

From: dmb88@iinet.com
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Conversation: Public Comments for NPDES Permit Modifications
Posted To: SW Permit Comments

Subject: Public Comments for NPDES Permit Modifications

Submitted to: Washington State Department of Ecology

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Re: Public Comment for Modifications for Stormwater Management Permits

Submission Deadline: May 1, 2009

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Please confirm receipt of these comments via return email notification.

Please note that these comments, submitted for the public record, do not represent the entirety of concerns regarding the draft documents, and are offered as an overview of concerns.

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General Comments

Ecology is considering extensions for interim deadlines in the permit. Commenters are opposed to extending compliance deadlines. Delays in the implementation of stormwater management exacerbates pollutant discharges and erosion, which in turn harms fish, shellfish, tribes and recreational use of the waterways. It is far cheaper to alleviate these environmental stresses by enforcing the compliance deadlines than it is to pursue cleanup actions once environmental harm has been done.

Another reason to avoid extensions for interim deadlines is based on probable introductions of new LID and AKART rules in future permit cycles. Compliance deadlines need to be enforced in order for municipal ordinance revisions to be updated in sequence with permit changes. Without firm deadlines, compliance will become inconsistent and chaotic, and this can only impact Ecology with an increase in administrative costs.

Regarding Equivalency for Runoff Controls for New and Redevelopment Construction sites -- Clark County was issued a Notice of Violation by Ecology in March 2009 for failure to adopt flow control standards. Clark County has engaged Ecology to negotiate alternatives on this item, including some unspecified capital improvement projects to replace flow control standards on construction sites. Ecology will be conducting internal equivalency assessment to determine if Clark County's alternative proposal is acceptable, however, the public has not been allowed review of the alternative plan, and there is no understanding of a timeline, science, or financial accountability. The Pollution Control

Hearings Board has required Ecology to modify the permit to allow for public review on any alternatives to regulations defined in the Stormwater Manual, yet this process has not been applied in Clark County's case. This problem is compounded by the fact that Clark County is in violation of permit deadlines for compliance and adoption of County stormwater ordinances. This points to the need for enforcement of timelines rather than allowing extensions of timelines.

Ecology will initiate a process to define the scope of LID, and stakeholders will be included in the process. The Rosemere Neighborhood Association, a non-profit environmental organization vested in stormwater improvements, would like to participate in stakeholder and technical/policy meetings to help design LID methodologies and performance standards. Stakeholders groups must include a balance of environmental groups, citizens, government officials and developers to ensure equal representation of interests. Development interests can tend to drive influence on stakeholder groups.

Ecology acknowledges that various municipalities do not have adequate experience with LID methods, and commenters offer that the state should create LID certification programs to address this gap similar to the certification programs for erosion control. LIDs should be based on local hydrology rather than following the Puget Sound conditions as baseline conditions vary throughout the state.

The Stormwater Management Manual of Western Washington acknowledges the importance of Sole Source Aquifers designated by EPA. The Troutdale Sole Source Aquifer System has been designated by the EPA in Clark County. Rosemere Neighborhood Association has offered various comments to both Clark County and the City of Vancouver (Phase I and Phase II permittees) stating that the Troutdale Sole Source Aquifer System needs to be acknowledged within the local stormwater management ordinances, or within stormwater pollution prevention plans, but this does not appear to be happening. The Stormwater Manual sites Sole Source aquifer's importance relative to the identification of Critical Areas, Groundwater Protection Areas, and Soil Infiltration Rates. The Troutdale Sole Source Aquifer System covers the vast majority of Clark County, and includes all of Vancouver's city limits.

During the City of Vancouver's stormwater ordinance review, there was substantial discussion about vesting issues. For example, if a builder has purchased property and has already begun the design phase of construction prior to the implementation of newer stormwater regulations, does the builder have to upgrade plans to adopt the newer stormwater regulations specified in the manual, or does the builder rely upon the regulations in force at the time the initial building permit was obtained? The commenters offer that Ecology needs to clarify that federal rules governing to the maximum extent practicable should supersede state vesting rules.

