



January 19, 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 Abbey Stockwell,

The City of Vancouver (“the City” or “Vancouver”) submits these comments concerning the preliminary draft language for the reissuance of the Western Washington Phase II Municipal Stormwater Permit. Like Ecology, the City places great importance on the State’s water resources and endeavors to reduce the amount of harmful contaminants that enter the MS4. Over ten years ago, Vancouver adopted a Water Resources Protection Program and Ordinance, which addresses both surface water and ground water resources, protecting waters of the State. However, the City is concerned about the proposed Source Control Program for Existing Development. As explained below, Ecology’s proposed Source Control Program is overbroad, and will greatly burden City staff and resources if implemented. Rather than the proposed program, the City requests that Ecology consider a targeted and phased approach to source control and identification of existing businesses that pose a risk, which would be both more efficient and more effective in protecting our water resources. The City also requests clarification on the proposed Public Education and Outreach requirements.

**Inspection and Enforcement of Required BMPs for all “Pollutant Generating Sources”**

Ecology’s proposed Source Control Program will require the City to establish an inventory of and inspect all publically and privately owned commercial, multi-family and industrial properties “which have the potential to generate pollutants to the Permittee’s MS4.” Ecology references Appendix X for guidance on identifying pollutant generating sources. After inquiring about Appendix X, the City was instructed by Ecology to reference Appendix 8 to the Western Washington Phase I Municipal

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Stormwater Permit for guidance. Appendix 8 includes an extensive list of businesses and activities with potential pollutant-generating sources, including “food stores,” “miscellaneous retail,” “real estate,” and “business services.” Effectively, no business is excluded as a potential pollutant-generating source. Vancouver suggests limiting the list in the Phase II permit, with a phased implementation, beginning with the businesses of higher threat to waters of the State.

The scope of Ecology’s proposed program will have varying impacts on Phase II permit holders, based on the size of the jurisdiction, number of licensed businesses, and whether each is already receiving funding from Ecology under the Hazardous Waste Local Source Control Partnership. The City of Vancouver receives no funding from Ecology to visit small businesses’ stormwater facilities and, as the fourth largest city in Washington, it is home to many businesses. Staff, training, resources and support offered through the Local Source Control Partnership are not available to most Phase II permit holders.

Currently, there are approximately 10,000 businesses within the City that would fall under the purview of this proposed Program, meaning the program would create an extreme burden on City staff and existing resources. And the number of businesses in Vancouver is a constantly moving target, with new businesses opening, other businesses closing, and City annexation of previously unincorporated areas. This reality will make creating an inventory and keeping track of the annual inspection requirements challenging. Even assuming the number of businesses remains static, the program would require the City to inspect 20% of Vancouver businesses each year, or approximately 2,000 businesses annually. The City currently has two staff members assigned to stormwater monitoring and enforcement. These employees are already tasked with enforcing compliance on a list of 65 high-risk businesses in vulnerable areas as well as responding to nearly 200 illicit discharge issues each year and simply do not have time to inspect an additional 1,935 facilities. The City estimates it would need to hire and train at least four new employees to implement the inspection requirements of the proposed program alone. This will take significant time and money, funded by rate payers. The City strongly recommends the inventory of businesses be limited to a one-time snapshot for the term of the five year permit to reduce this complexity and staff burden.

The Program’s enforcement provision would be equally challenging and costly to implement. It is difficult to predict how many businesses would fail Stormwater inspection, or fail to adequately implement required operational BMPs. Under Vancouver’s current stormwater facility inspection program, City staff inspections of sites not previously inspected result in about a 60% deficiency rate. But if just 20% of the 2,000 businesses in Vancouver require some enforcement action, that will require an estimated additional 500 hours of employee time each year. In sum, requiring the City to inspect and enforce the establishment of BMPs at every business licensed in Vancouver is an incredibly burdensome proposition. Further, requiring inspection and BMP enforcement as to every food store, personal services business, and retail establishment will not quickly and efficiently reduce the amount of pollutants in the City’s MS4. The proposed program would be much more appropriate as an outreach program where any enforcement action comes from the City’s existing illicit discharge code and the provisions already in place to protect our water resources.

Ecology would better achieve its goals and maximize a reduction in pollutants through a more focused source control outreach program. Rather than require inspection and BMP regulation of every business, Ecology should focus on those businesses that have a high propensity to generate pollutants, such as chemical and allied products, petroleum refining and related industries, fabricated metal products, gasoline service stations etc. That way, permittees would target businesses that are most likely to pollute the State's water resources, rather than wasting resources visiting businesses of little to no concern. In addition to targeting business with a high propensity to generate pollutants, Ecology has other collected data that it can use to create a targeted source control program. The Local Source Control Partnership biennium report indicates schools, property management companies and auto repair shops have the highest number of issues identified in the field. Specific issues and the resolution rates are also available in this data to provide more insight as to what effective approaches are being applied already in specific jurisdictions. Moreover, a focused source control outreach program would likely lead to greater public support, and allow ease of implementation through the City's existing Stormwater department. These factors are essential in fostering a successful source control outreach program.

