



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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October 20, 2015

Christie True, Director  
Dept. of Natural Resources & Parks  
King County  
201 S Jackson Street, Suite 700  
Seattle, WA 98104-3855

RE: Phase I Municipal Stormwater Permit (WAR04-4501)  
Response to King County's request for extension of deadline to adopt an updated Surface Water Design Manual

Dear Ms. True:

The Department of Ecology (Ecology) received King County's (County) letter, dated September 16, 2015, requesting an extension of the deadline to adopt the King County Surface Water Design Manual (SWDM) and associated county code changes. The County has requested use of the Phase I Municipal Stormwater Permit (Permit) provision at Special Condition S5.C.5.a.iii, which states "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."

The County's September 16, 2015 letter indicates that the County believes an extension, as provided for in the cited Permit language above, provides a mechanism to prevent the County from being out of compliance with the Permit. This is not a correct interpretation of the Permit language. Under any circumstances, if the County fails to meet its February 3, 2016 deadline to adopt and make effective its program to comply with Special Condition S5.C.5.a.i through ii, the County is out of compliance with its Permit. In accordance with 40 CFR part 122.62, Ecology cannot grant the County an extension to the February 3, 2016 deadline without formally modifying the phase I permit – a process that would take at least 6-9 months to accomplish.

Given this misunderstanding of this Permit condition, I am writing to recommend you withdraw your request and proceed with your efforts to revise the SWDM to comply with applicable Permit requirements. Please note the following additional considerations that Ecology may use in the future when evaluating the County's potential or actual noncompliance:

- Ecology does not agree with the County's rationale provided in the September 16, 2015 letter that describes the delay due to "circumstances beyond the Permittee's control" for the following reasons:
  - The changes made to the 2012 Ecology Stormwater Management Manual for Western Washington (2012 SWMMWW), as published in the 2014 SWMMWW,



- were insignificant relative to the changes made when updating from the 2005 to the 2012 versions.
- The changes made to the 2012 SWMMWW were for the most part a result of issues raised on appeal by permittees.
  - Ecology has already addressed concerns about the schedule caused by the 2014 SWMMWW update. Per Ecology's letter to King County dated May 4, 2015, and in accordance with Special Condition S5.C.5.a.iii, the County's original deadline for making the revised program effective has already been delayed by 218 days.
  - Ecology provided grant funding through the National Estuary Program to support the County's efforts to revise its SWDM and associated codes. The County spent, and Ecology reimbursed, roughly \$118,811 for this work.
  - The County has not yet submitted to Ecology a revised SWDM that addresses Ecology's May 4, 2015 comments on the County's original draft submittal. Only after Ecology has reviewed this resubmittal will Ecology know what work remains for the County's SWDM to be approvable.
  - The County's requested schedule allowing nine months following the point at which the County has an approvable program is unacceptable. The other five Phase I permittees have successfully conducted (or are currently conducting) their required legislative and public rule adoption processes within the permit-required timeframe while overlapping with finalization of their stormwater codes and/or manuals with Ecology. We do not understand and are not persuaded that King County requires significant additional time to comply with this Permit requirement.

Again, I recommend the County reconsider the request for an extension and proceed with and/or enhance County efforts to revise the SWDM to comply with applicable Permit requirements. Should the County be unable to comply with the February 3, 2016 deadline, refer to General Condition G20 Notice of Noncompliance and contact your Ecology permit manager, Rachel McCrea, at (425) 649-7223 to discuss next steps. If you have questions about the content of this letter, please contact me at 360-407-6460.

Sincerely,



Bill Moore, P.E.  
Water Quality Program, PDS Section Manager

cc: Mark Isaacson, Director, Water & Land Resources Division, King County (electronic)  
Curt Crawford, Stormwater Services Section (SWSS) Manager, King County (electronic)  
Doug Navetski, Env. Programs Managing Supervisor, SWSS, King County (electronic)  
Kevin Fitzpatrick, NWRO Section Manager, Water Quality Program, Ecology  
Rachel McCrea, Municipal Stormwater Specialist, Ecology  
Permit file