

## IMPLEMENTATION OF PRIORITY ACTIONS Action Item 2: NPDES Permits

Prepared and Presented by: Chris Townsend

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### Proposed Action

Approve staff recommended resolution (see attached).

### Background

Because polluted stormwater runoff is a significant threat to the health of the Puget Sound ecosystem, it is critical to maintain, and not slow or stop, current momentum in the development and implementation of the NPDES permit program. Delaying reissuance of municipal permits will result in delay of critical new permit elements, such as low impact development and collaborative stormwater monitoring. Delay in reissuance of the permits will also jeopardize the achievement of 2020 Puget Sound recovery goals.

Stormwater runoff has been identified by the Action Agenda and many other sources as one of the greatest threats to the protection and recovery of the Puget Sound ecosystem. Stormwater permits, mandated by the federal Clean Water Act through the National Pollution Discharge Elimination System (NPDES) program, are one important tool to address stormwater-related problems. Ecology is the delegated authority to issue NPDES permits and manage the program.

NPDES permits covering municipal separate storm sewer systems in western Washington expire January 2012. These permits regulate the five largest municipalities and two largest ports around Puget Sound under phase I of the program. Seventy-six smaller local governments around Puget Sound are covered under phase II of the program. The Department of Transportation is covered by a separate permit. Ecology plans to reissue updated permits for phase I and II municipalities in 2012 concurrent with or shortly after the existing permits expire.

A recent report sponsored by the Partnership concludes that local government NPDES stormwater programs are relatively cost-efficient at removing pollutants from stormwater.

NPDES permits are issued for five-year periods so that the effectiveness of each permit can be evaluated and improvements identified for future iterations of the permit. This allows the permits to be adaptively managed in response to new information, new technology, and new requirements.

On September 1, 2010, the cities and counties associations sent a letter to Governor Gregoire requesting evaluation of application of state and federally imposed regulatory requirements.

### Action Agenda Consistency

Stormwater has been identified as a top priority threat to Puget Sound health. The Action Agenda prioritizes stormwater management activities by local governments including implementation of NPDES MS4 permits and implementation of priority retrofit projects.

### **Stakeholder Input**

This issue was discussed at the ECB meeting on November 4, 2010. Dave Williams testified that the Association of Washington Cities is strongly in favor of delaying the reissuance of the permits. Others generally joined this perspective including Dan Wrye speaking for Pierce County, Sam Anderson speaking for the Master Builders, and Scott Merriman speaking for the Counties Association. Dan Wrye emphasized focusing on what's effective and making sure that those things happen in a timely way. A memo that he provided is attached.

The main reason that the cities and counties associations are advocating for a delay is due to the costs involved for compliance with the permits. They made the point that many of the requirements of the existing permit are not yet implemented (because the permits phase in requirements over the five year life of the permit to reduce the implementation burden) and that new requirements will increase costs to local governments to comply.

Those that were generally in favor of issuing the permits on time included Dow Constantine representing King County, Josh Baldi representing DOE, Tom Eaton representing EPA, and Kathy Fletcher representing the environmental community. Baldi made several points about reissuance including:

- Ecology is committed to reissuing permit in June/July 2012
- Will be informed by effectiveness studies being done under the current permit and SW monitoring work group efforts
- Courts have directed Ecology to add LID and add TMDLs to the permits
- Ecology does not intend to require local governments to implement retrofits in the new permits
- DOE is sensitive to costs associated with implementing new permits and will phase the compliance schedule to spread costs over the five year permit period

Comments were made by Terri King, Dave Herrera, and others stating that the MS4 permits don't cover important areas on the Hood Canal and other less urban places around the Sound.

### **Consequences of Delay**

A Leadership Council resolution on this issue now will encourage DOE, the governor and the legislature to support timely reissuance of the permits. Delaying the decision may prevent the Leadership Council from expressing a position prior to significant actions that might delay the reissuance of the permit such as an administrative decision by DOE, an executive order by the governor or legislative action.

