

# Clark County Stormwater Ordinance Update

## Ordinance Revision Overview

### **Background:**

The Department of Ecology issued a Phase 1 Municipal Stormwater Permit to Clark County effective February 16, 2007 (referred to hereafter as the permit). The permit authorizes stormwater discharges to surface and ground waters of the state pursuant to State of Washington Water Pollution Control Law RCW 90.48 and the Federal Water Pollution Control Act (The Clean Water Act), Title 33 United States Code, Section 1251 et seq.

The permit includes several requirements that must be met by Clark County over the following eighteen months. Failure to meet the requirements of the permit could result in the DOE revoking the permit, a state enforcement action, or citizen lawsuit under federal law. The following are excerpts from the permit with brief explanations of the current conditions and implications to this project. These excerpts attempt only to describe those requirements that have direct implications to existing county code and to the scope of this project. The permit contains many more conditions that are either currently being met or will be implemented by other projects or department procedures.

### *S5. STORMWATER MANAGEMENT PROGRAM*

*C. The SWMP shall include the components listed below. The requirements of the stormwater management program shall apply to municipal separate storm sewers, and areas served by municipal separate storm sewers owned or operated by the Permittee. To the extent allowable under state and federal law, all SWMP components are mandatory.*

#### *5. Controlling Runoff from New Development, Redevelopment and Construction Sites*

##### *b. Minimum performance measures:*

*i. The Minimum Requirements, thresholds, and definitions in Appendix 1, or Minimum Requirements, thresholds, and definitions determined by Ecology to be equivalent to Appendix 1, for new development, redevelopment, and construction sites shall be included in ordinances or other enforceable documents adopted by the local government. Adjustment and variance criteria equivalent to those in Appendix 1 shall be included. More stringent requirements may be used, and/or certain requirements may be tailored to local circumstances through the use of basin plans or other similar water quality and quantity planning efforts. Such local requirements and thresholds shall provide equal or similar protection of receiving waters and equal or similar levels of pollutant control as compared to Appendix 1.*

**Appendix 1 includes exemptions, definitions, applicability, and the nine minimum requirements for stormwater management. A substantial revision or re-write of CCC 40.380 is required to meet this condition. The current county code references the Puget Sound Manual whereas the Appendix 1 of the permit references the 2005 *Stormwater Management Manual for Western Washington*. The two manuals are substantially different. Clark County can choose to adopt the 2005 SMMWW, adopt an equivalent manual as approved by DOE, or author a new manual. In any case, the resulting code must be deemed equivalent to the 2005 SMMWW by DOE.**

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In the process of rewriting the code, it is important to maintain aspects of the code that are critical to Clark County and not necessarily contained within the 2005 *Stormwater Management Manual for Western Washington*. Also, to the extent practical, the project will address identified ongoing issues or conflicts within the current codes. The following are known questions:

- Downstream analysis requirements
- Appropriate application of infiltration design
- Infiltration rate testing procedures
- Groundwater depths

*ii. The local requirements shall include a site planning process and BMP selection and design criteria that, when used to implement the minimum requirements in Appendix 1, will protect water quality, reduce the discharge of pollutants to the maximum extent practicable, and satisfy the state requirement under chapter 90.48 RCW to apply all known, available, and reasonable methods of prevention, control and treatment (AKART) prior to discharge. Permittees shall document how the criteria and requirements will protect water quality, reduce the discharge of pollutants to the maximum extent practicable, and satisfy the state AKART requirements.*

*Permittees who choose to use the site planning process, and BMP selection and design criteria in the 2005 Stormwater Management Manual for Western Washington, or an equivalent manual approved by Ecology, may cite this choice as their sole documentation to meet this requirement.*

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

**Low Impact Development techniques are considered “experimental” BMP’s under the current code rendering them largely unused due to the onerous process to approve non-standard BMP’s. In addition, most LID techniques involve deviations from the transportation standards. The revised code will need to include specific requirements for review, approval, and maintenance of LID projects and some method to address many development related local codes that may be involved such as transportation, parking, and fire.**

