



ROSEMERE NEIGHBORHOOD ASSOCIATION

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Feb 16, 2006

Governor Chris Gregoire
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Sent Via Fax: 360-753-4110

Re: State Stormwater and Septic Tank Regulations

Governor Gregoire,

The Rosemere Neighborhood Association is a non-profit volunteer organization that has been dedicated to environmental work for the past ten years. Our work has focused heavily on water quality issues including urban contamination from stormwater and failing septic systems in Clark County, Vancouver, and the greater Portland Metropolitan area. In 2003, Governor Locke endorsed RNA's efforts in this arena, and wrote "The Burnt Bridge Creek Basin includes some of the most polluted properties in the Vancouver area. Identification of the sources of contamination, and planning for their cleanup, will involve all interested parties and stakeholders. I commend the Rosemere Neighborhood Association's proactive efforts to address this matter." RNA is proud to serve on technical and advisory boards for Ecology's current TMDL for Burnt Bridge Creek, a study RNA sought for several years.

RNA has worked diligently with state agencies, local officials, non-profit organizations and local residents to identify contaminant sources that have contributed significantly to failed water quality standards and diminished aquifer resources. Part of our work involved petitioning for and achieving federal Sole Source Aquifer designation by the EPA for the Troutdale Aquifer System, a vulnerable aquifer system that is the principal source of drinking water for approximately 99.4% of the people in the designated area that serves most of Clark County. The federal register states "The [Troutdale] aquifer system is vulnerable to contamination because recharge occurs essentially over the entire area, the aquifer is highly permeable, and there are many human activities that have released, or have the potential to release, contaminants to the Aquifers." The EPA has also identified PCB contamination in the lower Columbia River as a national priority with serious public health concerns, as you are aware with the cleanup of the Alcoa Aluminum site at the Port of Vancouver. The EPA has also identified DDT, Mercury, and PBDE at dangerous levels in the river [*Columbia basin toxins 'troubling'; EPA report raises alarm on compounds that pose risks to humans, animals, Columbian, Jan 15, 2009*]. The EPA sites untreated stormwater as a leading contributor of contamination to our lakes, rivers and streams – this will be very important to the future of stormwater management.

Since 2004, RNA has focused heavily on the Phase II NPDES stormwater permit for the city of Vancouver as well as the Stormwater Management Manual for Western Washington ("state manual"). Our work includes efforts to help update Vancouver's municipal stormwater ordinances in order to incorporate improvements in stormwater management as required by the state manual. That process is currently under review by Vancouver City Council with a tentative public hearing for adoption of the new ordinances in early March 2009.

Vancouver's stormwater ordinance adoption is well behind schedule; Vancouver agreed to adopt the state manual regulations for stormwater control in May of 2006, and the agreed adoption deadline for local stormwater ordinances in July 2008 was missed.

Over the past few months, adoption of stormwater ordinances for both Clark County and the City of Vancouver have been prominently discussed and covered by the media, including newspaper articles and several editorials. A few key developments on this subject have prompted this letter to you. First, Clark County passed stormwater ordinances that completely disregard flow control requirements as outlined in the state manual [*County dares state rebuke over building rules*, Columbian, Jan 13, 2009; and [*City council members slam stormwater plan*, Columbian, Jan 5, 2009]. Instead of the required pre-European flow control standard, Clark County arbitrarily adopted a flow control standard based on current development conditions. Ecology staff has stated that Clark County's action in this matter is unacceptable, but there has not yet been an indication on what action the state will take in response. Both Clark County Commissioners and Vancouver City Councilmembers have described the state's flow control standard as "stupid," "unreasonable," "ridiculous", "unrealistic," "unachievable," "unfair", "extreme," and that it does not "pass the sniff test." In spite of these grumblings, the City of Vancouver (as it is now seen) has decided that it cannot ignore state standards as Clark County has done, and has admitted that it will have to abide by the requirements set forth in the state manual. Vancouver cites third party lawsuits and state fines as reasons for not mimicking Clark County's example [Vancouver City Council Stormwater Workshop, CVTV coverage, Jan 26, 2009].