### **Attachments:**

- Resolution 2010-05
- Letter from Cities and Counties Association
- Memo from Dan Wrye to ECB

## Resolution 2010-05 NPDES Municipal Permit Implementation

**WHEREAS**, Preventing pollutants from entering natural water bodies is more cost effective than retroactive clean ups; and

**WHEREAS**, Pollution carried by stormwater runoff from urban areas is a significant threat to the health of Puget Sound; and

**WHEREAS**, The Action Agenda prioritizes the provision of financial and technical assistance to cities and counties so that they are able to fully implement their NPDES permits; and

**WHEREAS**, The Final Review Draft of the Urban Stormwater Runoff Preliminary Needs Assessment Technical Memorandum commissioned by the Partnership concludes that local governments are able to cost effectively remove a significant volume of pollutants from their stormwater systems through the implementation of requirements of their existing NPDES permits; and

**WHEREAS**, the Clean Water Act envisioned a five-year NPDES permit cycle to allow for improvements to each successive permit based on new information and experience with permit implementation; and

**WHEREAS**, The Ecosystem Coordination Board had an in-depth discussion at their meeting on November 4, 2010 regarding the reissuance of the NPDES MS4 permits on schedule with cities expressing concern over their ability to pay for new permit requirements during difficult economic times and the EPA, DOE, People for Puget Sound and others expressing the importance of implementing new permit requirements on time in order to meet 2020 Puget Sound recovery goals.

**NOW, THEREFORE BE IT RESOLVED**, that the Leadership Council supports efforts by state agencies and others to identify sources of funding to assist local governments with effective stormwater management activities. In addition, the Leadership Council urges the Department of Ecology to implement the new NPDES MS4 permits on schedule in 2012 in a manner that is sensitive to the budget realities of all the permittees including phasing requirements over the five-year life of the new permits.

Resolution Moved By: \_\_\_\_\_

Resolution Seconded By: \_\_\_\_\_

Approved/Denied/Deferred (underline one)

**DATE:** November 19, 2010

# WSAC

## Washington State Association of Counties

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# AWC

## Association of Washington Cities

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September 1, 2010

Governor Chris Gregoire  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

Dear Governor Gregoire:

Thank you for the opportunity to be part of your efforts to help reshape state and local government in order to respond to the changing economy. As you know, this change is being felt throughout our state – in homes, businesses, and among Washington’s 281 cities and towns and 39 counties. We are committed to continuing to implement changes and efficiencies at the local level and welcome the opportunity to explore ideas on how to accomplish more in partnership with the state.

Working with our membership, we have come up with an initial number of ideas that we believe will support the economic recovery; help control the cost of providing services at both the state and local level; focus public spending on activities that get results; and maximize limited resources. We think these ideas, should they get enacted, will make a significant impact. We are continuing to develop additional ideas and look forward to working with you and your staff on them.

### **Support Economic Recovery**

Cities and counties, in conjunction with the state, play an important role in economic recovery. Therefore, it is important that state policy and resource allocation support the core areas of our responsibilities in economic recovery: infrastructure, planning, and permitting.

- **Create a public works investment system for the 21<sup>st</sup> century.** As the state considers the most effective way to use its limited capital budget, we would urge you to strategically invest in infrastructure projects for the 21<sup>st</sup> century as the top priority. Funded projects should support the economic recovery, address the most critical infrastructure needs, and help meet state and federally imposed regulatory requirements. Infrastructure funding

sources should be reviewed in order to simplify criteria and help focus on priorities. The change in the economy has produced a beneficial bid climate for public works projects, however, without programs such as the Public Works Trust Fund many cities and counties do not have the funds available to take advantage of this strong bidding climate.

- **Streamline project permitting processes.** Continue to work on efforts to consolidate permit processes at the state level and provide cross jurisdictional permitting authorities. For example, can counties take on such permitting efforts for electrical work performed by Labor and Industries?
- **Expedite planning processes.** The Growth Management Act should allow cities and counties the ability to effectively respond to emerging economic opportunities.

### **Maximize Limited Resources**

Local governments, like the state, have had to make significant program cuts over the last couple of years and continue to make them. In order to maximize the limited resources we have, we need to reduce administrative costs and inefficiencies and focus on services to our citizens.