Ecology needs to review city and county ordinances to ensure that the minimum standards are equivalent to those outlined in the stormwater manual. Commenters are concerned that city and county ordinances fall short of Ecology's mandates relative to minimum standards.

The commenters have spoken to various Ecology managers responsible for the NPDES program, and have learned that Ecology's stated policy is to pursue negotiation to gently bring permittees into compliance rather than pursuing enforcement, thus, non-enforcement methods are becoming ingrained into the NPDES process. The commenters offer that negotiation of this sort can only exacerbate delays in the implementation of the goals of the NPDES permits, and delays will only cause increases in state costs for this program.

Regarding spills into and from the Municipal Separate Storm Sewer System that threatens human health, welfare and the environment, a major issue appears to be escaping review on this subject. MS4 systems include perforated underground pipes that are designed to absorb groundwater. These perforated pipes can exist in areas where private on-site septic systems are being used, which can result in septic tank

effluent being absorbed into the MS4 and then discharged to surface water. IDDE programs should be required to seek out septic tank infiltration when the receiving waters fail water quality standards for fecal coliform and where on site septic systems exist within the affected drainage basin. Furthermore, NPDES permits should require separate of MS4s from sanitary sewers as mandated by EPA, and IDDE programs should require inventories and testing to ensure separation of these systems. Cross connections need to be eliminated, and this is not being accomplished under the NPDES permit. The permit does not require the implementation of cross connection elimination plans, and this important element should be required.

A means of substantial cost reduction could be achieved by Ecology's adoption of the Quanta-Tray method of e.coli monitoring in grab samples rather than requiring fecal coliform membrane filtration methods. The Quanta-Tray method is far more cost effective, easier to process, and results can be achieved within 24 hours rather than several days. Membrane filtration is generally required for monitoring where shellfish are harvested. A vast amount of water quality monitoring takes place where there is no shellfish harvesting taking place, and e.coli monitoring would be more practical in areas where public recreation occurs. The Quanta-tray method is EPA approved.

There are instances where Clark County stormwater ordinances are inconsistent with or are in conflict with City of Vancouver ordinances. Ecology needs to address these inconsistencies in light of future annexations, or when County and City discharges into the same waterbody. Protection of surface water conditions needs to remain consistent irrespective of the permittee.

State guidelines for the Shoreline Management Master Program (WAC 173-26-221) specify Wetland Use Regulations designed to protect against the loss of functionality of wetland areas, including stormwater discharge, soil disturbing activities, hydrologic disturbances, construction or demolitions activities, and activities that disturb vegetation and buffers in Critical and Aquifer Recharge Areas. These items are central and crucial to the spirit and intent of storm water control, and the Shoreline Management Master Program must be revised to keep stormwater facilities out of wetlands, natural waterways, and riparian zones. State guidelines also call for flood hazard reduction to manage storm water within flood plains with the use of storm water management plans, flood plain regulations, and critical area ordinances. State guidelines call for stormwater retention and vegetative filtering to reduce sedimentation and also reduce pollutants in ground water and surface runoff. State guidelines strive to prevent impacts to water quality and storm water quantity that could adversely impact shorelines, their functionality, public health, and water discharges, especially resulting from residential development. Provisions are to include specific requirements for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development. The Shoreline Management Master Program is intended specifically to address water quality and quantity, including flow control standards relative to development activities. Therefore, in order to ensure consistency in the municipal stormwater ordinances, the Shoreline Management Master Program must be updated by each shoreline jurisdiction as part of NPDES compliance.

Jurisdictions need to qualify how large water body exemptions will effect stormwater management requirements within the stormwater management area covered by the assigned NPDES permit, and specify the extent of the exempted land use area. Mention of the large water body exemptions need to be added within the text of the revised stormwater ordinances, and should include a description of the process of approval of all exempted areas.

Phosphorus control plans are needed to protect lakes from eutrophication, as is happening with Vancouver Lake. The state manual outlines various performance goals and treatment facility options to alleviate phosphorus loading, and these items should be referenced in municipal ordinances. PCBs are

likely to be identified as a primary polluter of waterbodies via stormwater discharges, and monitoring plans should include parameters to test outfalls for PCBs.

