



February 2, 2018

VIA FIRST CLASS MAIL & EMAIL

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

RE: *Western Washington Phase II Municipal Stormwater Permit, Preliminary Draft Permit Language*

Dear Ms. Bartlett,

The City of Vancouver (“the City” or “Vancouver”) submits these comments concerning the reissuance of the Western Washington Phase II Municipal Stormwater Permit and the proposed “Long term MS4 planning to protect and recover receiving waters.” The City has several concerns about the proposed planning requirements.

Vancouver agrees that a deeper understanding of the State’s watersheds and establishing priority basins for restoration can be a beneficial tool in stormwater planning and management. However, we believe the proposed assessment method would take extensive resources and do nothing to restore beneficial uses or protect surface waters from harmful pollutants. Limited municipal resources are better utilized directly through capital projects, monitoring and enforcement, rather than paying for a costly analysis, mapping, and planning exercise.

In Vancouver, Stormwater Resources Are Better Spent on Targeting Problem Areas

Ecology acknowledges that “funding for additional strategies and capital projects is limited,” and that “local jurisdictions need to prioritize spending.” Vancouver agrees- limited municipal resources should not be spent on costly academic studies. The Phase I permit requirement for 2013 generated models that indicate anticipated costs to improve receiving water conditions are “well beyond current

funding programs” so the value of repeating this exercise to the same unworkable conclusion is not clear. Rather, resources should be spent on taking proactive steps focused on source control in areas within the most vulnerable watersheds, as determined through existing data. Vancouver already does this by addressing known problem areas and retrofitting water quality into existing basins with grant funding. Vancouver’s Peterson Channel retrofits and Orchards/Fourth Plain projects both sought to address untreated stormwater discharges based on individual basin analysis and documented historic deficiencies in those areas. If Ecology supports a planning exercise as a valuable component for municipal stormwater management, Ecology should provide oversight and guidance toward that end by providing funding to alleviate the cost burden on Phase II communities.

Vancouver supports monies better spent on a retrofit program targeting areas developed without stormwater control or treatment. A required retrofit program inherently involves a level of planning and prioritization but one that is appropriate to each jurisdiction’s size and needs. A requirement to follow the prioritization framework outlined in the guidance documents (Building Cities in the Rain and Development of a Stormwater Control Transfer Program) is an unnecessarily complex process for smaller Phase II communities to identify priority basins and develop an effective retrofit program, particularly without the benefit of the ground work laid in the Puget Sound Watershed Characterization. In a more flexible prioritization scenario, Permittees can still produce a qualitative assessment and achieve the deliverable desired: a watershed inventory with key characteristics of each basin.

Each Phase II could determine the extent of retrofit opportunities and submit this plan and prioritization for Ecology review. Ecology could require a commitment to certain number of stormwater retrofit projects to be implemented within a 5-year permit cycle. The number of projects should be commensurate to each jurisdiction’s capacity to implement projects. A percentage of a Permittee’s capital improvement plan budget dedicated to stormwater retrofits projects could be appropriate. Retrofit projects developed within this planning framework could also be given preference in the competitive Stormwater Financial Assistance Program (SFAP). The Puget Sound Watershed Characterization indicates in Appendix A that basin scales used (“assessment units”) are a tool to “narrow the field of candidate locations for investments through grants and loans” and a similar approach can be applied to a more flexible planning requirement.

Identifying, Characterizing, and Prioritizing Basins Will Require Significant Resources

The Puget Sound Watershed Characterization, a significant multi-agency project, served to give a starting point for many of the Phase I communities and would provide baseline data for implementing a Phase II requirement in the Puget Sound region. However this level of data and analysis is not

provided nor funded by Ecology or the U.S. EPA for other regions in Western Washington, including the Columbia River basin. Significant hydrogeomorphic differences exist between the Puget Sound Lowlands and the Columbia River basin, so strategies developed for watersheds in the Puget Sound are not directly transferrable to stormwater management in the Southwest region. Understandably, the international extent of the Columbia River makes the data more complex to collect and collate, but this is the scale of information needed to bring parity to all Phase II communities in Western Washington.