Friction over the flow control standard stems from opposition by the building and development industry who seem to have just learned about the updated stormwater regulations in December 2008. Local contractors make the assertion that stormwater regulations have "stopped development in Clark County" [*Business owners tell woes to governor*, Columbian, Jan 27, 2009]. This is a false claim given that Vancouver hasn't even passed its revised stormwater ordinances yet, and Clark County's ordinances do not enforce current state regulations. Development slowed in Clark County as a result of the poor economy, bad loans, increased materials costs, and inflated land prices, not because of stormwater management. In fact, at a Vancouver City Council Workshop on stormwater, January 26, 2009, Vancouver reported how all of the 2008 projects would have fared under the new state requirements: 1) of the 78 developments in Vancouver in 2008, 58 projects infiltrated without the need of flow control; 2) 9 projects incorporated stormwater treatment that discharged to surface water; 3) only 3 projects would have been impacted by new flow control requirements; 4) The vast majority of all projects showed there would have been no impact from new regulations. Furthermore, the city of Vancouver estimates that 57% of the city would be exempt from the flow control standard under the large water body exemption (Columbia River and Vancouver Lake), that 16% would be exempt under infiltration exemptions, and additional properties may be exempt under hardship variances. Given that there are substantial exemptions already planned to avoid flow control, it appears that there are various ways for development to continue without hindrance from the flow control standard. For those properties that are impacted by the new flow control standards, the size of retention ponds will be increased, and builders exaggerate the net cost of these requirements.

The building industry has also seized upon a controversial University of Washington Study by Theo Eicher, as reported by the Seattle Times one year ago [*UW study: Rules add \$200,000 to Seattle house price*, Feb 14, 2008] where skyrocketing housing prices are blamed on land use regulations such as stormwater control. This study intimates that the state's intervention causes tremendous delays in the permit process and categorically adds \$200,000 in costs to a new home, a 60 – 88% increase in cost driven by growth management regulations. This hypothesis flatly misrepresents the actual costs associated with regulations, as shown by a study prepared by the American Planning Association (APA), Washington Chapter, in August 2008 [*Observations on the Costs of Land Use Regulations and Growth Management: Critical Perspectives on a UW Study*]. The APA analyses shows that "land use regulations are unlikely to contribute more than 17% of the final price of a typical home, and the impact in many communities may be much less," and that the UW study has "grossly overestimated the impact of regulations by an order of magnitude of 300% or more." Given that many land use

regulations were in place in 1989, it is far fetched for the building industry to single out newly designed stormwater regulations as the culprit for soaring building costs.

In spite of the fact that factual analyses has debunked Eicher's UW study, local representatives of the building and development industry still insist that stormwater regulations have destroyed the real estate market in Clark County. In an editorial last December, Jim Keithley, representing the Clark County Association of Realtors as the government affairs director, wrote: "In Seattle, comparable regulatory requirements add \$200,000 to the price of a new home. In Clark County that figure is \$56,000; the new requirements would add \$60,000. How much is too much to pay for extreme environmental policies?" The position that stormwater regulations are "extreme" represents the kind of propaganda and fear tactics employed by the building industry as an attempt to avoid responsible development and best management practices.

A consortium of municipalities (including the city of Vancouver) appealed various aspects of the state manual, including flow control requirements, to the state Pollution Control Hearings Board, but the appeals were denied and the Board upheld the standards established in the state manual. Misinformation has been presented at Vancouver workshops that portray the state's flow control standards as a representation of returning to "Lewis and Clark" conditions. This interpretation is erroneous. The flow control standard requires development of a model that limits the durations of high flow events to those that existed in predevelopment conditions. Just high flows are required to meet the predevelopment standard, not all flows. The Pollution Control Hearings Board recognized this fact, observing that the flow control standard had an impact on only 1% of the rain events over one year's time. The Pollution Control Hearings Board also recognized that flow control alone is inadequate to protect water resources and did not represent AKART, meaning that state standards would have to be improved even beyond what the 2005 state manual requires.