The proposed program is also problematic because there is no guidance on structural source control for existing buildings/sites. Per the draft language, structural source control BMP's shall be required if operational source control BMPs do not prevent discharges or violations. This would trigger a site retrofit and there is no Ecology guidance for retrofits, only guidance for new construction. The city resource requirements per site would increase for those triggering structural BMP's. The requirements for such sites would escalate to plan review, construction and extra inspections. This could be a disincentive for some communities to inspect those businesses suspected of needing structural improvements. Removing this language from the preliminary draft and emphasizing the existing illicit discharge enforcement requirements as a best fit for any identified issues found in the course of the outreach program would be a better fit; although additional guidance on retrofits and source controls in the Stormwater Manual is also needed.

Additionally, Volume IV of the Stormwater Manual provides information on a broad set of operational BMPs which, while intended to provide the most cost-effective practices, are notoriously hard to regulate and enforce, particularly at the scale at which this requirement is proposed. "Recommended" BMPs further add confusion and a lack of clarity on what is required and, thus, cause the regulatory burden for enforcement to remain unclear. For example, one of the most basic "recommended" BMPs is to have a spill kit placed where there is a potential for fluid spills. The City's ordinance goes further and requires spill prevention systems as part of our Greater Standards for high-risk facilities. This is a more effective approach for keeping spills out of the MS4 and it makes regulation and enforcement clear. The Stormwater Manual, on the other hand, only recommends a spill kit. In section S404 regarding Commercial Printing Operations, a recommended BMP is training all employees in pollution prevention. This is already a requirement in our Greater Standards where we ask for training logs and sign in sheets; but, because Ecology's proposed BMPs are only recommended, when would a potential permit requirement obligate us to document the City's training requirements and convey it in our annual report? Clarification is needed on what constitutes a requirement for enforcement, how agencies should specifically satisfy the operational requirements and what the reporting standards will be. Such clarification is necessary to reduce liability and the potential for extraneous data to be published online

regarding private business operations. Alternatively, shifting the program to an outreach focus is both consistent with the language in the manual and effectively avoids creating an additional, ineffective enforcement burden for permittees.

### **Timing: Two Year Window to Adopt Ordinance and Develop Inventory**

The proposed two year time frame to implement an inspection and progressive enforcement policy is also a concern. The proposed Source Control Program will require extensive planning by City staff, including drafting policy, enforcement codes and procedures, estimating increased time and costs, identifying funding sources for the new program, public stake holder meetings, public outreach and education, and City Council briefings and approval. Further, the proposed program will require significant changes to the City's code. For Low Impact Development, ordinance changes alone were a two year process that included internal/external stakeholder meetings, internal subcommittees for code revisions, Planning Commission Hearings, and City Council Workshops and Hearings. However the permit deadline was the last year of the five year permit. This allowed time to educate city staff and the community as well as fund, plan and prepare for the comprehensive process of ordinance adoption. Capacity funding was also available to help offset the additional outreach and stakeholder involvement required. The Source Control Program should emphasize outreach, thus eliminating the need for extensive code revisions and time consuming duplicative ordinance creation by referring to existing illicit discharge enforcement ordinances already in place in all permittees of Western Washington.

### **Reliance on Local Source Control Partnership under Ecology's Hazardous Waste Program**

Ecology's Preliminary Draft "Fact Sheet," Section VI., discusses Ecology's Local Source Control Partnership. To the extent Ecology relies on this program, which is coordinated and funded through Ecology's Hazardous Waste program, as evidence that the proposed Source Control Program may be easily implemented or cost-effective, it shouldn't. The City of Vancouver and most other permittees do not receive funding under the Local Source Control Partnership. As such, Ecology's proposed program financially burdens the City (and other municipalities that do not receive Ecology funding) more heavily than the 20 local governments Ecology has chosen to partner with and provide funding to for site visits.

Further, Ecology's Local Source Control Partnership is not a good model for comparison because it is an optional program, providing only for site visits and outreach. The program funds a self-determined number of site visits and neither the effectiveness of the visits nor the estimated proportion of businesses affected in each jurisdiction. The ratio of businesses with identified "issues" varies widely from 9%-86% with no actionable issues found. This "issues" data is based on both stormwater AND hazardous waste best practices and is not a clear comparison to the typical scope and authority of a municipal stormwater agency or the guidance provided in Vol IV of the Stormwater Manual. For example, the third most commonly reported "issue" is "products and wastes not properly stored". As stated in the Fact Sheet, the Local Source Control program does not include an enforcement component. In fact, Clark County, which receives 100% of the available funding in our region, does not have enforcement authority over many of the facilities it visits. Although the data collected from the Local Source Control Program may be useful in identifying priority businesses for purposes of creating a

targeted source control outreach program, the program is not a model for comparison when considering whether Ecology's proposed source control enforcement program will be successful.

