

RESOLUTION R-5030

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ACCEPTING 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 Kirkland 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 has 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 (DOE); and

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

WHEREAS, the City Council finds that the proposed settlement is in the best interest of the City of Kirkland and wishes to accept the proposed settlement of the remaining issues in the appeal of the 2013-2018 NPDES Phase II Permit;

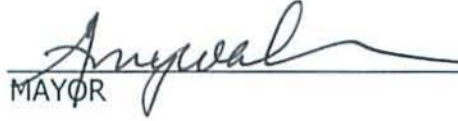
NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager 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 in Exhibit A, and incorporated by this reference.

Passed by majority vote of the Kirkland City Council in open meeting this 21st day of January, 2014.

Signed in authentication thereof this 21st day of January, 2014.

  
MAYOR

Attest:

  
City Clerk

**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**

- A. “Outfall” means a point source as defined by 40 CFR 122.2 at the point where a discharge leaves the permittee’s MS4 and enters a receiving waterbody or receiving waters. Outfall also includes the permittee’s MS4 facilities/BMPs designed to infiltrate stormwater.

Explanatory notes for “outfall” (to be converted into guidance):

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

- B. “Receiving waterbody” or “receiving waters” means naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine

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waters, to which a discharge occurs via an outfall or via sheet/dispersed flow. Receiving waters also include ground water to which a discharge occurs via facilities/BMPs designed to infiltrate stormwater.

Explanatory notes for “receiving waterbody” or “receiving waters” (to be converted into guidance):

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

- C. “Discharge point” means the location where a discharge leaves the permittee’s MS4 to another permittee’s MS4 or a private or public stormwater conveyance. “Discharge point” also includes the location where a discharge leaves the permittee’s MS4 and discharges to ground, except where such discharge occurs via an outfall.

Explanatory notes for “discharge point” (to be converted into guidance):

- “the location” = avoids circular use of “point” in the term and the definition; avoids confusion with 40 CFR 122.2 point source
- “where a discharge” = applies not only to stormwater but also to illicit discharges
- “leaves” = the use of discharge point in the permit is always referring to a permittee’s discharge from their MS4 to something else.
- “the permittee’s MS4” = intentionally possessive to a single MS4 permittee, not a group MS4 of permittees
- “to” = the use of discharge point in the permit is always referring to a permittee’s discharge from their MS4 to something else.
- “another permittee’s MS4” = applies to permitted regulated MS4s
- “or a private” = applies to private stormwater infrastructure
- “or public” = applies to non-permitted and/or non-regulated publicly owned or operated stormwater infrastructure
- “stormwater conveyance” = broadly used to indicate stormwater infrastructure
- “and discharges to ground,” = the discharge need not reach groundwater to be considered a discharge to ground

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- “except where such discharge occurs via an outfall.” = ties back to revised outfall definition to prevent a situation where something is both an outfall and a discharge point; does not limit discharge points to ground to infiltration facilities/BMPs that are designed to infiltrate; includes facilities/BMPs that inadvertently infiltrate, such as ditches and swales; includes stormwater conveyances that have no outlet, such as dispersion BMPs
- The permit does not need to specify “connection point” as it uses the word “connections” in a basic dictionary use.