Item No. SS 2(b)
September 16, 2013

CITY COUNCIL STUDY SESSION ITEM

SUBJECT
New NPDES Western Washington Phase II Municipal Stormwater Permit
(NPDES = National Pollutant Discharge Elimination System)

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POLICY ISSUES
The Washington State Department of Ecology (Ecology) issued a new National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit, effective August 1, 2013. Bellevue, along with over 80 other Western Washington municipalities, is required to comply with the new 5-year (2013-2018) Permit conditions. Provisions of the new permit will require Bellevue to modify existing regulations and practices.

DIRECTION NEEDED FROM COUNCIL
___Action
___Discussion
_X_Information

This briefing provides information on the new Permit. No action is required of Council.

BACKGROUND/ANALYSIS

Overview and Background
The National Pollutant Discharge Elimination System (NPDES) municipal storrmwater permits are federal Clean Water Act permits. The goal of the federal Clean Water Act (CWA) is to protect water quality and restore waters of the nation for "fishable, swimmable" uses. The permit requirements are intended to reduce pollutants discharged from municipal storm drainage systems to help achieve this goal.

NPDES Permit requirements are phased in over the 5-year permit term and apply to functions across municipal organizations. Within Bellevue government, departments take the lead for implementing

permit conditions that apply to their programs and, for permit conditions which apply to multiple department functions, a lead department will manage implementation of the condition through cross-departmental coordination or teams. Overall permit management is provided by the Utilities Department with oversight from a citywide Steering Committee reporting to the City Manager's Office. Enforcement provisions for the CWA permit include fines, imprisonment and 3rd party lawsuits.

Attachment 1 contains further background information on the NPDES permit.

Permit Status

In August 2012, Ecology:

- Extended the existing (2007-2012) Permit to July 31, 2013 with no new permit conditions;
- Issued a new 5-year Permit (2013-2018) effective August 1, 2013; and
- Issued a new 2012 Ecology Stormwater Manual containing significantly revised low impact development (LID) stormwater facility requirements (e.g., rain gardens, bioretention facilities, pervious pavement) for new development and redevelopment projects.

Although a Coalition of Phase II municipalities (including Bellevue) appealed certain conditions in the new Permit, there is no stay on permit conditions. For 2013, Bellevue has continued implementation of the remainder of the one year Permit conditions and began processes to implement the new 2013-2018 NPDES Permit conditions by the permit-specified deadlines. There are no new Permit conditions for 2013. Bellevue remains in compliance with current Permit requirements as documented in the March 2013 submittal of the 6th NPDES Annual Report to Ecology.

New 2013-2018 Permit

The new permit, effective August 1, 2013, retains the first permit's Stormwater Management Program structure and phased implementation approach. It continues and builds upon the first permit's Program requirements by:

1. Increasing permit requirements for the illicit discharge detection and elimination (IDDE) and municipal storm drainage system operation and maintenance (O&M) programs. Specifically, the:
   - Old Permit required field assessing storm drainage outfalls in three waterbodies for illicit discharges per a prescribed methodology, then tracking pollutants back to the source and taking steps with property owners to eliminate sources in a 4-year time period;

     New Permit requires developing a methodology to field assess 40% of the city-owned storm drainage system for illicit discharges, and then tracking pollutants back to the source and taking steps with property owners to eliminate sources in a 4 year, 5 month time period.

     Ecology is expected to issue guidance on implementing this new Permit requirement. If the guidance allows municipalities to utilize existing programs and the outfall approach from the first permit to meet the 40% requirement, then cost and resource impacts will be reduced.

   - Old Permit requires inspecting municipal storm drainage catch basins (over 23,000) once within the 5-year term;

New Permit requires inspecting municipal storm drainage catch basins in 4-years (by August 1, 2017) and, thereafter, inspecting them on a 2-year frequency.

Ecology subsequently issued guidance to clarify options and alternatives to meet the increased catch basin inspection frequency that may help mitigate resource and cost impacts for this new requirement. Utilities' surface water operations and maintenance staff will be evaluating Bellevue's options to comply with the requirement, protect water resources and minimize program resource and cost impacts.