*iv. No later than 18 months from the effective date of this permit, each Permittee shall adopt a local program that meets the requirements in S5.C.5.b.i through iii., above. Ecology review and approval of the local manual and ordinances is required. Permittees shall provide detailed, written justification of any of the requirements which differ from those contained in Appendix 1 of this permit.*

*The Permittee shall submit draft enforceable requirements, technical standards and manual to Ecology no later than 12 months after the effective date of this permit. Ecology will review and provide written response to the Permittee. If Ecology takes longer than 60 days to provide a written response, the required deadline for*

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*adoption will be automatically extended by the number of calendar days that Ecology exceeds a 60 day period for written response.*

*In the case of circumstances beyond the Permittee's control, such as litigation or administrative appeals that may result in noncompliance with the requirements of this section, the Permittee shall promptly notify Ecology and submit a written request for an extension.*

**This section provides the overall deadlines to complete the code revisions.**

*vi No later than 18 months after the effective date of this permit, the program shall include a process of permits, plan review, inspections, and enforcement capability to meet the following standards for both private and public projects, using qualified personnel:*

- Review all stormwater site plans submitted to the Permittee for proposed development involving land disturbing activity that meet the thresholds in S5.C.5.b.i., above.*
- Inspect prior to clearing and construction, all permitted development sites that meet the thresholds in S5.C.5.b.i., and that have a high potential for sediment transport as determined through plan review based on definitions and requirements in Appendix 7.*
- Inspect all permitted development sites involving land disturbing activity that meet the thresholds in S5.C.5.b.i., above, during construction to verify proper installation and maintenance of required erosion and sediment controls. Enforce as necessary based on the inspection.*
- Inspect all development sites that meet the thresholds in S5.C.5.b.i., upon completion of construction and prior to final approval/occupancy to verify proper installation of permanent erosion controls and stormwater facilities/BMPs. Enforce as necessary based on the inspection. A maintenance plan shall be developed for permanent stormwater facilities/BMPs and responsibility for maintenance shall be assigned.*
- Compliance with the above inspection requirements shall be determined by the presence of an established inspection program designed to inspect all sites involving land disturbing activity that meet the thresholds in S5.C.5.b.i., and achieve inspection of 95% of sites. The inspections in may be combined with other inspections provided they are performed using qualified personnel.*
- The program shall include a procedure for keeping records of inspections and enforcement actions by staff, including inspection reports, warning letters, notices of violations, and other enforcement records. Records of maintenance inspections and maintenance activities shall be maintained.*
- The program shall include an enforcement strategy to respond to issues of non-compliance.*

**The revised code will need to include procedures to implement the code.**

### *7. Source Control Program for Existing Development*

#### *b. Minimum Performance Measures for Source Control Program:*

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- i. No later than 18 months after the effective date of this permit, adopt and begin enforcement of an ordinance, or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources associated with existing land uses and activities (See Appendix 8 to identify pollutant generating sources).*

*The requirements of this subsection are met by using the source control BMPs in Volume IV of the 2005 Stormwater Management Manual for Western Washington, or a functionally equivalent manual approved by Ecology.*

*Ecology review and approval of the ordinance, or other enforceable documents, and source control program is required. Each Permittee shall submit the proposed source control program and all necessary documentation to Ecology for review, no later than 12 months after the effective date of this permit. If Ecology does not request changes within 60 days, the proposed source control BMPs are considered approved.*

*Operational source control BMPs shall be required for all pollutant generating sources. Structural source control BMPs shall be required for pollutant generating sources if operational source control BMPs do not prevent illicit discharges or violations of surface water, ground water, or sediment management standards because of inadequate stormwater controls. Implementation of source control requirements may be done through education and technical assistance programs, provided that formal enforcement authority is available to the Permittee and is used as determined necessary by the Permittee, in accordance with S5.C.7.b.iv., below.*

**There are three operation manuals associated with CCC 13.26A, Water Quality:**

- **Stormwater Pollution Control Manual, Best Management Practices for Business and Government Agencies, November 2000**
- **Water Quality Best Management Practices for Operation and Maintenance of Publicly-Owned Property, July 2000**
- **Stormwater Facility Maintenance Manual, July 2000**

