



STORMWATER ORDINANCE UPDATE
STAKEHOLDER WORK GROUP
MEETING #6 - May 13, 2009

Water Resources Education Center
4600 SE Columbia Way
Vancouver, Washington
4:30-6:30 p.m.

The meeting was called to order at 4:30 p.m.

Members Attending

Bill Custis, Eric Golemo, Tim Kraft, Steve Madsen, Chad McMurry, Stephen Murphy, Annette Griffy, and Brian Carlson, facilitator

Members Excused

Al Schauer and Greg Winters, due to previously announced schedule conflicts.

Staff

Mike Swanson, Mark Hazuka, Kris Olinger, Dorie Sutton, Nancy Brown, Rhonda Morgan, Loretta Callahan, Chris Malone, Jeff Schmidt

Public

Sean Darcy, Carol Panfilio, Mike Bomar

Mr. Carlson filled in as facilitator for absent Mr. Schauer.

Mr. Madsen introduced Mr. Bomar as his possible replacement in the Work Group.

Ms. Griffy introduced Mike Swanson (City Surface Water) and Chris Malone (City Transportation).

Mr. Carlson asked if there were any comments on the agenda or last week's minutes. There were none. He then asked if there were any other business before moving on to the topic of Flow Control.

Mr. McMurry asked about an updated version of the Table.

Ms. Griffy said she had just heard from the City Attorney's office regarding that and the hierarchy issue. She suggested that the group discuss this prior to moving on to Flow Control. She also handed out to the Group the following materials: a draft revised Applicability Flow Chart, a draft revised Infiltration Section for Proposed General Requirements, and Changes to WRPO 14.26 Suggested at the Stakeholders Meeting 5/6/09.

Mr. Carlson asked to discuss the Table issues first.

Ms. Griffy referred to the hierarchy issue and said the question is what prevails as most protective of water quality. She said that the City Attorney's office reviewed the Table and separated the applicable stormwater issues into five segments: NPDES Permit, City stormwater-related ordinances, State Stormwater Manual, City General Requirements, and Low Impact Development, the latter of which could be separate and on their own or part of the General Requirements.

Mr. Carlson asked about other City ordinances.

Ms. Griffy said that there are two sets of potential conflicts: 1) conflicts between City ordinances, and 2) conflicts between the manuals proposed for adoption. She referred to the multi-colored NPDES Program overview handout that was distributed at the first Work Group meeting. She said that where clarity can be achieved is really in the General Requirements because what we can do and are trying to do by adopting General Requirements, the City can document how we protect water quality (Section 5c4a11 of the permit), on a case by case basis. We can add the White Paper and those Ecology approved local definitions, and can also supplement definitions, then we can add to these, the tailored circumstances through such things, for example, as the refined Stormwater Manual applications, basin planning processes, though we all know the expense of basin planning, and borrowing areas the County has already done and had approved. She reiterated that the General Requirements are designed to supplement the State Stormwater Manual.

Mr. Golemo said that this should be stated in the ordinance and that this is what the developers have asked for, but basically it should be spelled out in the ordinance.

Mr. Carlson said that by adopting the General Requirements, the city can clarify, supplement, and answer case-by-case situations. He said that, essentially, the Requirements would be at the top of the hierarchy where you go first to see what applies and that something in the ordinance could describe that.

Mr. McMurry said that the code language "most stringent applies" might undermine this.

Ms. Griffy noted that the Hearings Examiner relies on code language, not General Requirements.

Mr. McMurry agreed.

Mr. Carlson said that it resembles the relationship between the RCWs (Revised Code of Washington) and WACs (Washington Administrative Code) where the VMCs (Vancouver Municipal Codes) are like the RCWs and the General Requirements are like the WACs.

Mr. Madsen asked where this language was in the proposed codes.

Mr. Golemo replied 14.25.100 F is one example.

Ms. Griffy said that we need to ask Law about what language can be used.

Ms. Olinger suggested it should be two sentences, one to address conflicts with the manuals and one for conflicts within the ordinances.

Mr. Carlson referred to 14.24.035 D and raised the "may" or "shall" issue.

Mr. McMurry said he was more concerned about getting caught in the middle of the conflicts, infiltration design standards being one of those areas where there is a significant chance for differences of opinion.

