



RESOLUTION 2014-05

**A RESOLUTION OF THE CITY OF LYNNWOOD, WASHINGTON,
APPROVING THE PROPOSED SETTLEMENT OF THE REMAINING
ISSUES IN THE ADMINISTRATIVE APPEAL OF THE 2013-2018
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
(NPDES) PHASE II PERMIT.**

WHEREAS, in September 2012, the City Council authorized the City of Lynnwood to join a coalition of local governments in filing an administrative appeal of the 2013-2018 National Pollutant Discharge Elimination System (NPDES) Phase II Permit with the Washington State Pollution Control Hearings Board (PCHB); and

WHEREAS, in October 2013, the PCHB held a consolidated hearing on appeal issues held in common by both appealing Phase I and Phase II permittees and a ruling is expected on those issues within the month; and

WHEREAS, the PCHB scheduled a hearing on the remaining appeal issues in April 2014; and

WHEREAS, in anticipation of the next hearing, the Coalition along with Washington State Department of Transportation and King County explored settlement opportunities with the Washington State Department of Ecology (WDOE); and

WHEREAS, WDOE has agreed to either issue new guidance documents and make modifications to the 2013-2018 NPDES Phase II Permit language to clarify or amend definitions at issue; and

WHEREAS, the proposed settlement includes clarifications that will: narrow the scope and cost to permit holders; decrease the number of potential locations for water quality violations; and limit the possibility of third-party claims for water quality violations; and

WHEREAS, the proposed settlement will include dismissal of the challenge to the elimination of the one-acre threshold; and

WHEREAS, the City must notify WDOE by January 31, 2014, as to whether it will accept the settlement proposal; and

WHEREAS, the applicable parties desire to resolve all disputes and accept the proposed settlement of the remaining issues in the appeal of the 2013-2018 NPDES Phase II Permit;

NOW, THEREFORE, be it resolved by the City Council of the City of Lynnwood as follows:

Section 1. The Mayor of the City of Lynnwood is authorized to execute a settlement of the remaining issues in the appeal of the 2013-2018 NPDES Phase II Permit including changes to definitions substantially in the form shown on Exhibit A, and dismissal of the challenge to the elimination of the one-acre threshold.

RESOLVED this 27th day of January, 2014.

APPROVED



Nicola Smith, Mayor

ATTEST/AUTHENTICATED:



Lorenzo Hines Jr., Finance Director
City of Lynnwood

EXHIBIT A

Proposed Changes to Definitions for Outfall & Receiving Waters and Addition of Discharge Point Definition As Agreed To by Phase II Coalition/Appellant and Ecology Representatives 12/9/13 With accompanying explanatory notes

1 A. "Outfall" means a point source as defined by 40 CFR 122.2 at the point where a discharge leaves the
2 permittee's MS4 and enters a receiving waterbody or receiving waters. Outfall also includes the
3 permittee's MS4 facilities/BMPs designed to infiltrate stormwater.
4