- **Greater efficiency in state pass-through funding to local jurisdictions.** Currently, the state provides a number of programs that provide grants, loans, or contracts to local jurisdictions. While grateful for this funding assistance, we are becoming increasingly concerned that our collective costs to administer these funds is compromising their original intent. Cities and counties believe that many programs could be streamlined to reduce the state's overhead costs, decrease local reporting costs, and put limited resources to work more quickly.
- **Allow for greater flexibility for existing local revenues.** We need to be as flexible as possible in order to respond to this fiscal crisis and that means using our revenues as effectively as possible. Flexibility is the key to responding to this crisis. We are being asked to do more with less revenue and we need to be able to use the revenue we have. Restrictions on real estate excise and lodging taxes can be cumbersome and inefficient. We also would like to see broader authority to use the trial court improvement funds. We urge the state to remove counterproductive non-supplanting language from current revenues and to avoid adding any new non-supplant requirements.

### **Control the Cost of Providing Services**

The increase in the cost to provide valuable public services has outstripped the increase in revenues needed to support them. We need to work together to find ways to stabilize the cost of providing services.

- **Ensure that personnel costs are sustainable.** Both the state and local jurisdictions are only as good as the committed public servants we employ. However, personnel costs continue to grow at a rate that is unsustainable even in a strong economy. We need to take

a hard look at our collective bargaining environment in the state and find ways to ensure that fiscal reality plays a leading role in our labor relations. We suggest stronger criteria for binding arbitration such as "ability to pay" language, arbitrator qualifications and comparables, as well as a greater recognition of the need to be flexible with the use of volunteers, furloughs; including the courts, private contracts, and layoffs that would save money, public services, and jobs.

- **Remove the profit motive from harassing public requests.** Open and transparent government is a high priority at the local level and we continuously strive to achieve this goal. However, the high cost of responding to harassing and serial records requests is driving up our costs and forces local jurisdictions to spend money on staff dedicated to such requests and costly legal fees. Currently, we are experiencing an increase in the number of individuals and attorneys who have discovered that they can make money by playing "gotcha" with local jurisdictions and state agencies over records requests. This does not serve the best interests of the public and should not drive our open government policies.
- **Update the way we communicate.** Local governments spend a considerable amount of money in order to meet the myriad of public notice requirements required by law. We would also like the ability to utilize low cost methods to inform the public instead of the statutory required legal notices in the local newspaper of record.

### **Focus on Results**

Our citizens demand and deserve results from their government; but sometimes we are forced to govern to rules not results. We need to find creative solutions to deliver the outcome that the public wants without having to impose rules that limit our ability to achieve results.

- **Evaluate application of state and federally imposed regulatory requirements.** Now is the time to and ask whether or not changes to regulatory requirements are appropriate to address during these challenging economic times. We would like to see the executive branch provide rigorous guidelines that state agencies can follow before reopening WACs, amending permits, or changing administrative procedures. We would be delighted to work with your staff to explore this further. As an example, regulated cities and counties remain concerned about the costs associated with stormwater management as outlined in the National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater permits. The Department of Ecology is currently evaluating new NPDES requirements that would increase our costs and responsibilities at a time when we are struggling to pay for the current requirements. We appreciate the goals of this program but ask that the state revisit the timing – in particular until we achieve more success in finding revenue to supplement what we're raising locally. We would also suggest that the recently enacted and much appreciated the three year "pause" for mandated updates of local Growth Management Act (GMA) plans and regulation is a good illustration of delaying mandates. Similar "pauses" may be appropriate during this lingering economic crisis.
- **Increase the value of state audits.** Fiscal accountability is also of paramount importance to local jurisdictions and we strive to be the best stewards of the public dollars. To that end,

we value the work of the State Auditor; however, local jurisdictions struggle with the costs related to fiscal and performance audits. We suggest that the state take a hard look at these programs to determine if the costs are justified by the benefits. We would like to see greater emphasis on more cost-effective education and technical support efforts– such as the Auditor's Small Cities Program which was recently scaled back. Finally, we endeavor to work with the State Auditor to establish a partnership to conduct meaningful performance audits that produce true efficiency results and cost savings.