Moreover, overlapping the inspections performed by Clark County under the Local Source Control Partnership and the inspections that would be required of the City under Ecology's proposed program is likely to cause a myriad of jurisdictional enforcement issues. For example, Clark County, which has no NPDES permit obligations or stormwater enforcement authority in the City, could inspect facilities under Ecology's Local Source Control Partnership and determine such facilities are compliant, in contrast to the City's determination that the same facilities need to install additional BMPs (or vice versa) related to our more protective standards and the risk to drinking water sources emphasized by the City as a water purveyor, a burden not shared with the County. This situation is not hypothetical, as the City has already run into issues with Clark County visiting facilities within the City's jurisdiction such as a local school bus yard. If inspection of all businesses' stormwater facilities and enforcement of corresponding BMPs become the City's obligation under its NPDES permit, such conflicts will be even more problematic.

The City appreciates your attention to these concerns, and we welcome the opportunity to be involved in the process of developing an effective Source Control Outreach Program for Existing Development under the Phase II permitting program.

### **Public Education and Outreach**

The language under proposed section S5.C.1, is concerning only to the extent it would allow the County or some other regional body to dictate the City's education and outreach requirements. At the end of the first paragraph, Ecology's proposed program requires: "Each Permittee shall implement what is developed regionally at the local jurisdiction." Reading the paragraph as a whole, this City understands this to mean that if the City chooses to meet the education and outreach requirements as a member of a regional group, and that group cooperatively develops a regional program, then the City must implement the regional program locally. To the extent the last sentence is independent and is intended to allow a regional body, in which the City has not actively participated, to dictate the City's requirements, the City objects to the language. The City is in the best position to determine what education and outreach methods will be most useful and effective within the City.

Also, the City suggests an edit under proposed section S5.C.1(a)(ii). As drafted, it reads "To effect behavior changes, Permittees shall select, at a minimum, one target audience and BMP(s)." When read consistently with S5.C.1(a)(i), the City understands that Ecology intends Permittees to choose one target audience and one BMP. If so, the City recommends adding the word "one" before BMP(s) for clarification on Permittees' requirements.

The City also requests clarification of the requirements under S5.C.1(b), and comments that Ecology should give Permittees more time to comply with the requirements. The City requests Ecology to clarify:

- What Ecology means by a "new evaluation;" in other words, can Permittees use the same methods for evaluating the effectiveness of its programs as in the past? Is something different anticipated?

- What is anticipated by the requirement to “document lessons learned and recommendations for which option to select.” If documentation is intended to be in a report to Ecology, the City recommends that Permittees be given a full year to comply, and that it be included in the City’s annual reporting to Ecology for 2021.

### **Illicit Discharge Detection and Elimination**

Proposed new language under S5.C3f requires permittees to “submit data for all the **potential** illicit discharges” during the calendar year “regardless of whether an illicit discharge was confirmed” and this is not consistent with the intent and federal requirement for this program. Illicit discharges are clearly defined as **any discharge** to the MS4 and have been reported as such for all previous permit terms. This is a significant expansion of the reporting requirement and subjects reporting agencies to a burden and liability not at all proportional to the effectiveness of the program. There is no precedent to report or regulate “potential” discharges and presents an unreasonable expectation that permittees can both anticipate a vast myriad of situations and document a suite of data not actually affecting the MS4 or water quality. This language should be removed and recordkeeping must focus on actual, reportable discharges.

### **Mapping**

Section III Permit Mapping terms and definitions- with guidance

“Permanent stormwater facilities are structures or devices designed or used to control stormwater flows or remove pollutants from stormwater or both.”

“Additional Guidance

- This terms refers to devices or structural stormwater BMPs constructed as retrofit projects or prior to permit requirements.”

The definition of a stormwater facility that describes treatment and flow control, including LID measures, indicates what is required to be mapped. This is important because this inventory must be inspected and maintained under S5.C.9. The definition of a mapped stormwater facility should not include non-engineered BMPs such as residential rain gardens and “devices” not related to minimum requirements like catch basin oil traps.

Section IV More Guidance on features required to be mapped

“The requirement to map areas that do not discharge to surface waters calls for mapping geographic areas such as City blocks, parts of sub-basins, etc... that do not drain to surface waters and instead drain to the ground. This provision does not require mapping individual drainage systems that discharge to ground.

Connections refers to any discrete point where stormwater enters or leaves the MS4 such as from ditches or pipes. This term does not include sheet flow or roof drains.”

V Not required but recommended features to map

“Tributary conveyance to outfalls or discharge points with a smaller diameter than 24 inches”

Connections must be defined to clarify the intent of this requirement. The diagram Figure 11 indicates the ends of a non-UIC infiltration pipe should be mapped as a discharge point and this is not consistent with the definition of discharge point in the permit requirements. Further, it does not clearly define discharge relevant to the MS4 permit or UIC requirements.

### **Water Quality Monitoring S8**

The City of Vancouver is in agreement with and supports the City of Longview and Clark County’s comments to Ecology on the preliminary draft permit wording under S8 Monitoring.

It should be clearly stated that all Phase I and Phase II Southwest Washington permittees will meet S8.B permit requirements by paying into a collective fund, managed by Ecology, for a contract to conduct status and trends monitoring in the Lower Columbia Region. It is our preferred option to have Clark County implement the monitoring through this contract with Ecology.

Respectfully,

**Annette Griffy, PE** | Engineering Manager



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