The Work Group discussed the primary role of the General Requirements as the controlling document and how to achieve that with the ordinance.

Mr. Golemo said he liked the idea of two sentences listing code and General Requirements to provide clarity to the Manual.

Mr. Madsen said it would be helpful to use language where conflict over Manuals, the presumption is that the General Requirements meet the equivalent standards, because if it's not, then Ecology won't approve them.

Mr. Carlson said the City doesn't submit its ordinance to Ecology as a Phase II permittee, and General Requirements aren't submitted for Phase IIs either.

Mr. Kraft supported Mr. Madsen's suggestion, providing that what is in the General Requirements is equivalent to what's in the Manual, which is in keeping with the permit.

Mr. Carlson asked if there were other issues besides hierarchy.

Ms. Griffy said yes, LID (Low Impact Development) - some people don't like the Puget Sound Action Team LID manual. She said staff is amenable to adding LIDs to the General Requirements like Clark County has done but the City may risk appearing arbitrary and capricious if it does not provide enough Best Management Practices (BMP) options.

Mr. Hazuka mentioned that the pervious pavement and bioretention in the Clark County Manual are straight out of the state Stormwater Manual.

Mr. McMurry said that there are a few differences such as allowing impervious surfaces to drain to pervious. He said that having two treatment systems doesn't make sense and that some Puget Sound restrictions are not appropriate.

Mr. Hazuka said that most modeling is in the State Stormwater Manual and that the Puget Sound LID manual supplements that.

Mr. McMurry said that it is not the modeling, it is how you design and install in the field. Clark County did a better job of reviewing the Puget Sound LID manual and saying what is appropriate where.

Mr. Hazuka said that both the Puget Sound LID and State Manuals allow draining from impervious to pervious if the flow path for the pervious pavement is greater than the flow path of the impervious.

Mr. McMurry wants to make sure that the basic LID guidelines are understood.

Mr. Kraft said the City can adopt the Puget Sound LID and provide some clarity. He said that the Clark County manual wasn't intended to provide only those (LID) measures, but to give some clarity and guidelines as to how those would be used.

Ms. Griffy asked if the Group preferred to incorporate specific LIDs into the General Requirements OR adopt the Puget Sound LID manual and make the appropriate changes in the General Requirements.

Mr. Golemo said he wanted it to be consistent with the County.

Mr. Swanson said that we can provide clarification in the General Requirements just like we do for PVC pipe or slopes.

Mr. Golemo said that it all requires too much interpretation.

Mr. McMurry said that if the Puget Sound LID Manual is used as the guide, only use specific sections and leave ones out we can't do pertaining to storm water.

Ms. Griffy asked what specifically in the Puget Sound LID Manual are we adopting or excluding that is so troublesome.

Audience member Mr. Darcy asked about the time frame.

Ms. Griffy said there is the adoption date and then an effective date of the ordinance.

Mr. McMurry asked whether the Work Group would not be able to see the General Requirements by the time the revised ordinances returned to the Council for adoption.

Mr. Carlson said that was a good assumption.

Audience member Mr. Darcy asked whether there was a required public process for the General Requirements. .

Ms. Griffy said that there has been a suggestion that a technical work group be formed. She said that any amendments to the General Requirements could be distributed.

Mr. McMurray asked if this allowed public participation.

Ms. Griffy said it allowed for public comment.

Mr. Madsen said that the Work Group can ask that a public process be allowed.

Audience member Mr. Darcy asked if there was any recourse on that situation.

Mr. Carlson said that the General Requirements are adopted administratively and, as with all administrative issues, the resource is to go to Council and raise the issue there if it hasn't been addressed through normal channels prior to that. He said obviously the first recourse ought to be here. He added that the City can set up an interactive process on an ongoing basis and go from there. Procedurally that process could be reflected in code language.

Ms. Griffy said she would take back the recommendation for code language to reflect the process for amending the General Requirements.

Flow Control VMC 14.25.220.

Ms. Griffy acknowledged that a lot had been crossed out of this section of the ordinance and that it is important to understand the difference between the Phase I and Phase II permits. She said that within the City of Vancouver, less than one acre must meet current code. She referred to the Applicability Chart Figure 3.1 in Permit Appendix 1 and the handout that Ms. Olinger developed as a supplement.

