

STORMWATER ORDINANCE UPDATE
TECHNICAL ADVISORY COMMITTEE (TAC)
Meeting #1: Wednesday, August 8, 2007
Washington Department of Fish and Wildlife
2108 Grand Boulevard
1:30 - 3:30

N O T E S

Introduction / Ground Rules / Agenda

Members Attending

Jennifer McClure, Chad McMurry, Mike Misiak, Robin Krause, Tim Kraft, Tom Grange, Mike Soliwoda, Ali Safayi, Fereidoon Safdari

Members Absent

Patrick Harbison

Staff

Jim Gladson, Sue Stepan, Joel Rupley, Ron Wierenga

Audience

Sean Darcy, Jason Mattos, Andrew Stoeckinger

The ground rules and agenda were reviewed. Today's objective is to discuss threshold conditions and review the nine minimum requirements.

Background & Overview

The group charge was reviewed. Mr. Safayi asked about the relation between TAC and the Stakeholders Advisory Committee (SAC). Mr. Krause replied that concept codes from TAC and staff will go to the SAC. TAC is advisory to staff and consultants. SAC will weigh in on a policy level.

The NPDES Municipal Stormwater Phase I permit was issued to Clark County in February 2007. It requires an update of municipal stormwater codes to match the Ecology *2005 Stormwater Management Manual for Western Washington* (hereafter *2005 Manual*).

Mr. Krause listed the big topics to be covered during the course of the TAC: thresholds; minimum requirements; low impact development (LID); conveyance, which is neither in the *2005 Manual* nor much in current code; and the BMP manual.

Code History

- 13.24 - 1978, storm drainage policy
- 13.25 - 1995, stormwater control ordinance
- 13.25a - 1999, updated water quality requirement
- 13.29 - 2000, redevelopment and erosion control requirements
- 40.380 - 2003, the current code
- 13.26a - Water Quality code also must become equivalent

Appeal

The current appeal is for a different part of the permit and does not affect the stormwater code piece. Regardless, the appeal has not stayed the implementation of the permit.

Schedule

The schedule is planned but flexible. The permit requires draft code to be submitted to Ecology February 18, 2008. Prior to Ecology, the draft code must go through the Planning Commission, Development Engineering Advisory Board and BOCC. The goal is to complete the initial draft by early December and submit to Ecology in late January.

Cost Models

Mr. Krause is seeking model projects in order to compare cost of completing the projects under current code (40.380) and the potential new codes, including Low Impact Development (LID).

Equivalency

Mr. Kraft has been reviewing how other jurisdictions are implementing NPDES permit re: local conditions, conveyance, LID, and thresholds. The permit allows adjustment for local conditions. The group will receive a memo prior to the next meeting.

Mr. Krause stated that there are currently no manuals or codes deemed fully equivalent to the *2005 Manual*. WSDOT's Highway Runoff Manual is close to being approved. Clark County Public Works would like the Highway Runoff Manual be the reference manual for its road projects.

Mr. Rupley is the Endangered Species Act Coordinator for the county. He is interested in National Marine Fisheries Service (NMFS) relation to county code for stormwater.

Open Forum for Member Thoughts / Needs

The code will get a complete rewrite of flow control, water quality treatment, applicability, exceptions and exemptions.

The group discussed including provisions in code that are not required by the *2005 Manual* or by the permit. The manual is the baseline. Modifications can be made for local conditions and to cover things not required in the manual. County code can be more stringent, but must demonstrate at least equivalency to the manual.

The group discussed various methods of incorporating technical data and design standards: specify all standards within the code; adopt existing manuals by reference; adopt existing manuals by reference and also include local tweaks in code; write a Clark County design or BMP manual and adopt it by reference.

Mr. Misiak noted that a citation to a manual can be to the "current version."

Mr. Safayi advocated separation of technical design standards from code.

Mr. Darcy advocated writing a Clark County design or BMP manual. He advocated implementing a framework for adopting new non-proprietary techniques that are not evaluated by Ecology.

Mr. Misiak wondered how a relatively static ordinance could reflect changes in technology and techniques. Mr. Safayi replied that code is updated every six months for minor changes, and a new BMP probably could be adopted in that process.

Mr. Kraft wondered if adopting the *2005 Manual* would automatically allow new BMPs to be adopted as they become conditionally approved by Ecology.

Minimum Requirements and Thresholds

Mr. Kraft asked the group to become familiar with the county's NPDES Permit section on Controlling Runoff from New Development, Redevelopment and Construction Sites on page 9, and Appendix 1, especially sections 3 & 4.

Regarding the minimum technical requirements and thresholds, the permit requires the county to either:

1. Adopt as-is
2. Tailor to local
3. Adopt/maintain more stringent standards
4. Adopt equivalent manual (e.g. Highway Runoff Manual)
5. Create equivalent manual and submit to DOE

To create an equivalent design manual is not feasible in the time allotted. Staff thinks option four looks unattractive, too, because other existing design manuals are tailored to different local conditions.

