

# Memorandum



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**To:** City of Sedro-Woolley  
**From:** Joe Simmler, Ph.D., Bill Rice  
**Copies:** File  
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**Subject:** Stormwater Utility Questions and Answers  
**Project No.:** 30716

The City of Sedro-Woolley (City) has formed a stormwater utility to fund and carry out a stormwater management program aimed at protecting the quality of surface water and groundwater and to comply with state and federal laws. A comprehensive stormwater program is required of the City by recent changes in the federal Clean Water Act. The boundary of the City's stormwater utility will include the entire incorporated area of the City. A stormwater utility would collect stormwater fees from subject properties.

A list of Questions and Answers is presented below to help answer inquiries from businesses, residents, and other property owners.

## **I) Do business owners that have already set aside a grassy swale or detention pond get any credit (reduced stormwater fee)?**

The City is not considering giving a stormwater fee credit to businesses with on-site stormwater treatment facilities.

Grassy swales are put in place to treat stormwater before it is discharged to local streams or seeps into groundwater. Detention systems are used to protect streams from the excess runoff created by impervious surfaces. These systems need to be kept in good working condition, which is the owner's responsibility. However, most of our stormwater program costs are for management activities needed for regulatory compliance. These activities are aimed at reducing and preventing the degradation of surface water and groundwater from cumulative impacts of polluted urban runoff and the unintended harmful effects of everyday actions of citizens, businesses, and the City itself. Our program costs are not significantly affected by how runoff is managed at a particular site. As such, while treating runoff does help to control the cumulative impacts of stormwater pollution, it does not significantly reduce our long-term program needs

or costs; therefore, credits or waivers to one property owner simply shifts the financial burden to others by increasing their fees.

In addition, a large part of our program costs are for pollution prevention activities along public roads and around public facilities. Because all citizens utilize roads and are served by public facilities, they should share in the cost of their operation. The City's management activities do benefit property owners and is a service provided to them even though they may retain or treat their stormwater on site.

Under the new regulations, the City must require stormwater treatment and/or detention on most new development. As our population increases and urbanization continues, the need for our programs will also grow. It would not be feasible or fair to totally waive future development from utility fees simply because they meet new stormwater treatment standards.

## **2) What is the money raised by stormwater fees going to be used for?**

The money from stormwater fees will be used to pay for the cost the City incurs in operating the municipal storm drain system in compliance with state and federal laws and consistent with established local priorities. Some of the things that stormwater fees will be used for include:

- **Educational activities** such as: working with school children on stream clean-up activities; sending information to businesses about how to properly dispose of chemicals and how to ensure chemicals don't get washed into local streams or groundwater; and holding training sessions for builders about how to keep dirt from being washed into streams during construction projects.
- **Water quality protection and clean-up activities** such as: enforcement of water quality codes; finding and eliminating illegal polluted discharges into storm drains and waterways, such as sewage or industrial wastewater and chemicals; constructing treatment facilities on city drains; looking at City practices like road maintenance, grounds keeping, and park maintenance, and making changes to ensure that water quality impacts are minimized; and increasing the frequency of street sweeping. Ensuring that ongoing development takes care of their stormwater properly, by including stormwater treatment on their projects will likely be paid for by development permit fees rather than stormwater utility fees.
- **Storm drain construction, operation, and maintenance costs** such as: repairing broken pipes; constructing new drains; cleaning dirt and debris out of storm drains; constructing projects to solve drainage capacity problems; and properly disposing of storm drain wastes.
- **Administrative and general activities** such as: preparing stormwater program budgets and tracking expenditures; developing and/or updating City stormwater ordinances and holding public hearings; obtaining legal and engineering services; paying overhead costs like office space and computers; keeping records; and preparing regulatory compliance reports.

### **3) How does this stormwater program benefit me?**

Operating a municipal storm drain system prevents flooding of private property, ensures that drainage from future growth does not impact existing property owners, provides for the safe use of City roads, and, when done right, protects environmental resources by controlling pollution.

Clean water benefits all citizens by ensuring that we have safe and healthy streams and rivers that can be used for swimming, drinking, and fish and wildlife habitat. Protecting our groundwater protects drinking water wells, avoiding the need for costly treatment or deeper wells. Removing illegal polluted discharges into storm drains prevents public contact with hazardous substances like raw sewage, thereby lowering the risk of contracting diseases. Cleaning garbage and chemicals out of our waterways results in more and higher quality recreational opportunities for all citizens. Educational activities benefit us all by helping ensure that our neighbors and businesses are not dumping chemicals down storm drains. Requiring proper stormwater standards on new development ensures that those who already live along the streams and rivers do not experience increased flooding problems or see reductions in their water quality.