Ms. Olinger said it provides the option to meet the Minimum Requirements of the Permit or the City's code.

Mr. Golemo said he couldn't see this as very different than the 3.2 or 3.3.

Mr. McMurry said he could. He pointed to flow control and WWHM (Western Washington Hydrology Model), and his review regarding very, very small projects.

Mr. Swanson said it is also a volume requirement (VMC 14.25.220(C)(4)(b)).

Mr. Hazuka said that the 2-year volume must be retained on-site.

Mr. McMurry said 2-year 24-hour volume.

Mr. Swanson said that in a recent appeal, the Hearings Examiner ruled that you cannot release more than a two-year pre-developed volume ever because that is the way it is stated in the ordinance and we argued that volume released for the first 24 hours cannot exceed the predeveloped volume for the two-year 24-hour storm.

Ms. Griffy said we still have "or."

Mr. Golemo brought up the backsliding issue and asked if "or" means you have to do the more stringent.

Ms. Griffy said that it is a back sliding issue and it is specifically written that we cannot back slide. She said that the City does not have a choice.

Mr. Carlson asked if you are doing it in current code right now, what's the problem?

Mr. Swanson said when the ordinance was written, the intent of the volume requirement was that during the first 24 hours of a 2-year storm the volume released cannot exceed the pre-developed volume. The way it is written, it doesn't say that.

Mr. Carlson said that it is clarifying intent, not backsliding.

Mr. Kraft and Mr. Madsen agreed.

Ms. Griffy pointed out that the crossed out language in this part of the code is moving to the General Requirements.

The Work Group broke into several simultaneous discussions about the boxes in the charts.

Mr. Golemo was concerned that there would be doubledipping, compensating for larger sites with smaller ones, new development having to make up for contributions from existing development.

Mr. Carlson and Ms. Griffy disagreed. Mr. Carlson suggested comparing to other examples such as hazardous waste. Sites with large quantities of hazardous materials versus small amounts such as household hazardous waste would have more impact.

Mr. Madsen asked if this could be codified and said that if you are not going to improve water quality through retention/detention design with either standard, then it should be an option.

Ms. Griffy said staff would look at an optional table for less than one acre to be included as appropriate in the General Requirements.

BREAK 5:37 p.m. - RESUMED 5:45 p.m.

Ms. Griffy referred to the Flow Control handout and said there were two topics to choose from: 1) Flow Control and Quantity and 2) Flow Control for Surface Water Discharge.

Mr. Golemo referred to number one and said he likes what has been added on the handout. He said it makes sense and is practical.

Ms. Griffy said it is based on the UIC (Underground Injection Control) rules we are looking for approval with Ecology UIC regulators.

Mr. McMurry said he is not going to debate whether or not we put clean water in the ground. The question I have is with the area such as Minnehaha basin, effective minimum standards applied to especially areas like this, I see issues. Comparing minimum standards with more onerous detention standards different than those becomes a real issue. So with adequate protections, adequate assumption, appropriate infiltration rate for soils, how to do you see these back under the need to meet flow control requirements, when standards end up not allowing us to do the Western Washington Manual requirement to get back to the ground.

Ms. Griffy said that it is possible under some situations that by adopting the more stringent infiltration testing standard that alone will increase the size of the infiltration system. This is a more stringent standard for quantity disposal than the current city standard. Quantity for infiltration is an area where a single event model could be used, particularly in the areas of high infiltration, but it would need Ecology buy off.

Mr. McMurry noted a similar situation in the St. John's area with more stringent requirement for the amount of infiltration.

Mr. Swanson asked if he was referring to the PIT (Pilot Infiltration Test) Test.

Ms. Griffy said that is a specific area that may require a pump station in the sump area in the future. She said a recent example is a project called Anna's Court where everything around it infiltrates with groundwater separation but LID was required because there was not enough space to put in enough infiltration and drywells.

Mr. McMurry asked how much he had to get into pervious subgrade, as he didn't see any minimums here. He asked if this was going to be on a case-by-case basis.

Ms. Griffy said that the policy the City had is area specific and it still is.