Nearly all surface waterbodies in the state of Washington fail water quality standards, and Ecology is charged with the responsibility to identify and rectify the sources of contamination in order to achieve higher water quality standards. The state will not be able to succeed in this important task if municipalities across the state are allowed to revolt against stormwater standards. Furthermore, rain events like the recent storm that submerged Interstate 5 for several days (causing a loss of millions of dollars per day) point to the serious need for stormwater management and flood control in order to minimize the adverse impacts of high flow events.

The Washington Association of Cities does not list fighting flow control standards in state legislature as a priority, but the Building Industry Association intends to submit legislation by Feb 25, 2009 to roll back stormwater regulations. The city of Vancouver will be sending its lobbyist to Olympia to work on decreasing flow control standards.

Similarly, legislation has been introduced under House Bill 1661 [*Reducing the authority of the state board of health with regard to small-scale sewage systems*] to remove state oversight on private septic systems. Without state standards, local jurisdictions would have the authority to revoke existing operations and maintenance requirements for on-site septic systems, and local authorities would be faced with public challenges to overturn local codes without the presence of state regulations. In short, this bill would allow failing septic systems to continue to pollute ground and surface water and spread disease. In the *Columbian* article "*Mielke discusses his goals*" [Jan 5, 2009] a newly elected county commissioner stated that Clark County should "stop requiring people with overflowing septic systems to fix them...at least until they begin to disturb the neighbors." Clearly, there is an agenda in Southwest Washington to avoid state regulation and allow property rights and development to take precedence over protections of our natural resources. This is the kind of thinking that led to failed water quality standards in the first place.

A major component of stormwater pollution may be septic tank infiltration through perforated stormwater pipes. The City of Vancouver recognizes that septic tank discharge can be absorbed into municipal storm sewer systems. Vancouver added language to its draft stormwater ordinances to define septic discharge as an "allowable discharge" via storm sewers, and this would clearly violate water quality standards. The addition of

this kind of allowable discharge was an attempt to avoid responsibility in helping to solve the problem of failing septic tanks, a problem that has plagued Vancouver watersheds for more than 30 years.

There were 62 septic tank failures discovered this past year in Clark County with surfacing sewage, almost all of them in the city of Vancouver. Of those that failed, several septic systems were at least 50 years old -- septic tanks only last about 25 years. Out of the 7441 inspected septic systems this past year, about 1/3 of them had problems that required repair. There are still cesspools operating in Clark County, and they are illegal. A Washington State University Study last year (Dr. Bollens) indicated that one of the major sources of nutrients causing toxic blue-green algal blooms in Vancouver Lake comes from failing septic tanks. The state is contributing funds to find ways to improve the health of Vancouver Lake. Most notably, there are approximately 5000 properties in the Burnt Bridge Creek basin where neither Clark County nor the City of Vancouver know if these properties are connected to municipal sewer or if they rely upon septic systems. Many of these properties may not be paying sewer fees or inspecting their septic systems as required. As you know, contamination from failed septic systems has been a serious problem in Hood Canal for many years, costing the state millions of dollars in reparations.

The opponents of improved stormwater management have not offered constructive means to improve water quality for our ill-fated streams, lakes and rivers. Nor have they offered plans to conserve dwindling aquifer resources. The need for stormwater control and septic tank regulations is seemingly overlooked by special interests that have attempted to overturn state and local policy on these subjects. It is time for all parties to recognize that our water resources are vulnerable and are in need of protection before it becomes impossible to reverse the increasing levels of waterborne contamination and decreasing water column levels. The public's health is at risk without appropriate state oversight.

The Rosemere Neighborhood Association respectfully requests that you take action to uphold Ecology's stormwater manual, refrain from rolling back stormwater regulations, and prevent the state from losing its authority to regulate private septic systems.

Sincerely,

Dvija Michael Bertish
Executive Board
Rosemere Neighborhood Association