### **4) Why does the City have to implement a stormwater program and fees? Aren't there any alternatives?**

While we know that our waterways are being impacted by stormwater runoff and illicit discharges, the main reason for enhancing our program is the fact that the City is faced with its own new stormwater requirements. These requirements make it impossible for the City to continue paying for the stormwater program using general funds. The main regulatory law the City faces is:

- **Federal Clean Water Act**—the recently adopted Phase II of the National Pollutant Discharge Elimination System (NPDES II) requires that the City be covered under and comply with a Federal/State stormwater permit in order to legally discharge stormwater into local waterways. The City has been under the NPDES II Permit since February 2007. In order to comply with the conditions of the permit, we must implement an array of stormwater management activities falling into the categories of: (1) public education & outreach; (2) public involvement and participation; (3) finding and eliminating illegal polluted discharges; (4) controlling runoff from new development, redevelopment, and construction sites; (5) pollution prevention and good housekeeping for City operations; and (6) keeping records and preparing compliance reports. Phase I of the NPDES Stormwater regulations required that large population centers like Seattle and King County implement similar programs (starting in 1991). Phase II extends these requirements to our area and many others.

Another law that is related to stormwater management is:

- **Federal Endangered Species Act (ESA)**—ESA requires that we do no harm to fish species listed as threatened within our waterways. Ensuring that we do no harm requires us to consider and minimize the impacts that stormwater runoff can have on these species. Implementing the activities described above on a City-wide basis addresses most ESA concerns, minimizes our ESA liability, and helps protect threatened fish species.

The only alternative to implementing these programs involves the City being out of compliance with the federal Clean Water Act and state Water Pollution Control Act. This would result in costly fines, penalties, third party lawsuits, and loss of current state and federal funds for many other City operations. Since the regulations legally apply to the City, failure to move towards compliance will ultimately result in a court order to do so.

New funds are required to carry out these new stormwater activities; therefore, possible revenue sources were investigated. It is getting more and more difficult to fund current governmental services using **General Fund** tax revenues, let alone pay for additional stormwater requirements; therefore, General Fund revenue is not an option to fund ongoing stormwater programs.

**Existing utilities** that provide water, sewer, and electric services cannot be used to fund stormwater programs (rate increases would be needed even if it were legal). **Federal and state grants** will be sought to help carry out programs but cannot provide an ongoing source of revenue and cannot be counted on for long-term funding needs. Therefore, the formation of a dedicated stormwater utility was investigated and recommended by City staff and our stormwater Consultant. A stormwater utility will implement service charges that are paid by property owners with the revenue being used solely for our stormwater program.

## **5) I've heard that others are seeking a waiver from stormwater laws; why can't the City get a waiver from NPDES?**

The NPDES permit is required if the City: (1) meets population density criteria; (2) operates a public storm sewer serving a population of at least 1,000 people; and (3) discharges storm drainage into surface waters or wetlands. The City meets these criteria and therefore is currently under the NPDES II Permit for Western Washington (effective February 2007).

## **6) Why isn't the stormwater utility being voted on by the people?**

New taxes require a vote of the people. A stormwater utility fee is not a tax; it is a charge for services rendered. We recognize that it may be difficult to understand why the City now wants to charge property owners for services that are normally hidden (nobody thinks about storm drains when they are working properly). The City has been paying for the existing stormwater program using General Fund tax revenue, but due to increasing costs, it cannot continue to do so.

Regulatory requirements and state law allow a stormwater utility to be implemented by the City Council without a vote of the people because it is legitimate to put stormwater on the same plane as water and sewer where customers pay for services received. It does not make sense for customers to vote on whether or not they want to pay for the utility services they receive. However, the funds raised must go solely for the purposes of the utility—in this case, stormwater system operation and management activities.

To withstand a legal challenge, a couple things must be assured: (1) stormwater utility fees must be tied to the cost to comply with regulations, provide stormwater services, and construct stormwater projects (cost of service); and (2) fees charged to a property owner need to be related to the stormwater burden imposed by their property and the benefits and services received by their property (impervious surface and land use based fees may not be perfect, but they are reasonable ways to distribute costs and have been upheld in legal challenges). As publicly elected officials, City Councils are empowered to make utility funding and budgeting decisions, and are responsible for doing so.

## **7) What kind of technical help is available for small developments?**

Technical assistance is available from City Public Works staff as well as the State Department of Ecology. Assistance is available locally to help understand and address stormwater management requirements. This includes what types of Best Management Practices (BMPs) can be used for preventing erosion during construction and for treating or detaining stormwater over the longer term. Most small residential developments will be exempt from many stormwater requirements that large developments must comply with. The City will provide stormwater design standards for use by developers and engineers. In the meantime, we ask engineers and developers to refer to the Stormwater Management Manual for Western Washington available from the WA State Department of Ecology.

