

November 14, 2018

Abbey Stockwell  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

**RE: 2019 Draft Municipal Stormwater Permits, Phase I and Phase II Western Washington**

Dear Ms. Stockwell,

On behalf of Washington Environmental Council (WEC) and our thousands of members throughout Washington State, we are writing to provide comments on the Department of Ecology's Draft Municipal Stormwater Permits. WEC is a nonprofit, statewide advocacy organization driving positive change to solve Washington's most critical environmental challenges since 1967.

Our organization is concerned with the declining health of Puget Sound and Washington waters, and recognizes that the NPDES Municipal Stormwater Permits are the principal tool for addressing polluted stormwater - the leading source of contaminants reaching Puget Sound. We also recognize the critical linkage between healthy watersheds and healthy forests, which preserve permeable surfaces for stormwater capture, filter harmful toxics and pathogens, provide critical habitat for aquatic and riparian species, and regulate the timing and delivery of stream flows.

WEC believes the Municipal Stormwater Permits must be strengthened with each reissuance, informed by experience and the latest science to maximize their effectiveness. The Permits should continue to support the integration of green infrastructure systems and the protection of forest habitat into development planning as our region continues to grow.

We appreciate the opportunity to comment on the formal draft Municipal Stormwater Permit language for the 2019-2024 permit cycle. Our comments below are focused on the language Ecology has proposed for the following sections:

- Western WA Phase II Draft Permit S5.C.1: Stormwater Management Program for Cities, Towns, and Counties, subsection C, listing components of the Comprehensive Stormwater Planning program, and the related *Stormwater Management Action Planning Guidance*;
- Phase I Draft Permit S5.C.7: Structural Stormwater Controls, Appendix 12: Structural Stormwater Controls Project List, and the related *Structural Stormwater Controls Guidance*;
- Appendix 1 (Western WA Phase II and Phase I): Minimum Technical Requirements for New Development and Redevelopment;
- Appendix 3 (Western WA Phase II and Phase I): Annual Report Questions for Cities and Counties.

**1. Western WA Phase II Draft Permit S5.C.1.a: Coordination with long-range plan updates.**

We are pleased to see requirements in S5.C.1.a of the Western WA Phase II Draft Permit that permittees shall describe the connections between stormwater management and other long-range land use planning efforts, as well as policies and implementation strategies. We also appreciate your clear references within the *Stormwater Management Action Planning (SMAP) Guidance* to local and state-driven growth planning processes that must be considered in order to make this process meaningful and preserve the integrity of our water system.

However, the Department of Ecology should provide more clarity on which processes to reference and incorporate into the SMAP process. Growth Management planning, Shoreline Master Programs, local public transportation expansions, and other similar efforts should be specifically incorporated where relevant. Furthermore, the current lack of standardized reporting mechanisms for this first component of watershed planning will likely lead to inconsistencies between permittees in implementation and reporting, making it difficult to track and compare progress.

While we understand that flexibility is important for municipalities of varying sizes to achieve success in watershed planning, this flexibility should be paired with clear outcome expectations. Watershed assessment and planning provides tremendous value and informs the rest of a permittee's stormwater management program, including capital and operational actions, as well as land use planning and policies. Without a consistent approach to watershed assessment and planning, determining compliance with these requirements will be far more challenging for Ecology.

## **2. Western WA Phase II Draft Permit S5.C.1.b: Low impact development code-related requirements.**

We appreciate the changes made to this permit section to clarify that permittees are expected to build on their past work in implementing low impact development (LID) code reviews and changes, rather than stopping at completion of the previous permit requirements. As permittees continue to identify and evaluate barriers to LID implementation in their code, we further appreciate that Ecology has begun the process of tracking common barriers to support solutions at a regional scale.

To better facilitate this process and ensure that barriers can be easily overcome, WEC recommends clarifying and standardizing the annual reporting requirements for permittees by providing a tool or template permittees can use (for example, permittees should identify specific sections of their development or other codes that were found to be problematic for LID implementation, and should include specific language they used to change these sections). WEC also recommends that Ecology share information and best practices learned from this process across jurisdictions in a clear and consistent way, such as a webinar, presentation, or newsletter.