2. Adding a new monitoring requirement;

   - Old Permit required Phase II municipalities to prepare to implement a stormwater monitoring program in the next (new) permit.

   - New Permit adds a 3-part monitoring program requirement and provides permittees with the option of either:
     - Paying to participate in a regional stormwater monitoring program (RSMP) to meet the new requirement (fee option)

     or
     - Conducting an independent monitoring program to meet the new monitoring program requirement (independent option).

     The 3-part monitoring program is intended to provide information on the:
     - Status and trends of water quality in urban and rural small streams and the marine nearshore ("Are our streams and marine shorelines getting better or worse?")
     - Effectiveness of stormwater activities required by the permit, ("Is this activity making stormwater cleaner?")
     - Improving protocols and sharing information about removing sources of pollution ("Is there someone I can ask about solving this type of pollution problem?").

     The regional program fee option will provide better data and cost Bellevue approximately $85,000 annually compared to the approximately $800,000 to $1 million annual cost for the independent program. For this permit requirement, Council approved the 2014 Utilities budget which includes the annual $85,000 funding for the RSMP fee option.

3. Adding two significant new development requirements and project vesting requirements;

   - Old Permit required adoption of the development stormwater standards in the 2005 Ecology Stormwater Manual for Western Washington which included allowing low impact development techniques.

   - New Permit requires adoption of two new low impact development (LID) requirements by December 31, 2016. The intent of the new requirements is that municipalities "shall make low impact development the preferred and commonly used approach to site development."

     - *The first requirement* is to amend codes and standards to require LID stormwater facilities for on-site stormwater management unless infeasible and to do so by adopting the new 2012 Ecology Stormwater Management Manual or an equivalent Phase I

Manual. The 2012 Ecology Manual requires all property owners developing or redeveloping property to do a site assessment and implement certain LID stormwater BMPs unless infeasible. The LID stormwater facilities include rain gardens, bioretention facilities, and pervious pavement.

Permit compliance will require amending three City codes, revising standards, and modifying development services programs and processes and documentation. There will also be post-development impacts for on-going inspection and maintenance of these dispersed new facilities to consider. A multi-department project team lead by Utilities will implement this permit requirement.

- *The second requirement* is to conduct a review and revision process of citywide land use policies, codes and standards with the intent of minimizing impervious surfaces and native vegetation loss. No metric is provided for impervious surfaces or native vegetation and each jurisdiction is given the flexibility of determining what is sufficient to that locale. Ecology requires a good faith effort be conducted that includes business and community members.

  Examples of land use code revisions provided by Ecology to meet this requirement include:
  - Site assessment, pre-application and review process
  - Reduce street lane widths
  - Eliminate curb and gutter requirements
  - Provide setback and height flexibility
  - Impervious surface limits
  - Native vegetation percent area requirements
  - LID stormwater facilities as part of open space/landscaping/rights-of-ways
  - LID design standards (streets, parking lots, driveways, sidewalks)
  - Allowance for clustered housing and efficient roads.

  The first step to implementing this requirement is to conduct an opportunity analysis of existing policies, codes and standards to help define the scope of the review and revision process. After this analysis is completed, the multi-departmental project team will develop a recommended project plan and public and/or stakeholder process for City Council direction. Policies, codes, and standards that Ecology requires municipalities to review include:
  - Comprehensive Plan
  - Subdivision and PUC development codes
  - Critical areas and shoreline management regulations
  - Zoning code
  - Open Space code
  - Fire Code
  - Bulk and dimensional consideration
  - Impervious surface limits
  - Landscaping/native vegetation/street landscaping standards

- Parking
- Design standard and guidelines for building and site design elements
- Street standards.

- *Vesting* - the new Permit also specifies vesting requirements for development projects. The requirements are generally consistent with the City's vesting regulations with the exception of a one-year window for subdivisions.