A concept code for revising 40.380.020 "Applicability" will be written based on today's discussion of thresholds and minimum requirements.

Review of the Handout "Applicability of Minimum Requirements" for New Development

Mr. Kraft explained that the permit only asks the jurisdiction to regulate discharges directly or indirectly to its medium or large Municipal Separate Storm Sewer System (MS4). Therefore, to adopt the *permit* thresholds, instead of the design manual thresholds, would mean that many developments, those not discharging to the MS4, would not come under the stormwater code. Current Clark County stormwater code and the *2005 Manual* do not differentiate between MS4 and non-MS4 discharges.

The group needs a complete and accurate definition of MS4 and Clark County's storm sewer system.

Mr. Wierenga said that while permit regulates only discharges to the MS4, it is up to local code to regulate other discharges.

Mr. Misiak, Mr. Kraft and Mr. McMurry discussed that private developments that discharge to the county's MS4 must be regulated by the county. Other standards and regulations may affect non-MS4 discharging developments.

Does the site have 35% or more of existing impervious coverage

The group discussed the definition of "35% or more of existing impervious coverage." Does it mean legal impervious coverage (from permitted development), actual on-the-ground impervious coverage (including non-permitted "impervious creep"), historical impervious coverage, pollutant-generating or non-pollutant-generating surfaces? Mr. McMurry stated the permit definition does not distinguish between pollutant generating & non-pollutant-generating surfaces. Mr. Grange's opinion is that "existing" is current, legally on the ground.

Mr. Kraft stated that Minimum Requirement #6 starts to distinguish the definition more closely.

Does the project add 5,000 square feet or more of new impervious surfaces?

Mr. Grange listed current code requirements as urban - new 2000 sq. ft. and rural - new 5000 sq. ft.

Mr. Soliwoda said that current code has an exemption for rural, which might not meet this permit requirement. Mr. Kraft said the permit has its own exemptions. Code can be more stringent, but not less.

Mr. Krause added industrial - 1000 sq. ft. (for certain uses - gas stations and other high oil-loading activities). Mr. Safayi clarified that the 1000 sq. ft. just requires pre-treatment in code; flow control and water quality treatment are not triggered until 2000 sq. ft. Mr. Kraft read the existing code differently. Mr. Krause clarified that between 1000-1999 sq. ft. requires only an oil/water separator for new or redevelopment. Mr. Safayi pointed out 40.380.040.B7a and B7b. Mr. Safayi later agreed that the code could be read as Mr. Kraft had interpreted.

Does the project convert ¾ acres or more of native vegetation to lawn or landscaped areas, or convert 2.5 acres or more of native vegetation to pasture?

Mr. Krause: this requirement is not currently in county code in any form. Mr. Safdari agreed.

Other triggers

Other triggers were briefly reviewed.

Differences with County Code for New Development

Mr. Krause listed the differences with county code as:

- urban vs. rural in code
- 2000 sq. ft. versus 5000 sq. ft.
- the 1000 sq. ft. for industrial in code

Mr. Soliwoda added:

- rural single family exemption in code
- ¾ acre land-disturbing activity not in code (pollution-generating pervious surface - PGPS)
- 2000 sq. ft. or more of new, replaced, or new plus replaced impervious; current code would require meeting Minimum Requirements 1-5, so permit is less stringent. Ties into grading code.

Mr. Krause and Mr. Safayi discussed the 1-acre exemption in code. The definition of land-disturbing activity is arguable. A recent Hearings Examiner decision defined replacing 40,000 sq. ft. of asphalt as "non-vegetative land-disturbing activity" and thus did not trigger the redevelopment code. The exemption must be worded very carefully in code if it remains.

Mr. Safayi said that the 1000 sq. ft. section of the code could be read either way. Rewrite this carefully.

Ms. McClure pointed out that the 1-acre exemption in code would be trumped by the 7000 sq. ft. of land-disturbing activity threshold in the permit, which leads to Minimum Requirements 1-5. This effectively cuts the exemption down from 1 acre to 7000 sq. ft. Mr. Krause replied that 1-5 are not difficult to meet. Ms. McClure clarified a construction NPDES will still be required at 1-acre, but the SWP will move down to 7000 sq. ft.

Mr. Misiak asked if the distinction in code between urban and rural applies to redevelopment. Mr. Safayi: yes.

Mr. Kraft asked if the county should keep the parts of existing code more stringent than the thresholds. Mr. Grange urged caution in retaining stricter thresholds because the *2005 Manual* requires such large pond sizes.

Mr. Krause said that rural vs. urban maybe should be addressed in the water quality or flow control requirements instead.

Mr. Rupley worried that using the flow chart as-is would exclude almost all rural development from county stormwater code because the permit applies only to discharges to the MS4.

