure protection of water quality and human health, with the permit establishing conditions, prohibitions, and best management practices for discharges of storm water. While at first glance, the preliminary permit draft accomplishes the targeted goals of the EPA. However, our concerns, as evidenced above, offer your agency insight into the application of the proposed changes from the perspective of small to mid-sized municipalities that, while cognizant of the need for clean water standards, are tasked with balancing the proposed regulatory changes with budgetary limitations, as well as applying generalized standards to an environment in which our community has its own intrinsic environmental fit characteristics to which “one permit fits all” is not the soundest of approaches.

We respectfully request that your agency consider our comments as you deliberate the Preliminary Draft NPDES II Permit. Again, we appreciate the opportunity to comment on this topic.

Sincerely,



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