

November 14, 2018

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

RE: 2019 Draft Western Washington Municipal Stormwater Permits for Phase I and Phase II permittees

Dear Ms. Stockwell:

On behalf of Washington Environmental Council (WEC), Futurewise, and Puget Soundkeeper Alliance, and our tens of thousands of members throughout Washington State, we are writing to provide comments on the Department of Ecology's 2019 Draft Western Washington Municipal Stormwater Permits for Phase I and Phase II permittees. Our organizations are deeply concerned about the declining health of Puget Sound and Washington waters. Stormwater runoff is the number one source of toxic pollution to Puget Sound and its tributaries. This is a critical time to hone policy and regulatory tools for Puget Sound health concurrently with the update of the Puget Sound Action Agenda and the recommendations of the Governor's Orca Recovery Task Force. The Permits are a vital tool for reducing the threats of toxic stormwater to Puget Sound and its tributaries, along with our iconic salmon runs, the Southern Resident Killer Whale population, our vibrant economy, and all of our communities. For these reasons, we appreciate this opportunity to provide suggestions for meaningful improvements to these Permits.

While we appreciate that some of our organizations' early comments have been addressed to some degree in the current drafts – such as defining a minimum performance standard for retrofits in section S.5.C.8.d for Phase Is, and expanding watershed planning requirements to Phase IIs in Section S.5.A.5.c – the Permits do not go far enough to meet the requirements and goals of the Clean Water Act. While our organizations will each submit individual comments, we are in alignment around three major areas of concern: watershed planning, retrofits, and low impact development (LID).

Watershed Planning

Watershed-based planning and management is key to achieving clean water. Polluted runoff must be managed in reflection of ecological realities. We therefore appreciate that Ecology has taken steps to help municipalities link watershed planning efforts to land use planning efforts. We also appreciate that Ecology is including a requirement that Phase Is and IIs prepare Stormwater Management Action Plans (SMAPs) [Sections S.5.C.6.c, and S.5.A.5.c, respectively], and has included a *SMAP Guidance* document that provides support to permittees around data collection as well as clear expectations around data quality.

However, watershed planning requirements for both Phase I and Phase II permittees must be strengthened. Both Phase Is and Phase IIs should be required to begin implementing their

SMAPs within the 2019-2024 Permit cycle. Moreover, the *SMAP Guidance* should include specific recommendations and requirements around environmental justice, how to implement a transparent and inclusive public processes, land use planning and the health of aquatic species.

Require Implementation of Stormwater Management Actions Plans

We strongly urge Ecology to require that both Phase I and Phase II jurisdictions go beyond preparing a SMAP in the 2019-2024 Permit cycle and implement these plans. Permittees should also report on projects that will be implemented within the 2019-2024 Permit cycle. This means that Phase II jurisdictions should include a list of projects to be implemented in this Permit cycle with their list of Annual Report Questions (Appendix 3). Additionally, we 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.

Enhance Environmental Justice Provisions

Communities of color and low-income communities are burdened disproportionately by polluted stormwater. As watershed planning leads to the prioritization of watersheds and management efforts by permittees, habitual, historical and current inequities must be meaningfully addressed. Ecology must provide guidance beyond simply the environmental justice guidance found in the *Building Cities in the Rain* reference document that encourages permittees to prioritize EJ communities for stormwater investments. We recommend that the EPA's EJSCREEN mapping tool be integrated into the SMAP process explicitly.

Improve Public Process

Communities often have valuable information on local conditions and priorities that could benefit the SMAP process. We recommend providing enhanced guidance that facilitates the implementation of an inclusive, transparent public process throughout watershed planning so that the public can provide input and thus help maximize the effectiveness of each SMAP.

Strengthen Links Between Comprehensive Stormwater Planning and Land Use Planning

The Permit Fact Sheet recognizes the importance of land use planning and policies beyond the individual site and subdivision scale:

“...it is not possible to maintain water quality and habitat in lowland streams in Washington State without considering land use and how the landscape is developed.” (p.38, Fact Sheet)

and

“To the extent possible, stormwater management must be an integral part of long-range planning documents that determine where and how development that will result in stormwater discharges to the MS4 should occur.” (p.39, Fact Sheet)

Despite the acknowledged importance of long-range planning, permittees are only required to describe “how stormwater management needs and protection/improvement of receiving water health are informing the planning update processes and influencing policies and implementation strategies” in this cycle (Section S.5.C.6.a.1, Phase I Draft Permit). Not only should stormwater and water quality inform long range plans, but these plans should inform Comprehensive Stormwater Planning.

Permittees could use more specific guidance on incorporating landscape scale data from long range plans (such as Critical Area Ordinances and Shoreline Master Programs) to inform the assessment of water conditions during the SMAP process. Planning documents can also inform the assessment of development pressure in the chosen basin – how much growth is likely to occur and whether sensitive parts of the basin are likely to be protected. The long-term actions and adaptive management sections of permittees’ SMAP should address how stormwater planning will be incorporated into CAOs and SMPs. This should also be included in the Annual Report (Question 28).

Address Urban Runoff Mortality Syndrome

The documented effects of Urban Runoff Mortality Syndrome (URMS) demonstrate the death of adult coho salmon within hours of reaching fresh water due to high levels of contamination from land-based pollution. This is exactly the type of pollution the Permits are designed to address. Any instance of fish mortality should require a serious and dedicated response by permittees.

The University of Washington is currently spearheading a [reporting platform](#) so that people living in the Puget Sound region can report salmon exhibiting URMS. Ecology should encourage permittees to accept and investigate reports of URMS, either utilizing this platform or modifications to Ecology’s pollution reporting hotline. URMS data for coho salmon could also be used for prioritizing basins for planning and implementation of SMAPS.