Next Steps

The first NPDES Annual Report under the new Permit is required to be submitted by March 31, 2014. Ecology has waived submittal of a compliance report for the 2013 transition year which means the first Annual Report under the new Permit will only contain the 2014 Stormwater Management Program Plan (SWMPP). The SWMPP describes the actions the City will take in 2014 to implement the new permit requirements. The City is currently in the process of performing a gap analysis between the old and the new permit conditions and developing a citywide 5-year work plan for the new permit. The 2014 SWMPP will be based on this work plan.

Multi-department project teams have begun work on the two new LID permit requirements and Utilities' staff has begun assessing options to meet the increased program requirements for the illicit discharge detection and elimination (IDDE) and municipal storm drainage O&M programs.

The budgetary impacts of the new Permit are being assessed and will be brought forward through the 2015-2016 budget process.

Staff will keep City Council informed and seek Council direction as the new Permit is implemented.

ALTERNATIVES: N/A

RECOMMENDATION: N/A

ATTACHMENT
Attachment 1: NPDES Permit Background Information.

AVAILABLE IN COUNCIL OFFICE FOR REVIEW
New 2013-2018 NPDES Western Washington Phase II Municipal Stormwater Permit

Attachment 1

Background Information on the NPDES Western Washington Phase II Municipal Stormwater Permit

The National Pollutant Discharge Elimination System (NPDES) municipal stormwater permits are federal Clean Water Act permits. The goal of the federal Clean Water Act (CWA) is to protect water quality and restore waters of the nation for "fishable, swimmable" uses. The permit requirements are intended to reduce pollutants discharged from municipal storm drainage systems to help achieve this goal.

The permit affects local governments and property owners. The CWA created a Phase I permit for large cities and counties[1] and a Phase II permit for medium and small cities and counties[2]. Bellevue is a Phase II permittee. The federal Environmental Protection Agency specified minimum permit requirements and delegated permit authority to state environmental agencies. State agencies can add additional requirements. In Washington, the permit authority is the state Department of Ecology.

In 2007, Ecology issued the first Western Washington Phase II municipal stormwater permit. The permit was issued to over 80 Phase II municipalities, including Bellevue, for a 5-year term, 2007-2012. A Coalition of Phase II municipalities (including Bellevue) appealed certain conditions in the Permit. Ecology modified the permit in 2009 in response to appeal rulings by the Washington State Pollution Control Hearings Board (PCHB).

The Permit requires municipalities to implement a Stormwater Management Program (Program) consisting of over 100 permit-specified "best management practices" (BMPs). The Program is intended to meet the federal compliance standard to protect water quality and reduce the discharge of pollutants to the "maximum extent practicable" (MEP) and meet state AKART (all known, available, and reasonable methods of prevention, control and treatment) waste discharge requirements.

The Program's best management practices are grouped under the following categories:

- Public Education and Outreach;
- Public Involvement and Participation;
- Illicit Discharge Detection and Elimination (IDDE);
- Controlling Runoff from New Development, Redevelopment and Construction Sites; and
- Pollution Prevention and Operations and Maintenance for municipal operations

In addition, the Permit requires:

- Water Quality Monitoring;
- Reporting (e.g., permit compliance documentation); and
- Implementation of waterbody-specific clean-up plans developed by Ecology, if applicable. To date, Ecology has not developed such plans for Bellevue waterbodies.

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[1] Phase I municipalities are those which had 100,000 or more in population in the 1990 census, includes Seattle, Tacoma; King, Snohomish, Pierce, Clark counties and WA Department of Transportation(WSDOT).

[2] Phase II municipalities are those which had between 10,000 and 100,000 in population in the 1990 census.

Attachment 1

Background Information on the NPDES Western Washington Phase II Municipal Stormwater Permit

NPDES Permit requirements are phased in over the 5-year permit term and apply to functions across municipal organizations. Within Bellevue government, departments take the lead for implementing permit conditions that apply to their programs and, for permit conditions which apply to multiple department functions, a lead department will manage implementation of the condition through cross-departmental coordination or teams. Overall permit management is provided by the Utilities Department with oversight from a citywide Steering Committee reporting to the City Manager's Office. Enforcement provisions for the CWA permit include fines, imprisonment and 3rd party lawsuits.