Mr. Darcy said that all of the treatment requirements specify "fish-bearing streams." Mr. Soliwoda said that other codes will cover some of that development.

Mr. McMurry stated that Clark County is unique among the Phase I permittees in having a very large rural portion as well as a highly urbanized area to regulate under the same permit and code.

Mr. Grange asked if the chart can be included in code to increase clarity. Mr. McMurry cautioned that online code publishing services cannot easily display visuals such as flow charts. The group agreed that code would have to include written descriptions that may be supplemented with a flow chart.

Mr. Misiak advocated researching the justifications used when current code was written more strictly than Ecology thresholds before keeping or tossing them. Perhaps new methods and higher flow control standards allow the thresholds to be raised. Mr. Soliwoda said that many flows in rural areas can be dissipated. Mr. Krause stated that the new manual addresses dispersion directly.

Mr. Kraft cautioned that the public may perceive raised thresholds as relaxation of stormwater control codes.

Review of the Handout "Applicability of Minimum Requirements" for Redevelopment

The group discussed that the first two questions in the flow chart are essentially the same as for New Development, but formatted a little differently. The thresholds are more stringent than current code for Redevelopment.

The group discussed the exemption of roofs except for buildings with kitchens. Mr. Soliwoda suggested that industrial galvanized roofs that produce zinc runoff should be regulated.

Is this a road-related project?

This is vague; what is the definition of a road-related project?

Do new impervious surfaces add 50% or more to the existing impervious surfaces within the project limits?

Mr. Misiak: if you have 5 acres existing impervious surface and you're adding 2.5 acres, then redevelopment requirements apply to replaced impervious as well as new.

Mr. Krause: yes, if you are adding less than 50% then you just have to deal with your new stuff. Mr. Krause asked Mr. Safayi to explain the equivalent situation under current county code. Does it differentiate between what must be treated as far as existing and replaced?

Mr. Safayi: under current code, we go through a proportionality argument when it comes to determining requirements. It boils down to a requirement to spend as much money building or improving a water quality facility for replaced impervious as you spend for the new impervious. For example, if a Fred Meyer store triggers the redevelopment requirements, and they spend

\$20,000 for conveyance, catch basins, pipes and other stormwater infrastructure to treat runoff from the new impervious surface, then they have to spend same amount to add or upgrade a water quality facility to treat runoff from the replaced impervious surfaces. If the money cannot be used adequately or beneficially on-site, then the code allows you to spend it improving water quality in the same basin.

Mr. Misiak asked if there a time limitation before the money reverts to the developer. Mr. Safayi: no, but it must be used in the same basin, and it should be concurrent. The money goes to the county, it is not spent directly by the developer. Mr. Misiak: this system can backfire, as in the Toyota example.

Mr. Kraft quoted Appendix 1, page 11, the Redevelopment section of the permit: "the local government may allow the minimum requirements to be met for an equivalent area within the same site." He questioned what is meant by "same site." For public road projects, the equivalent area does not have to be within the project limits but must drain to the same receiving water.

Mr. Krause: it is the basin.

Mr. Grange: What is the receiving water? It could be the ocean!

Mr. Misiak: the *2005 Manual* is pretty clear on describing those basin areas.

Mr. Krause asked the group to consider whether to look at an area criteria, a value criteria, or both. He referenced section 2-13 in the *2005 Manual*. The local government may choose one of various bases for identifying projects that must retrofit replaced:

- 50% of assessed value
- 50% of replacement value of existing site improvements as determined by the Marshall Value System
- exceeding a certain dollar value
- exceeding a certain ratio to total replaced plus new impervious

He continued: whatever method is chosen must be at least equivalent to that described in the permit. If we choose a method different from what is described in the permit, we must demonstrate that an equivalent level of treatment and detention is obtained.

The group discussed the pros and cons of a valuation basis. Valuation is contentious; private parties and county staff may not agree on costs and values. It creates more work for developers. It may be based on information that is not available to the design engineers.

Public Comment

Mr. Darcy said that a value-based system amounts to a one time fee that is a get out of jail free for the developer. A water quality facility has to be maintained over its life. A value-based system does not meet end goal of protecting water quality.

Next Steps and Questions

Mr. McMurry requested handouts in advance.

The discussion on Threshold and Minimum Requirements will continue next meeting. A concept code will be presented based on today's discussion. The next specific topic will be Minimum Requirement #6, Exemptions and Exceptions, and definitions.

Mr. McMurry asked if the group will discuss code outside of stormwater ordinance that interact with or affect the stormwater code, e.g. the infill development code. Mr. Krause said that comments about those interactions would be welcome, but might be outside of the group's influence. Ms. Stepan stated that ideas can be brought back to Community Development for review. The development code will be updated in 2008.

Respectfully Submitted,

Trista Kobluskie

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