Vancouver's early draft stormwater ordinance attempted to introduce forms of "Approved septic system discharges" as allowable discharges to the municipal storm sewer. Commenters vehemently oppose the inclusion of septic system discharge as an approved discharge or an approved cross connection between septic systems and the storm sewers. The state manual clearly states that any substance that contributes to violations of water quality standards must not be discharged. The state manual also defines fecal coliform (found in septic effluent) as a stormwater contaminant. The NPDES permit should clearly forbid septic system discharge into the any MS4.

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Comments on Specific Draft Verbiage

Permit Modification Reads:

S4. COMPLIANCE WITH STANDARDS

"A Permittee shall notify Ecology in writing within 30 days of becoming aware, based on credible site-specific information, that a discharge from the municipal separate storm sewer owned or operated by the Permittee is causing or contributing to a known or likely violation of Water Quality Standards in the receiving water."

Public Comment: Thirty days is too long to wait for the permittee to contact Ecology when a violation is discovered. The permit should require IDDE outfall monitoring in a prescribed fashion in order to alleviate concern of pollutants discharging from an MS4 outfall into surface water. Operations to remedy outfall pollutants seems voluntary and arbitrary, and public review is needed for stakeholders to comment on outfall reconnaissance actions. Without a prescribed reporting function that accompanies a prescribed IDDE program, it is possible that contaminated outfalls will not be reported by the permittee.

Permit Modification Reads:

iii. Low Impact Development

The program must require non-structural preventive actions and source reduction approaches including *Low Impact Development* Techniques (LID), to minimize the creation of impervious surfaces, and measures to minimize the disturbance of soils and vegetation where feasible.

Public Comment: The term "where feasible" needs to be defined in order to avoid confusion. A set of parameters needs to be established where disturbances are required versus when they are discretionary.

Permit Modification Reads:

S7. COMPLIANCE WITH TOTAL MAXIMUM DAILY LOAD REQUIREMENTS The following requirements apply if an applicable Total Maximum Daily Load (TMDL) is approved for stormwater discharges from MS4s owned or operated by the Permittee. Applicable TMDLs are TMDLs which have been approved by EPA on or before the date permit coverage is granted. ~~All Permittees shall be in compliance with the requirements of applicable TMDLs.~~

Public Comment: Commenters object to the removal of the last sentence. Compliance with TMDLs

should be mandatory, otherwise state resources dedicated to this program will be wasted.

Permit Modification Reads:

Stormwater monitoring frequency and type of sampling

Public Comment:

Locations of stormwater monitoring sites need to be spread throughout the jurisdiction in order to provide adequate baseline data and coverage of the landscape. Monitoring plans should be subject to public review.

Permit Modification reads:

f. Annual sediment monitoring.

ii. Parameters that are below detection limits after two years of data may be dropped from the analysis. A minimum of one ~~independent~~ sample per year shall be collected.

Public Comment:

Commenters ask that some type of independent sampling be retained to ensure accuracy in reporting.

Permit Modification Reads:

E. The annual report for Permittees listed in S1.B. and S1.C.

11. A summary of the extent to which basin or watershed planning is being conducted in the Permittee's jurisdiction, either voluntarily, or pursuant to the Growth Management Act (Chapter 36.70A RCW) or any other requirement.

Public Comment:

Watershed Planning is not actively taking place in Clark County or Vancouver. Local ordinances do not include provisions for watershed or basin planning. Basin management plans should be pursued more aggressively. Basin plans need to be clearly defined and should include goals for upland recharge.

Permit Modification Reads:

~~"Equivalent document" means a technical stormwater management manual developed by a state agency, local government or other entity that includes the Minimum Technical Requirements in Appendix 1 of this permit and BMPs approved by Ecology.~~

Public Comment:

Commenters oppose the removal of this definition. The process of determining equivalency of alternatives to the requirements of the Stormwater Manual needs to be defined with a prescribed scoring method, and this process should require public review.