## **8) What about people on fixed incomes like senior citizens?**

We are attempting to keep fees at a low enough level so they are not an undue burden, even for low-income households. However, to be consistent with our other utilities, we will offer reduced fees to low-income citizens if they own and occupy a single-family residence and also qualify as an “eligible head of household”.

## **9) What stormwater plan review or development permit fees will be charged?**

Stormwater development permit fees ensure that the work done by City staff to review and inspect a particular development is paid by that particular property owner rather than being subsidized by other utility customers. While this revenue is important, it is only for development

review purposes and does not reduce the funding needed for other stormwater management functions (O&M, projects, good housekeeping, etc.).

As we implement our stormwater program we will have to increase our effort for stormwater plan review and construction site inspection activities in order to comply with NPDES. This will require additional City staff time and some equipment expenses. We have not estimated the size of future development permit fees; however, we don't expect the revised development permit fees to be unreasonable or significantly greater than the existing fees.

### **I 0)What about property that already has an NPDES Industrial Stormwater Permit, why should they pay again?**

Industrial Stormwater Permits are required for certain industries that carry out activities and use materials that have a higher potential for polluted runoff than other commercial or industrial activities. Having an Industrial Stormwater Permit ensures that the runoff from the site is properly treated before discharging into the City's system, and includes extensive management programs. Although the City recognizes this effort, we are currently not offering a stormwater fee credit for holders of valid NPDES Industrial Stormwater Permits. Further, a complete waiver from fees is not recommended since the on-site permit does not significantly reduce the need or costs of the City's stormwater management program, much of which still serves the property owner in one way or another.

### **I 1)Why should I pay if all my stormwater stays on my yard or in my parking lot?**

Stormwater pollution comes from many sources—it may be discharged into the public storm drain when rain water runs off private property, it may be deposited on the roadway by a property owner's car or business traffic, it may be deposited on a sidewalk or roadway as a property owner sprays weeds or fertilizer, or it may flow into the public storm drain as a property owner washes their car in the driveway.

In a climate like ours, most properties with grassy areas will retain rainfall from frequent and smaller storms on-site; however, they still discharge to the public storm drain during larger storms (typical wet season events) or when certain conditions exist (e.g., saturated soils and occasionally frozen ground, rain on snow, rapid snow melt, etc.).

The majority of the costs for our program are for regulatory compliance and public storm drain operation and management activities. The purpose of NPDES is to control stormwater pollution discharged from the City storm drain into surface water; however, the City is also concerned about the potential for polluted stormwater to contaminate groundwater. Keeping most stormwater on-site does not eliminate other pathways for pollution to enter the storm drain;

therefore, the property owner still contributes to stormwater pollution and is served by the utility. In addition, the property owner receives services as they or their customers utilize public roads where safe drainage systems are operated and maintained.

While keeping some runoff on site does help to prevent cumulative impacts of excess stormwater, it does not significantly reduce the City's program needs or cost; therefore, a complete waiver is not possible and would simply shift the burden to other property owners.

**I2)How much extra stuff is in this cost estimate that is just nice to do, but not required?**

The NPDES II Permit for Western Washington contains a lot of specificity about what is required and by when. Therefore, we clearly know what we must do and on what schedule. We have assumed that some existing City staff and resources will be used to help comply, and that compliance efforts will be successful in a very efficient manner. We have defined the minimal program to achieve compliance, which is why our costs are far lower than other areas with established regulatory driven stormwater programs. The City is currently concerned mainly with NPDES compliance and there is no "extra stuff" included. Down the road it may make sense to integrate stormwater management with other related efforts such as salmon recovery and watershed plan implementation, but we'll need the public's input on those things before making a decision.

**I3)Why not wait to collect fees until later?**

The City established a storm and surface water utility in 1999, but did not collect utility fees or establish a dedicated funding mechanism to begin development of an effective stormwater management program. Since the NPDES II Permit went in to effect in February 2007, the City now needs a dedicated funding mechanism to begin compliance with the permit requirements. Non-compliance with NPDES is not a situation the City wants to be in, so we need to secure the resources and move towards compliance as soon as possible. Accomplishing the full array of things that NPDES requires us to do can be done, but it will be a real challenge and we need to begin quickly in order to make the deadlines and avoid liability and risk of third party lawsuits.