5 Explanatory notes for "outfall" (to be converted into guidance):

- 6 • "a point source as defined by 40 CFR 122.2" = limits outfalls as "discernible, confined and
7 discrete conveyances"
- 8 • "at the point where" = further modifies "discernible, confined and discrete conveyances" to
9 a discernible, confined and discrete point; excludes stormwater conveyances that have no
10 outlet, such as dispersion BMPs
- 11 • "a discharge" = applies not only to stormwater but also to illicit discharges
- 12 • "leaves the permittee's MS4" = intentionally possessive to a single MS4 permittee, not a
13 group MS4 of permittees; excludes private and unregulated public stormwater systems for
14 the purposes of its use in this permit. It is likely that municipalities will want to identify
15 private or unregulated public outfalls in order to have a comprehensive understanding of
16 drainage within their jurisdiction.
- 17 • "and enters a receiving waterbody or receiving waters." = see definition of receiving
18 waterbody and receiving waters (e.g., surface water and groundwater)
- 19 • "Outfall also includes the permittee's MS4" = intentionally possessive to a single MS4
20 permittee, not a group of MS4 permittees; excludes private and unregulated public
21 stormwater systems for the purposes of its use in this permit. It is likely that municipalities
22 will want to identify private or unregulated public outfalls in order to have a comprehensive
23 understanding of drainage within their jurisdiction.
- 24 • "facilities/BMPs" = broad use of the term "facilities/BMPs" to accommodate a wide range of
25 infiltration facilities including any pre-existing facilities and retrofit facilities; not limited to
26 "stormwater treatment and flow control BMPs/facilities" as defined in the permits.
- 27 • "designed to infiltrate stormwater." = limits applicable infiltration facilities/BMPs to those
28 that are designed to infiltrate; excludes facilities/BMPs that inadvertently infiltrate, such as
29 ditches and swales. For the purposes of this permit, UIC facilities are categorically excluded;
30 however it is likely that municipalities will want to identify UIC facilities as a form of an
31 outfall in order to have a comprehensive understanding of drainage within their jurisdiction.
- 32 • Outfall does not include [the points where] pipes, tunnels, or other constructed
33 conveyances which connect segments of the same receiving waters and are primarily used
34 to convey receiving waters (for example: stream culverts). = excludes in-stream culverts that
35 convey the stream under roadways; excludes the outlets of streams that have been piped
36 under development areas.

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37

38 B. "Receiving waterbody" or "receiving waters" means naturally and/or reconstructed naturally
39 occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and
40 marine waters, to which a discharge occurs via an outfall or via sheet/dispersed flow. Receiving
41 waters also include ground water to which a discharge occurs via facilities/BMPs designed to
42 infiltrate stormwater.

43 Explanatory notes for "receiving waterbody" or "receiving waters" (to be converted into guidance):

- 44 • A receiving water body is not defined by the type of discharge it receives. For example, an
45 illicit discharge of non-stormwater can occur to receiving water. Thus, the definition does
46 not specify what is discharged.
- 47 • It is acceptable to retain the last use of "stormwater" because it is referring to what the
48 facilities/BMPs were designed to do.
- 49 • This definition does not refer to MS4 either, because a receiving waterbody is not defined
50 by who discharges to it.
- 51 • The definition does not indicate that the discharge must be intentional (i.e., to which a
52 discharge is directed) because a receiving waterbody is not defined by an intention to
53 discharge.

54

55 C. "Discharge point" means the location where a discharge leaves the permittee's MS4 to another
56 permittee's MS4 or a private or public stormwater conveyance. "Discharge point" also includes the
57 location where a discharge leaves the permittee's MS4 and discharges to ground, except where such
58 discharge occurs via an outfall.

59 Explanatory notes for "discharge point" (to be converted into guidance):

- 60 • "the location" = avoids circular use of "point" in the term and the definition; avoids
61 confusion with 40 CFR 122.2 point source
- 62 • "where a discharge" = applies not only to stormwater but also to illicit discharges
- 63 • "leaves" = the use of discharge point in the permit is always referring to a permittee's
64 discharge from their MS4 to something else.
- 65 • "the permittee's MS4" = intentionally possessive to a single MS4 permittee, not a group
66 MS4 of permittees
- 67 • "to" = the use of discharge point in the permit is always referring to a permittee's discharge
68 from their MS4 to something else.
- 69 • "another permittee's MS4" = applies to permitted regulated MS4s
- 70 • "or a private" = applies to private stormwater infrastructure

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- 71 • “or public” = applies to non-permitted and/or non-regulated publicly owned or operated
72 stormwater infrastructure
73 • “stormwater conveyance” = broadly used to indicate stormwater infrastructure
74 • “and discharges to ground,” = the discharge need not reach groundwater to be considered a
75 discharge to ground
76 • “except where such discharge occurs via an outfall.” = ties back to revised outfall definition
77 to prevent a situation where something is both an outfall and a discharge point; does not
78 limit discharge points to ground to infiltration facilities/BMPs that are designed to infiltrate;
79 includes facilities/BMPs that inadvertently infiltrate, such as ditches and swales; includes
80 stormwater conveyances that have no outlet, such as dispersion BMPs
81 • The permit does not need to specify “connection point” as it uses the word “connections” in
82 a basic dictionary use.