**The current Stormwater Pollution Control Manual is codified in CCC 13.26A. The Water Quality BMP for O&M is a policy document used by Clark County Public Works to maintain roads and parks.**

**This project will include an equivalence analysis and update of both manuals to the 2005 SMMWW. The revised manual will be submitted to DOE for review along with the revised stormwater code.**

**The Stormwater Facility Maintenance Manual used for stormwater facility maintenance under both 40.380 for new development and 13.26A for existing development will also need to be updated under S5.C.9 below.**

### *8. Illicit Connections and Illicit Discharges Detection and Elimination*

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*b. Minimum Performance Measures:*

*ii. No later than 18 months after the effective date of this permit, each Permittee shall evaluate, and if necessary update, existing ordinances or other regulatory mechanisms to effectively prohibit non-stormwater, illegal discharges, and/or dumping into the Permittee's municipal separate storm sewer system.*

*(2) The ordinance or other regulatory mechanism, shall prohibit the following categories of non-stormwater discharges unless the stated conditions are met:*

- Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4;*
- Discharges from lawn watering and other irrigation runoff. These discharges shall be minimized through, at a minimum, public education activities (see S5.C.10) and water conservation efforts.*

**The direction to educate the public will need to be codified. Public Works will develop a policy to detail what that education effort will include. Codes and permits in regard to installation and permitting of irrigation systems will need to be researched and modified if appropriate.**

- Dechlorinated swimming pool discharges. The discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4.*
- Street and sidewalk wash water, water used to control dust, and routine external building washdown that does not use detergents. The Permittee shall reduce these discharges through, at a minimum, public education activities (see S5.C.10.) and/or water conservation efforts. To avoid washing pollutants into the MS4, Permittees shall minimize the amount of street wash and dust control water used. At active construction sites, street sweeping shall be performed prior to washing the street.*

**This will require BMP manual revisions.**

- Other non-stormwater discharges. Other non-stormwater discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed by the Permittee which addresses such discharges.*

**Currently CCC 13.26A exempts several discharges that are now prohibited. The revised code must include the added prohibited discharges and methods to address specified discharges. Revisions may include required BMP's for Agricultural, residential, and forestry practices.**

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### 9. Operation and Maintenance Program

#### b. Minimum Performance Measures:

i. *Maintenance Standards. No later than 18 months after the effective date of this permit, each Permittee shall establish maintenance standards that are as protective or more protective of facility function than those specified in Chapter 4 of Volume V of the 2005 Stormwater Management Manual for Western Washington. For existing facilities which do not have maintenance standards, the Permittee shall develop a maintenance standard.*

(1) *The purpose of the maintenance standard is to determine if maintenance is required. The maintenance standard is not a measure of the facility's required condition at all times between inspections. Exceeding the maintenance standard between inspections and/or maintenance is not a permit violation.*

(2) *Unless there are circumstances beyond the Permittee's control, when an inspection identifies an exceedence of the maintenance standard, maintenance shall be performed:*

- *Within 1 year for wet pool facilities and retention/detention ponds.*
- *Within 6 months for typical maintenance.*
- *Within 9 months for maintenance requiring re-vegetation, and*
- *Within 2 years for maintenance that requires capital construction of less than \$25,000.*

**Both CCC 40.380 and 13.26A reference the Stormwater Facility Maintenance Manual which will need to be revised. Staff is working on summarizing the maintenance standards contained in both the current code and the 2005 SMMWW to update the inspection program. That summary should be useful to the manual revision effort.**

#### ii. *Maintenance of stormwater facilities regulated by the Permittee*

(1) *No later than 18 months after the effective date of this permit, each Permittee shall evaluate and, if necessary, update existing ordinances or other enforceable documents requiring maintenance of all permanent stormwater treatment and flow control facilities regulated by the Permittee (including catch basins), in accordance with maintenance standards established under S5.C.9.b.i., above.*

**Both CCC 40.380 and 13.26A will require revisions to include maintenance private facilities and a program to implement the requirements.**