## **3. Western WA Phase II Draft Permit S5.C.1.c: Stormwater Management Action Planning.**

**SMAP Implementation:** We are pleased to see stormwater retrofit and management action planning requirements for Phase II permittees in the Draft Permit. However, we believe that there is opportunity for Phase II municipalities to take action on their SMAPs by the end of the 2019-24 permit cycle. Additionally, we would suggest including clear expectations on the outcomes of these actions that set permittees up for success, such as measurably improved outflow water quality. There is no value in planning and taking inventory if these measures are not acted upon.

Phase I permittees should be implementing their SMAPs during the 2019-2024 permit cycle and reporting on actions taken, funding resources identified, and lessons learned. For better integration between the Western WA Phase II and Phase I Permits, and for real progress on water quality improvements, we strongly urge Ecology to require that all permittees submit their SMAPs by 2022, begin implementing their SMAP plans between 2022 and 2024, and submit reports on their progress (including specification of which projects have been selected from the planning process for implementation) by the end of the permit cycle.

**Community engagement:** WEC appreciates Ecology's new *SMAP Guidance* document, incorporated by reference into the Draft Permits. We were especially pleased to see that the Guidance provides support to permittees around gathering data, and sets clear expectations around data quality.

However, Ecology should provide more guidance to permittees around implementing an effective public process. Specifically, we suggest emphasizing that the local community should help to drive this work. Their lived experiences within the watershed and vision for the future will strengthen these efforts.

The City of Seattle is currently working on comprehensive community outreach around green infrastructure following its [Inclusive Outreach and Public Engagement Guide](#), and King County is developing a comprehensive community outreach plan for the long-term CSO Control program under its own NPDES Permit. These resources may be helpful in strengthening Ecology's guidance around what effective outreach and community involvement should look like within Stormwater Management Action Planning.

**Environmental justice:** Watershed planning must include environmental justice safeguards in every municipality. History has demonstrated that it is most often communities of color and low-income communities that are burdened disproportionately by polluted stormwater. According to Ecology's most recent Partnership Agreement with EPA Region 10, "Ecology is committed to the principles of environmental justice (EJ) and shares the EPA's goal 'to provide an environment where all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live, learn, and work.'" As watershed planning leads to prioritization of watersheds and management efforts by permittees, habitual, historical and current inequities must be meaningfully addressed.

WEC is concerned to see patterns of historical oppression continue to be institutionalized by the current Draft Permits and *SMAP Guidance*, specifically where the *Guidance* directs municipalities to "Give higher priority to basins with receiving waters that show low to moderate levels of impairment" because "These receiving waters are expected to benefit more quickly as a result of stormwater control improvements." Such basins likely to be located in higher-income communities of majority white residents, which will ultimately continue the flow of taxpayer dollars into wealthier and gentrifying communities and away from areas with severely degraded receiving waters, where communities of color and low-income communities will continue to shoulder the effects of living alongside higher pollutant loadings.

The environmental justice guidance found in the *Building Cities in the Rain* reference document is insufficient to combat these inequities. Stating that municipalities "can include consideration of environmental justice and social equity issues in economically disadvantaged neighborhoods" not only does not impose any requirements on permittees to conduct such analysis but also directly contradicts the *SMAP Guidance* document. Ecology must move beyond *Building Cities* toward a meaningful environmental justice framework within the Permits that truly addresses racial and social inequity by actively directing stormwater investments into EJ communities.

WEC recommends that Ecology conduct a full environmental justice analysis of the investment of stormwater dollars throughout the state, especially for retrofits and management efforts that result from the SMAP planning process and for any actions that are funded by federal and state grants. We believe you will find a disproportionate benefit to wealthier and whiter communities, and we further believe that this must be rectified. We also recommend that the EPA's EJSCREEN mapping tool should be integrated into the SMAP process explicitly.

If Ecology truly wishes to meet its EJ commitments, processes must be developed that prioritize future project work where stormwater discharge indicators place a disproportionate burden of risk on already disproportionately polluted communities. We suggest that this work be led by the Ecology lead staff for Environmental Justice, who have not thus far been engaged in the Permit reissuance process, to our knowledge.

**Prioritizing green stormwater infrastructure:** WEC strongly recommends a recognition within the *SMAP Guidance* that green infrastructure and the maintenance of natural systems are as critical to achieving long-term water quality goals as hard infrastructure solutions, and also provide multiple benefits beyond stormwater management.