Your recognition that the actions of the state have a direct and lasting impact on local jurisdictions is greatly appreciated. We and our citizens rely heavily on a variety of state programs and state shared revenues. We feel the impact when the state is forced to make cuts. Changes at the state level often translate into greater needs at the local level which stretch our already limited resources even further. We must work together to address these problems so that we are not simply transferring the burden to those jurisdictions that can least afford it.

Thank you for engaging us as part of a broad coalition to collectively work in the best interests of our state. We know this is only the beginning of a very difficult process, it is our hope that we can talk with you, your administration, and legislative leaders further about these and other ideas in greater detail over the coming weeks and months.

Sincerely,



Mike McCarty  
CEO  
Association of Washington Cities



Eric Johnson  
Executive Director  
Washington State Association of Counties

c: Marty Brown, Director of Office of Financial Management  
Jim Justin, Legislative Director

**November 4, 2010**

**To: Members of the Ecosystem Coordination Board**  
**From: Dan Wrye, South Puget Sound Action Area Representative**  
**Re: NPDES Municipal Stormwater Permit**



This memo contains some information I hope is helpful in our deliberations on November 4, 2010, concerning the NPDES municipal stormwater permits. I offer this in the spirit of our role to provide support to the Leadership Council as it makes its policy choices.

In South Puget Sound, there is one Phase I NPDES municipal stormwater permit holder (Pierce County) and nine Phase II NPDES municipal stormwater permit holders (Dupont, Lacey, Lakewood, Olympia, Steilacoom, Tumwater, and University Place). Pierce County, as the one Phase I permittee, has been under this permit since 1995. The Phase II permittees have been under permit since 2007. The Phase I permit was issued in 1995, administratively extended by Ecology in 2000 and again in 2005, and was substantially rewritten and reissued at the same time in 2007 as the Phase II permit.

My input on this matter is as the South Sound Action Area representative. However, the opinions and recommendations of this memo are my own and the jurisdiction I work for and should not be construed as those of other stormwater permittee jurisdictions in the South Sound.

In my day job, I am currently the Water Quality Manager for Pierce County and am the designated County lead for administration and compliance with Pierce County's Phase I NPDES municipal stormwater permit. At the time the first Phase I permit was issued in 1995, I supervised the Department of Ecology's Water Quality Program, Permit Management Section, which wrote and issued the first Phase I permit.

Pierce County currently has over 50 FTEs dedicated directly to the Phase I NPDES stormwater permit requirements. The 2007 permit resulted in hiring 20 additional FTEs to meet the new requirements of that permit. In addition to the operational costs of the permit, Pierce County spends between \$2Million and \$6Million annually on capital construction for stormwater management.

With this in mind, I offer the following observations:

1. On the aggregate, the NPDES municipal stormwater permits (both Phase I and Phase II) are incredibly important for properly managing stormwater and reducing negative impacts of stormwater on receiving water bodies.

2. Administration and implementation of the permits is a partnership between the state and local governments.
3. The NPDES municipal stormwater permits (both Phase I and Phase II) are technology-based permits. Full compliance with these permits does not guarantee water quality standards are met or beneficial uses are attained.
4. The permits are general permits, not based on regional differences of soils, rainfall, topography, cultural development, watershed, or jurisdiction.
5. The permits require stormwater programs containing several main components.
6. The Phase I permit has over 115 specific requirements, 79 (69%) have only become effective in past two years.
7. Many of the permit-required components are critically important for reducing negative impacts from stormwater.
8. Some of the permit-required components have questionable or no value for reducing negative impacts from stormwater.
9. Many other "nonpoint sources" of pollution (e.g., failing septic systems, poorly managed agricultural lands runoff) are not covered by the permits.
10. Program effectiveness studies on existing Phase I NPDES stormwater permittees, including Pierce County, not due until March 2011.

With the above in mind, I ask that the Board's recommendations to the Leadership Council be focused on the effectiveness of the program components of the permit, not on the permit per se, and that the emphasis should be on not disrupting the progress made on the components that add value.

Alternatively, Board's input could confer principals of support. Attached to this memo is a document Pierce County has submitted to WDOE at its listening post entitled "Pierce County's Preliminary Thinking about Reissuance of the Municipal Stormwater Permits." Also attached is a copy of a similar document WDOE released in July 2010. Both of these documents could help inform the ECB's discussion as to the messages we want transferred to the Leadership Council.