**I4)Is money going to get siphoned off to go to non-stormwater activities?**

By law, stormwater utility fees cannot be used for non-stormwater activities. Like other utilities, the City will establish clear work plans and budgets. The budget will be available for scrutiny and will be adopted in an open setting just like existing budgets.

**15) Why are you collecting money for water, wastewater, and now stormwater? Isn't it all the same thing?**

No, these are not the same thing. “Water” refers to operation of the drinking water system, including treatment, supply systems, and regulatory compliance (Safe Drinking Water Act). “Wastewater” refers to the domestic sewer system, including sewage collection system, wastewater treatment plant operation, and regulatory compliance (Clean Water Act/State Water Pollution Control Act, the WWTP has an NPDES Municipal Wastewater Permit). “Stormwater” refers to the operation of the storm drain system to convey and dispose of rainwater or snowmelt runoff, including the runoff collection, conveyance, and outfall system (sometimes including regional treatment and/or detention systems). Stormwater is beginning to be regulated more like wastewater, which is why the City is now under an NPDES Municipal Stormwater Permit.

**16) You have determined how much I pay based on how much pervious and/or impervious surface is on my property. You then say that many costs are for regional management programs and not because of individual site runoff. Aren't these two statements incompatible?**

No. We need to keep in mind that any basis used for stormwater charges will not perfectly address the wide array of situations that exist on the ground (just like a wastewater fee basis does not exactly fit everyone's wastewater situation). We want to be as fair as possible, but a more complex method would increase implementation and administration costs, which would be passed on to customers. We need to use a basis that is reasonable and fair. We have included provisions for non-residential customers (Class 3 – Commercial and Industrial and Class 4 – Public-Use) to choose from one of two billing calculation methodologies – either one based on the total size of the parcel (default methodology) or one that uses only the impervious surface area of the parcel or parcels. Customers will have the ability to have their storm drainage fees recalculated and adjusted based on better information they bring to us.

The amount of stormwater from a property that drains to surface water or groundwater is directly related to the amount of hard surface on a site. Even though a portion of the fee is for regional management programs that are required by stormwater regulations, the amount of hard surface is a fair way to determine fees. The regional management activities will provide services of one type or another to all property owners—the City will not differentiate a business that retains some stormwater on-site from a business that does not when implementing our program; good stormwater management practices are applicable to both.

In addition, the amount of impervious surface correlates well with other factors that influence the costs of our program such as: (1) generation of traffic, which is a large cause of stormwater



pollution in City storm drains; (2) on-site activities that can have a greater affect on stormwater quality (food processing, trucking debris, chemical storage/use, fuel spills, etc.); and (3) industrial sites will be a focus of educational activities.

**I7)We heard that you were waiving some types of properties or offering credits. How can this be fair to the rest of us?**

We are sensitive to the fact that as one group receives a fee credit or waiver it simply shifts costs to other groups, raising their fees. In addition, we cannot arbitrarily waive fees or offer credits, there has to be a sound justification for doing so. Therefore, we have limited the number of discounts and waivers for consideration. A discount for low-income citizens was discussed above, others are described below:

- We have recommended that vacant undeveloped parcels be waived from paying fees because they tend to generate little or no traffic and have no land use on them that contributes to water quality problems or requires public education. Unless otherwise known, vacant undeveloped properties are assumed to be in a natural or semi-natural state.
- Properties located within the Brickyard Creek Subflood Control Zone District (District) will receive a discount in their storm drainage fees. The discount will represent an offset in the amount of tax paid to the District against the stormwater utility rate established by the City for a particular customer class. The District is one of several subflood districts within the Skagit County Flood Control Zone District. As specified under state law, these districts can undertake, operate, or maintain flood control projects or stormwater control projects that are of special benefit to specified areas of the County. These activities are similar to the types of activities that will be performed by the City as part of its stormwater management program. Thus, it does not make sense to double bill customers that are within both the stormwater utility service area and the subflood district for similar or related type activities.
- We have recommended that City owned roads be waived because the City Public Works Department is already paying large amounts for activities like street sweeping and drainage system operation and maintenance and will continue to do so for the time being. State roads cannot be charged unless City roads are.
- A credit or waiver may be offered to public and private K – 12 schools that contribute to stormwater and surface water educational efforts in cooperation with the City. However, the amount of any credit would be made contingent upon the inclusion of surface water education and outreach materials on site and in school activities and would be subject to review and approval by the City.
- We have recommended waiving publicly owned parks since: (1) they have low overall impervious surface; (2) will have to review their practices and implement pollution control methods; and (3) offer environmental education opportunities. However, park waivers will be contingent upon review and approval by the Public Works Director, and they will need to assist in stormwater educational activities.