Toward this goal, permittees should take steps within their SMAP process to recognize green infrastructure and natural systems within watersheds as integral components of the state's water infrastructure, such as inventorying green infrastructure as part of landscape-scale data under Step 2 of the receiving water basin assessment. It should be clear from reading the Permit and *SMAP Guidance* that maintaining green infrastructure and functioning, natural habitat, as well as retrofitting developments and grey infrastructure with green updates are preferred stormwater investments under SMAP.

**Transportation:** Given the latest research from the Center for Urban Waters linking tire residues to the death of Coho salmon<sup>1</sup>, we recommend that Ecology encourage consideration by permittees of high-traffic roadways and other transportation infrastructure under local jurisdiction within the SMAP process, with the goal of reducing toxic runoff from tires. Additionally, real-time Urban Runoff Mortality Syndrome (URMS) data should be used for prioritizing basins for planning and implementation of stormwater management. These data should be referenced in Annual Reports as evidence of known or likely water quality problem areas. Linking long-term local transportation planning with stormwater management is precisely the sort of integrated thinking that can result in innovative stormwater solutions through the watershed planning process.

#### **4. Phase I Draft Permit S5.C.7: Structural Stormwater Controls.**

WEC has the following recommendations for clarifying the Structural Stormwater Controls (SSC) program in the Phase I Draft Permit, as well as the proposed point ranking system in Appendix 12 (Structural Stormwater Controls Project List) and relevant sections of the draft *Structural Stormwater Controls Guidance (Guidance)*:

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<sup>1</sup> Peter *et al.* (2018): "Using High-Resolution Mass Spectrometry to Identify Organic Contaminants Linked to Urban Stormwater Mortality Syndrome in Coho Salmon," *Environ. Sci. Technol.*, 52 (18), pp 10317–10327.

**DOI:** 10.1021/acs.est.8b03287

**Phase II retrofits:** We urge Ecology to implement retrofit requirements for Phase II municipalities within this permit cycle. We believe there is sufficient time and support available for Phase II permittees to succeed in taking needed action on retrofits over the next five years. Puget Sound is facing urgent crises driven by our polluted stormwater runoff, and we cannot afford to wait any longer on actions we know will advance environmental outcomes.

**Minimum performance standard:** The minimum performance standard of 300 points should be increased to ensure that meaningful water quality benefits are achieved under the SSC program. WEC recommends a tiered approach to retrofits for Phase I and II permittees based on population. Under this approach, 1,300 points would be required for all Phase I permittees, as well as any Phase II permittees currently meeting or exceeding the original Phase I population threshold of 100,000 residents. Mid-sized Phase II permittees should be required to achieve 800 points, and small Phase II permittees should have a 500-point requirement. This approach allows flexibility for permittees of varying sizes to meet their permit requirements with a reasonable level of effort.

**Restoration of forest cover and riparian areas:** We are pleased to see restoration of forest cover and riparian habitat included under Structural Stormwater Controls. However, we strongly recommend that permittees receive points based on an increase in tree canopy cover, rather than acres planted, for these project types.

Canopy cover is a much stronger indicator of forest health and functionality than total acreage, and also corresponds to the interception of rainfall before it becomes surface runoff. Ecology should award 0.25 points per acre where future canopy cover has been restored to at least 40% above current conditions.

Canopy cover will be easier to incorporate into urban forestry programs. While it is challenging to determine the total acreage of urban lands impacted by tree planting, obtaining a measure of expected canopy cover over a given area is relatively straightforward. Existing tools such as [I-Tree](#) could be used (and should be mentioned in the *Guidance*) to select trees in a given area that will provide the most benefit.

The *Guidance* should specify that restoration of forest cover includes the urban forest (street trees) and not just bare land or natural areas. Additionally, the *Guidance* should specify that native evergreens capture more water than deciduous species, so restoration efforts that favor evergreen species should be encouraged. WEC suggests referencing the Center for Watershed Protection's [Making Urban Trees Count: A Project to Demonstrate the Role of Urban Trees in Achieving Regulatory Compliance for Clean Water](#) report in the *Guidance* as a helpful resource.