Thank you for the opportunity to provide input into this matter. I appreciate the effort that Puget Sound Partnership staff have made to help the Board become more effective in delivering implementation guidance to the Leadership Council and believe it is this type of work we should be engaged in.

Attachments

# Pierce County's Preliminary Thinking about Reissuance of Municipal Stormwater Permits

September 8, 2010

## Principles

1. Maintain continued progress to reduce municipal stormwater impacts by maturing programs initiated in the 2007 permit, most requirements of which have only just become effective. Minimize major shifts of direction of programs and associated high start up costs.
2. Maintain existing flexibility that supports watershed-based stormwater management.
3. Focus existing resources on maturing important components of existing permit for effective stormwater management rather than new, untested start up initiatives. These include **maintenance and operations of public and private facilities, source control of potential pollutant generating sources, illicit discharge discovery and elimination, source control of residential, commercial and industrial sites, structural stormwater controls and pollutant modeling, and stormwater monitoring.**

## Factors

- 2007 Phase I Permit included 12 years of permit enhancements from original 1995 permit.
- Several key components of the existing permit are critical for effective stormwater management and need to mature. These include source control, structural controls, and maintenance and operations.
- Pierce County has made tens millions of dollars of investments in stormwater management since 1995 and millions since 2007 alone.
- Most of the existing permit requirements have only been in place since February 2009 (only a year and one-half).
- Permit requirements since 2007 have necessitated major staff additions, which are only now being completed for some permittees.
- Permit-required monitoring results will not be complete before end of permit term.
- A significant regional effort has been under way for two years to devise a Puget Sound regional stormwater program and Pierce County has actively supported that. It has yet to finish its work.

- Numerous jurisdictions have benefited from Pierce County's and other large jurisdiction's investments in stormwater permit compliance actions (e.g., development and adoption of stormwater manuals) that smaller jurisdictions are using.
- US EPA is currently updating national municipal stormwater permit regulations.

## **Pierce County's Tiering of Permit Reissuance Preferences (descending order of preference)**

Pierce County encourages Ecology to conclude that the best approach to maintain progress in effectively manage stormwater is to administratively extend the current permit with strategically-targeted permit modifications, if necessary to meet legal obligations. This will enable us to avoid negatively impacting progress made on the 2007 permit. Specifically, our order of preference is as follows.

### **First Preference: Administrative Extension of Phase I Permit.**

**Rationale:** Most current permit requirements were fully implemented in years 3 and 4. Monitoring results are not available until end of permit term. Most permit requirements require hiring of new staff, which has only been accomplished in years 3 through 4 of existing 5 year permit. Changing permit requirements will cause additional startup costs at a time of significant public sector economic distress.

### **Second Preference: Targeted Permit Modification of Phase I and Phase II Permits to Incorporate LID Requirements and Completed TMDLs.**

**Rationale:** Responsibility to respond to Pollution Control Hearings Board and EPA requirements.

### **Third Preference: Targeted Permit Modification of Phase I and Phase II Permits to Incorporate LID Requirements, Completed TMDLs, and Results of Stormwater Monitoring Workgroup.**

**Rationale:** Responsibility to respond to PCHB and EPA requirements and to reflect improved regional stormwater monitoring. This is a third preference because Stormwater Monitoring Workgroup work is not complete at this time. A permit extension, such as under our First Preference could enable the results to be incorporated.

# Ecology's Preliminary Thinking for the Reissuance of the Municipal Stormwater Permits

July 30, 2010

*In preparation for the reissuance of the municipal stormwater permits Ecology has identified our preliminary agency priorities. This approach is intended to prompt a more deliberative discussion to better inform the agency as it moves into the formal process in 2011. The following represents our starting point.*

## **SUMMARY**

- The current permits are delivering results: improved implementation of existing requirements is an important part of achieving clean water.
- Local and State Government capacity has declined from what it was when the permits were last issued in 2007; maintaining current stormwater investments will be significant challenge.
- Low Impact Development and other permit improvements are needed.
- The most significant stormwater gains will be realized by securing new funding to support improved controls and retrofits.