Mr. McMurry said some projects may be rendered unbuildable and/or economically infeasible with the potential increases required with these new standards.

Ms. Griffy asked if the problems of quality separation, not enough room for enough pipes, and huge detention exist now.

Mr. McMurry said yes.

Ms. Griffy said we are considering adopting the UIC single event runoff model to size UICs.

Mr. McMurry said he wants the toolbox on the table and the flexibility to choose.

Ms. Griffy said that the process is part of site plan review now. She said things change and that Mr. McMurry had some good points.

Mr. Carlson said that this can be addressed in language about intent similar to what is in the Water Resources Protection ordinance.

Mr. McMurry said that it only applied to a handful of projects in the next few years anyway.

Mr. Carlson said we don't want to be delayed by "poster child" projects.

Ms. Griffy said that Exceptions and Adjustments are required by the Permit to be in the ordinance and there is a process for that. She asked Mr. McMurry if this would be suitable for an Adjustment.

Mr. McMurry said yes.

Mr. Golemo said that the UIC guidelines are demonstrative and regard drinking water protection.

Mr. McMurry said that it is not an easy process and the types at the planning level are not minor.

Ms. Griffy pointed out again that it is case specific.

Ms. Olinger said that there are provisions for these few difficult sites.

Ms. Griffy emphasized options and pointed out that new applications of BMPs may not be approved by City Transportation or Building or other areas of the code. She said that rain gardens, for example, have to meet ADA and safety regulations and that these can be worked through in the General Requirements.

Mr. Golemo had questions about "Setbacks" on page 4 of the handout.

Ms. Olinger said that this is a very draft document and that page has not been worked on yet so save that discussion for next week.

Ms. Griffy redirected the discussion back to Flow Control. She said that the City is looking at Ecology approved models, the Clark County local conditions that can be incorporated, and how the Clark County Manual differs from the State manual. She said the software will be specified in the General Requirements.

Mr. Golemo asked if the non-engineers needed any explanation about the problem with all of this. He said that changing from a single event to a continuous model is a big problem when there is no infiltration and showed the group some drawings. He said other problems include urban density, sprawl and traffic and that he wants smarter, more efficient approaches.

Audience member Mr. Darcy asked about the forested condition.

Mr. Golemo said that the requirement is for prehabitation forested condition even if the forest has been gone for 100 years. He said Burnt Bridge Creek has habitat now that it didn't have 100 years ago.

Mr. Murphy asked what percentage of the City is impacted to the degree in Mr. Golemo's example.

Mr. Golemo said twenty percent, although it is higher if the amount of available land is considered.

Mr. McMurry spoke of the large water body exemption and said if you can get it there in a pipe or ditch, it is exempt. He said that a large part of the City can't get there, to the large water body by pipe, and referred to Fruit Valley as an example.

Mr. Golemo produced the map prepared by staff for a City Council Workshop and said the Work Group needed to discuss it.

Mr. Swanson said that a lot of the areas shown as having possible large water body exemption infiltrates.

Ms. Griffy said that this was a basic representation to Council to show the magnitude of the impacts not the details of every project.

Mr. Swanson said that the example projects that Mr. Golemo presented are specific hypothetical projects and that ponds for real projects could be bigger, could be smaller depending on site characteristics. He said these examples should not be construed to represent an average project.

Mr. Madsen said that the problem gets back to basin planning and that there is no attempt made or process required to measure results.

Mr. Murphy said maybe only ten percent of the City should be impacted and that we need to see what works. He asked what was the benefit of going from twenty percent to ten percent and who that would benefit. He said he looks at the issue from the Neighborhood Association perspective, and he referenced his background in finance. He said, based on what the city put forth and what engineering representatives are now proposing, the crux of the argument is protecting water, streams from runoff or getting ten percent more (revenue) off the site. He said we don't know that ten percent is not going to make a difference, and that the community should at least try. He said in his area, Ellsworth Springs, neighbors are very upset about infill developments, and that's what the example Mr. Golemo provided looks like to neighbors – infill - so if the situation is that instead of eight houses, maybe there should be four instead of ten. He said it was really dollars and cents that builders and engineers are talking about.