Structural Stormwater Controls

Phase I and Phase II permittees should both be required to carry out retrofit projects during this grant cycle. Additionally, we encourage Ecology to increase the minimum required number of retrofit points from 300 to at least 500 for Phase II permittees. 300 points is too low a limit for Phase I permittees to achieve meaningful water quality improvements. Our organizations recommend the following changes to the Structural Stormwater Controls program:

Require Retrofits for Phase II Permittees

As acknowledged by Ecology in the 2019 Permit Draft Factsheet, retrofit provisions are a critical component to stormwater programs (p.39, Fact Sheet). The Puget Sound region is highly built-out, and our iconic Southern Resident Killer Whales, Chinook and coho salmon are in crisis due to the pollutants entering the food web via our stormwater. We must act now to make the appropriate modifications to our built-out systems to protect our aquatic resources before they are lost.

Increase the Minimum Performance Standard for Retrofits

The pre-draft minimum performance standard of 1,300 retrofit points for Phase I permittees was a reasonable and achievable standard. Various combinations of projects could meet the minimum point requirement of 1,300. For example, new flow control facilities serving 200 acres (300 points) + new runoff treatment facilities serving 200 acres (400 points) + new LID BMPs serving 150 acres (300 points) would reach the 1,000 point retrofit minimum. The new facilities would serve a total of 550 acres, or 110 acres/year over a 5-year Permit cycle. Maintenance projects would only have to serve 1,200 acres to reach the 300-point minimum for that category. This is a reasonable approach and, in fact, Ecology could go much farther for Phase Is. Each Phase I permittee has thousands of acres per jurisdiction. We encourage Ecology not to backpedal from the reasonable requirement of 1,300 retrofit points for Phase I permittees that was articulated in the pre-draft Permits.

To meet Clean Water Act standards, we suggest a tiered approach to retrofits for Phase I and II permittees based on population, with a 1,300-point requirement for all Phase I permittees and any Phase II permittees that now meet the original Phase I population threshold of 100,000 or more. All other Phase II permittees should meet a threshold of at least 500 points. This is a reasonable and tailored approach that matches population size and pollution generated from pervious surfaces to a defined level of minimum effort appropriate for each permittee.

Transportation Impacts to Stormwater

Road runoff is a significant contributor to stormwater pollution in Western Washington. We propose that permittees are awarded incentive points (1.0, equivalent to removal of impervious surfaces) for reducing the pollution from cars on their roadways by: 1) reducing the vehicle miles travelled (VMTs) on high-traffic roads under local jurisdiction or 2) increasing mode shift and trip reduction.

Low Impact Development (LID)

33 U.S.C. § 1342 (p)(3)(B) requires that: “Permits for discharges from municipal storm sewers...(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable [MEP], including management practices, control techniques and system, design and

engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

LID remains a top priority for the undersigned organizations, who have advocated for stronger LID provisions for years. We urge Ecology to reduce redevelopment minimum thresholds and eliminate the “assessed value” loophole that currently allows large redevelopments to skirt LID requirements, and to implement a site-planning approach to LID BMPs.

Eliminate 50% Assessed Value Loophole

There is a loophole in the 2019 Permit Drafts that allows redevelopment projects to skirt flow control and water quality treatment requirements if their value is less than 50% of the assessed value of the existing site. There is no environmental justification for linking stormwater treatment to the market value of a building and this loophole results in harmful actions on the ground. Furthermore, as property values in our region soar, we fear that fewer and fewer stormwater controls will be required under this scheme. If a redevelopment project exceeds 22,000 square feet, it should be required to upgrade flow control and water quality treatment for its stormwater runoff to current standards.

Reduce the Minimum Thresholds

For too long, we have built our urban landscapes in an unsustainable way. Reversing this damage will take years and will come at great expense. To halt the continuing trend of unsustainable development, we must address all stormwater from all new development, redevelopment, and new construction projects in Puget Sound.

Section 3.1 of Appendix 1 sets Minimum Requirement Thresholds that trigger application of all Minimum Requirements (1-9) for new and redevelopment at 5,000 square feet of new + replaced impermeable surface, or conversion of $\frac{3}{4}$ acres of native vegetation to lawn or landscaped area (32,670 square feet), or conversion of 2.5 acres or more of native vegetation to pasture. These thresholds are too high. “As of 2013, the median [size of a residential home] was 2,359 square feet for houses on the West Coast, and the average was 2,524 square feet.” This means the average new or redeveloped home in the Puget Sound region will not be subject to stormwater regulations necessary for stream and salmon protection, and urban residential development projects might be almost entirely excluded. Excluding small projects from LID obligations does not control stormwater to the Maximum Extent Practicable and is a missed opportunity, particularly in urban areas.

Ecology should reduce the Minimum Requirement Thresholds to 2,500 square feet of new + replaced impermeable surface, and similarly reduce the thresholds for conversation of native vegetation.

Move Away from LID BMP List Approach

We strongly urge Ecology to move away from an LID BMP “list” approach towards a site planning approach. We strongly disagree with the requirements in the Manual that only the first feasible BMP from the appropriate list is required. The core principle of LID is to integrate multiple small-scale BMPs across a site to reduce the generation of stormwater and infiltrate what remains. These help achieve the goal of no-net runoff during storm events. Ecology should require that BMPs be chosen and implemented to eliminate as much runoff as technically feasible – all BMPS that will further reduce stormwater runoff, reduce impervious surfaces, and/or increase native vegetation should be implemented if feasible. This is consistent with the Clean Water Act and Ecology’s MEP and AKART requirements.

Thank you for the opportunity to comment. Please follow-up with us if you have questions.

Sincerely,



PUGET
SOUNDKEEPER®



Washington Environmental Council

Puget Soundkeeper Alliance

Futurewise