## **THE DETAILS**

### **1. Schedule**

- Work underway is informing improvements to permits – Stormwater Monitoring Workgroup and the LID committees. The SWG will provide recommendations this fall; LID committees are scheduled to *complete* their work by August 12<sup>th</sup> 2010.
- August 4<sup>th</sup> through September 8, 2010: Eight listening sessions for the public and permittees.
- Fall/winter 2010: Preliminary draft permit language for LID (W WA Permits) and monitoring.
- Spring 2011: Complete draft permits out for public comment.
- January 2012: Issue final new permits (current permits expire February 2012)

### **2. Known issues for the next round of permits**

*Following are issues Ecology must address in the next round of municipal stormwater permits.*

- New “bubble cities” and waiver cities. Federal regulations require that new permittees be evaluated for inclusion under the permit (bubble cities) and/or some cities may no longer be eligible for a waiver due to increases in population.
- Responding to 2010 Census information. Federal regulations require Ecology to consider any new 2010 census defined urban areas, or expansions to current census defined urban areas that may bring additional jurisdictions under the permits. May not get census information until after the draft permit is out for Public Comment in spring 2011.
- LID requirements for Phase I and Western Washington Phase II. The Pollution Control Hearings Board required Ecology to incorporate LID “where feasible.” The external LID committee process is informing Ecology’s thinking on this issue.
- Monitoring requirements. The Stormwater Work Group is working on monitoring requirements for Puget Sound. This work is informing Ecology’s thinking on this issue. The SWG is not addressing southwest

Washington or Eastern Washington. Ecology staff will be working with southwest Washington and Eastern Washington permittees and others as we develop monitoring requirements for these areas.

- Incorporating completed TMDLs into the new permits where actions apply to permitted municipal separate storm sewers (MS4s). Federal regulations require this provision.

### 3. Additional issues for the next round of permits

*Following are questions that one or more external stakeholders are interested in having Ecology pursue in the next versions of the municipal stormwater permits and Ecology's preliminary answers.*

- a. Should the permits be expanded to include additional jurisdictions with populations of less than 10,000?

Answer: We will not expand the permits to include additional jurisdictions with populations of less than 10,000. However, the petition process can be used by other entities if they feel additional jurisdictions or areas should be covered. Ecology will respond to petitions as required by federal regulations.

- b. Should the EWA permit do more with respect to the use of LID?

Answer: The PCHB rulings applied only to Western Washington, so we have focused on WWA requirements. In EWA, there is not as much history, interest and experience in LID, but we are open to input on this issue.

- c. Should the phase II permit(s) include a business source control inspection program (a requirement in the current phase I permit)?

Answer: No, the phase II permits will not include a stand-alone source control program, which can be complex and costly. We will, however, look at ways the program elements in the current permit can better address source control – for example under public education and outreach and the illicit discharge detection and elimination (IDD&E) program.

- d. Should the phase II one-acre threshold be reduced to apply the standards for new and re-development and construction site runoff controls at smaller sites?

Answer: The Western Washington phase II permit should incorporate the lower thresholds from the Stormwater Manuals for new development, re-development and construction site runoff. This in part relates to the LID discussion. Not reducing the threshold means that the majority of development in phase II cities and counties would fall outside the permit requirements. Phase I permittees do not have this threshold, and we understand that many WWA Phase II cities are already regulating at lower thresholds. This provision will provide significant clean water gains. Ecology has not made a decision with respect to the EWA phase II permit.

- e. Should the phase II permit(s) include requirements for a structural retrofit program?

Answer: The phase II permits will not include requirements for a structural retrofit program. This could change if a funding mechanism is established to fund stormwater retrofits.

- f. Should the administrative framework for the permits be changed?

Answer: Watershed or other administrative approaches are complex and costly. Our preliminary thinking is that we will not change the administrative framework, but will retain the three permits.

- g. Should Ecology specifically address or attempt to limit how state vesting applies within the context of these permits?

Answer: Ecology is not planning to change how vesting is addressed under the permits.

- h. Should Ecology introduce requirements for stormwater basin planning into the phase I and/or phase II permits?

Answer: This topic will be addressed in the LID proposal, which will be discussed once the LID committee concludes its work on August 12.