The modeling required for this exercise is beyond the expertise and capacity for nearly all Phase II communities; even the Phase I communities had to rely heavily on contracted, external modeling expertise to meet the requirements. City staff understands that Pierce County had to hire an outside consultant to complete the study that was required under its current Phase I permit, at a cost of over \$1 million—even with the baseline data advantage provided from the Puget Sound Watershed Characterization. Early feedback from the Ad-hoc Watershed Planning Subgroup, including the agencies already employing this model, indicated it was “not generating transferrable knowledge to build the case” that this exercise can offset other watershed plans. This funding could be better spent on design expertise for retrofit projects and addressing known capital issues related to flooding and other important municipal priorities not tied to water quality outcomes, but which may still take precedence for local elected officials and utility rate payers.

The prescriptive basin scale set in the proposed requirement is unnecessarily rigid for basins not already characterized in the Puget Sound Watershed Characterization. A flexible and scalable planning requirement with an emphasis on data Permittees already have or institutional knowledge that can be dovetailed into the planning and prioritization process is more appropriate. Smaller scale basin analysis, for instance, would give Permittees in the Lower Columbia more achievable goals for basins within our operational control and practical implementation abilities. Forcing a rigid, arbitrary basin scale into every permit does not leave room for Permittees to tailor priorities or target achievable projects, particularly within the 5-year permit term. The stated purpose of this requirement is to protect and restore beneficial uses of receiving waters and if the scale is flexible, more projects are likely to be implemented and benefits materialized rather than abstract, arbitrarily large-scale goal setting.

Ecology's Proposed Catchment Area Planning

Ecology proposes to condition Phase II permits on the development of a long-term MS4 plan that includes capital projects, land acquisitions, conservation easements, land use and zoning code changes, and new critical area designations, among other things. The City agrees that it should take a holistic approach to stormwater planning, including discussion with City land use planners. The City's

stormwater department already does this, as it must in order to implement required stormwater regulations, such as LID standards for development. To the extent Ecology intends to someday require implementation of stormwater plans that include zoning code changes, designation of critical areas, etc., as a condition of NPDES permits, however, the City objects to such an approach.

Almost all of the proposed considerations and planning strategies (land use and zoning code changes, critical area designations) for the long-term MS4 plan fall outside of stormwater monitoring and control, and into the purview of the Growth Management Act (“GMA”). In fact, Ecology recognizes this, acknowledging that it learned through the Phase I watershed plans that “comprehensive planning, and stormwater management are regulated under different laws and overseen by different state and local departments with separate administrative and public processes,” and therefore “it is difficult for stormwater managers to cross this boundary of authority and responsibility as part of an exercise required by the MS4 permit.” Such land use considerations touch on a variety of state and federal laws, other than just the federal Clean Water Act. For example, the designation and protection of critical areas also has a connection to the Safe Drinking Water Act, Endangered Species Act, the National Environmental Policy Act, the Washington State Environmental Policy Act (SEPA), Shoreline Management Act, Watershed Planning Act, Salmon Recovery Act, the GMA, and may implicate tribal treaty rights. The GMA requires the City to apply its comprehensive plan and development regulations, developed in accordance with the GMA, to specific permitting decisions and land uses. To the extent the City’s NPDES permit was to impose land use and zoning requirements inconsistent with the City’s comprehensive plan and development regulations, the result could be a regulatory debacle. Attempting to regulate land use and zoning through stormwater permits could expose municipalities to conflicting standards and considerations when planning and may expose municipalities to legal challenges when such NPDES permit obligations cannot be met due to conflicting laws and regulations. Requiring changes to the City’s growth management plan, not directly related to the standards required under the CWA for NPDES permits, is also outside of Ecology’s authority.

Finally, as currently drafted, the required planning considerations and the development of a proposed long-term plan have no clear goal. There is no clear requirement to implement a long-term MS4 plan—and as explained above, any such a requirement based on the required considerations could pose a variety of problems—so there seems to be no point in spending the City’s stormwater budget to go through such a comprehensive exercise to develop a theoretical long-range plan. As with the proposed analysis and mapping requirements, if Ecology supports long-range planning as a valuable component for municipal stormwater management, Ecology should provide further guidance and

funding to alleviate the cost burden on Phase II communities. The City would like to see grant funds made available to perform community-specific watershed analysis and planning with a flexible basin-scale characterization and retrofit emphasis without strict uniform modeling requirements.

Respectfully,

A handwritten signature in blue ink that reads "Annette M. Griffy".

Annette Griffy, PE | Engineering Manager



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