**Property Acquisition:** The Structural Stormwater Controls point program should not simply allow but should prioritize the acquisition and protection of natural areas that provide water quality benefit and that are at risk of development.

**Transportation:** High-traffic roads under local jurisdiction should also be considered in SSC programs. WEC suggests awarding 1.0 points (equivalent to the removal of impervious surfaces) for retrofits that target and treat runoff from highly travelled roadways, bridges, large parking structures, and other concentrated automobile infrastructure.

We also recommend awarding 1.0 points to permittees that take actions to increase public transit, cycling or pedestrian participation. These actions reduce toxic tire runoff and further integrate long-range growth planning with stormwater management.

**Environmental justice:** WEC is concerned that the proposed SSC points system does not incentivize retrofits in low-income communities or communities of color. SSC projects, especially capital retrofits that mimic natural hydrological functions and support low-impact development principles and practices, should be prioritized in these communities. Ecology should require municipalities to assess where previous investments in stormwater infrastructure have been made, and to compare these geographies with demographic data. This information should be made public, with the desired outcome being more investments in previously overlooked communities, especially poor communities, communities of color and the most heavily polluted areas.

**Partnerships:** Strategic partnerships have the potential to catalyze this work and make it more effective. WEC recommends that Ecology explicitly allow permittees to form innovative partnerships with private organizations, nonprofit entities, etc. to leverage funds, build capacity and meet water quality goals more efficiently, as long as they meet the goals and requirements of the Permit and ensure that public interest and engagement remain priorities.

For example, permittees should be allowed to work with other land conservation organizations, such as non-profit land trusts, as project managers and funding pass-throughs in order to have the capacity to complete projects and achieve retrofit requirements. Additionally, for the riparian and forest cover restoration options, permittees should be able to direct funding toward expanding urban forestry and forestland stewardship efforts through local Conservation Districts.

## **5. Connection between SFAP and NPDES.**

Ecology's Stormwater Financial Assistance Program (SFAP) has historically played a critical role to address stormwater retrofit needs across our state – an area previously addressed in a limited fashion in the Permits. Funding from SFAP was therefore intended to support those communities going above and beyond their Permit requirements to address retrofits.

With the evolution of the Permits, consideration should be made for the evolution of SFAP. As the SMAP process identifies potential retrofit projects, and as retrofit projects may be able to earn points under the Structural Stormwater Control requirements, the role of SFAP as a complimentary tool that strengthens, rather than undermines, the Permit process will need to be discussed within Ecology.

For example, currently, SFAP is structured to incentivize projects that have been developed through a basin/watershed planning effort. We recommend narrowing the prioritization for stormwater projects under SFAP to focus fully on the SMAP process dictated by the Phase I Draft Permit. This is also another opportunity to to direct stormwater investments into lower-income communities and communities of color, by prioritizing projects in these areas.

## **6. Appendix 3: Annual Report Questions for Cities and Counties.**

Finally, municipalities should be required to provide more informative annual Stormwater Management reports, or to submit more supporting documentation to meet reporting requirements, so that the Department of Ecology and the public can accurately evaluate their activities. The current annual reporting questions primarily consist of 'yes' or 'no' answers that do little to inform the public or the Department of Ecology about a permittee's activities. Some of the questions ask for numeric values but provide no context with which to evaluate these.

The public relies on reports such as these to independently assess whether cities and counties are adequately protecting water quality and meeting their permit requirements. While not wishing to create an overly burdensome process, we recommend phrasing all questions in question format, and refraining from asking any “yes or no” questions unless that is truly the best way of conveying progress.

For example, Question 27 currently reads, “Have you convened an interdisciplinary team to inform and assist in the development, progress, and influence of the comprehensive stormwater planning program (S.5.c.6)?” WEC recommends re-wording this to read, “Who is on your interdisciplinary team to inform and assist...? Please describe the process this team has followed.”

Additionally, Question 24 states: “Achieved at least 80% of scheduled construction-related inspections (S5.C.5.b.vi.(e))?” We recommend you rephrase this as, “What percentage or fraction of your scheduled construction-related inspections were completed? Please provide a point of contact for this work.”

Thank you again for this opportunity to comment on the formal draft 2019-2024 municipal stormwater permits. If you have questions about these comments, please feel free to contact us at any time.

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