Mr. McMurry said that the difference could be 39 lots instead of 55 or maybe that instead of 55 lots, neighbors might see 55 townhouses. He referenced zoning requirements.

Mr. Swanson said the area for stormwater facilities is not included in zoning density calculations.

Mr. Madsen said neighbors are trying to use stormwater facilities as land use control. He said the bigger issue is commercial and that the development community is not arguing for one iota of water degradation.

Mr. Murphy said that maybe developers will not be able to get everything they want.

Mr. Madsen said that it may not apply to the problem you are trying to correct.

Audience member Mr. Darcy said that the development community is not out to restore streams damaged in the past and that there are watersheds that have been built upon that have flow control problems that could have been remedied if these ordinances had been in place 10-15 years ago.

Mr. Madsen said that a lot of problems we are attempting to correct with these ordinances are based on history and not addressing existing problems.

Mr. Carlson said that it is not laying the burden on new development and that the new standards are not overcompensating. He said the standard applies to the property being developed and referred to other pollution controls as examples.

Mr. Golemo and Mr. Madsen said they disagreed.

Mr. Golemo said that the Clean Water Act says to restore and protect to 1975 levels and Washington Ecology is going back to preforest. He said they are more restrictive on new development and said there are two options: 1) adopt their anti-growth standards and get more creative, or 2) comprehensive planning, for example, a Burnt Bridge Creek basin plan.

Mr. Carlson said basin plans are a lot of work, they take time and money. He asked how many have been adopted in the entire state - maybe two. He said it is an option but in the meantime this is what Ecology requires.

Mr. McMurry said it is an onerous burden that makes developers look bad and is so difficult to meet.

Mr. Carlson said that he as the City's Public Works Director does not have the option if the State says it is required.

Ms. Griffy said that this ordinance does not preclude basin planning and does not preclude pursuing prairie designations.

Mr. Kraft asked Mr. McMurry and Mr. Golemo what they thought they would get out of basin planning. He said basin planning is not the panacea people think it is. He referred to the prairie condition and said that there are tools in place to pursue that option. He asked if the City had applied to Ecology for a Vancouver Lake large water body exemption.

Ms. Griffy said that the City currently has only one catch basin that goes to Vancouver Lake.

Mr. McMurry said that there is a lot of potential industrial there.

Mr. Kraft said that City staff must analyze how much the City is actually impacted and must make the argument to Ecology for preexisting conditions of prairie in certain areas.

Ms. Griffy said that the City has a mandate to adopt by August 15 and suggested that looking at the Permit allowance for Exceptions and how that is legally applied is a very important consideration. She said that prairie conditions can be looked at with Ecology, but a basin plan will not happen in the near future.

Mr. Madsen asked what a property owner can do to get prairie conditions.

Mr. Carlson and Ms. Griffy said the City and Ecology would have to work through that.

Mr. Madsen asked about a direct discharge equivalency standard with a capital facilities plan and a fee-in-lieu for developers.

Ms. Griffy said it is a regional facility problem.

Mr. Madsen said Clark County plans to come into compliance globally.

Ms. Griffy said that you must have property to implement and that the property east of I-205 around the Creek is all private. She said that a lot of time and money can be wasted on a plan for property that the owner will not sell.

Mr. Carlson spoke of problems years ago at Clark County with stormwater fees charged in advance of construction of facilities, where the fees did not cover the total costs and the facilities never were constructed. He said the current County model is not what the City is going to follow.

Mr. Madsen asked about the large water body exemption and how one gets there.

Ms. Griffy said that all of downtown can fall within the exemption.

Mr. Swanson said that infiltration is preferred.

Mr. Golemo wondered if the forty percent exemption applied downtown.

Mr. Carlson asked for a recap of the meeting.

Ms. Griffy said that there are alternative provisions within the permit and the ordinances which have impacts to site development. There are productive ways to look at each and understand how the provisions affect a site. Basin planning may not be it. Prairie is reasonable to look at with the General Requirements. There is potential for better defining redevelopment requirements for capacity when draining to a large water body. Finally, consider the potential of the Exceptions and Adjustment section of the Permit and Ordinances.

Mr. Carlson asked the audience for comments. There were none.

Meeting Adjourned 6:58 p.m.