

## John Carpita

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**From:** Mark Relph [mrelph@shorelinewa.gov]  
**Sent:** Thursday, July 02, 2009 9:47 AM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

John: No doubt you heard from others but with the storm water regulations being Federal law (& administered by DOE for our State) makes noncompliance ultimately subject to Federal penalties; I believe the financial penalty is up to \$25,000 per day. I would also assume that other Federal and State grants would be in jeopardy. Those are big issues I see as a downside of noncompliance . . . .,

Mark J. Relph, P.E.  
Public Works Director  
City of Shoreline, WA  
17500 Midvale Avenue, N  
Shoreline, WA 98133-0780  
(206) 801-2401 (o)  
(206) 546-0780 (f)

[www.shorelinewa.gov](http://www.shorelinewa.gov)

-----Original Message-----

**From:** John Carpita [mailto:jcarpita@mrsc.org]  
**Sent:** Wednesday, July 01, 2009 8:57 AM  
**Subject:** Phase II Stormwater Regulations

From a smaller eastern Washington jurisdiction:

I'm having difficulty explaining to our governing body and the public that we don't have any choice in whether we do or don't enact the Phase II Stormwater Regulations requirements from DOE. Are there any jurisdictions out there that have thrown down the gauntlet and refused? What were the repercussions?

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But seriously, folks. Can you share your experiences with reluctant governing bodies and how you worked with them to comply with the regulations? Or perhaps some of you may have some familiarity with DOE enforcement if you haven't yet complied.

Please call or email me if you have any questions or need further information.

John W. Carpita, P.E.  
Public Works Consultant  
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[jcarpita@mrsc.org](mailto:jcarpita@mrsc.org)  
[www.mrsc.org](http://www.mrsc.org)

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**From:** John Van Lund [johnvl@sjcpublicworks.org]  
**Sent:** Thursday, July 02, 2009 8:25 AM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

John:

There is no choice but to comply with DOE regulations.

...unless of course you like dealing with lots of lawyers and other watchdog groups.

One citizen in particular bragged that they "were the eyes and ears of DOE."

Don't even think about it.

John

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**Sent:** Wednesday, July 01, 2009 8:57 AM  
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**From:** Bob Alberts [ALBERTSB@pasco-wa.gov]  
**Sent:** Wednesday, July 01, 2009 2:33 PM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

John:

It is my understanding that if you don't comply you are not protected from ligation under an umbrella permit and you would have to apply for an individual permit. You may have to bear the costs associated with going through the permit process for the individual permit.

Bob Alberts

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**From:** John Carpita [mailto:jcarpita@mrsc.org]  
**Sent:** Wednesday, July 01, 2009 8:57 AM  
**Subject:** Phase II Stormwater Regulations

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## John Carpita

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**From:** Carlson, Brian [Brian.Carlson@ci.vancouver.wa.us]  
**Sent:** Wednesday, July 01, 2009 1:10 PM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations  
**Attachments:** 3453\_001.pdf; 3454\_001.pdf

Hi John

As someone who has personally had to endure three third party citizen lawsuits (two with Clark County and one with City of Vancouver), my advice to anyone is that you do not want to find yourself on the receiving end of one of these unless you enjoy spending (aka wasting) countless hours of staff time and attorney's fees on the matter. And we are talking about into the six figures here not some minor piddly amount. And it ends up even being worse if you know that you are not in compliance with your permit, that is, it is a black and white issue. Just because you do not like it or you disagree with it or think it is not a reasonable regulation gives you no cover. I'd suggest that they talk to their city attorney or another attorney well versed in the matter.

Clark County has received a notice of violation from Ecology (see attached) for basically not having adopted the flow control provisions or an alternative that has been determined to be equivalent. Please note that Clark County is currently working through a process with Ecology that they hope will gain approval by Ecology. In the meantime, the County has received a notice of intent to sue by a third party since they are currently non-compliant.

Yes while Ecology can make your life difficult, it is my opinion the greatest exposure (and a real one at that) is from third party lawsuits. I've also attached an excerpt on that which should be required reading for anyone considering ignoring compliance with their permit that has never had the pleasure of enduring a third party lawsuit. (***John please note this attachment is copyrighted so for further distribution you should get permission***). The last one I dealt with cost the City of Vancouver into the mid six figures to defend itself against the fact that Ecology was late in issuing the Phase 2 permit (we won in the lower courts on that and reached a settlement agreement prior to going into appeals court although we were confident we would win there too we decided we had already spent enough on attorney's fees already).

I would also like to point out that while Ecology pushed back the adoption and effective date of local stormwater ordinances dealing with runoff from new development, redevelopment and construction sites from August 16, 2009, to February 16, 2010, they did not change the adoption and effective date of August 16, 2009, of ordinance changes required to prohibit illicit discharges. So if one hasn't dealt with those provisions yet they are running out of time.

Vancouver has recently adopted an ordinance (June 15, 2009) that we believe fully complies with the permit requirements. And it was not as easy go. And some of the Ecology requirements (particularly as related to flow control) we had and still have some heartburn over their reasonableness as to benefit versus cost.

<http://www.cityofvancouver.us/waterallaround.asp?menuid=10463&submenuID=20299&itemID=59279>

Brian

### ***Brian K. Carlson***

Public Works Director  
City of Vancouver  
PO Box 1995  
Vancouver WA 98668-1995

direct line: (360) 487-7131

reception: (360) 487-7130

fax: (360) 487-7139

e-mail: [brian.carlson@ci.vancouver.wa.us](mailto:brian.carlson@ci.vancouver.wa.us)

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**Sent:** Wednesday, July 01, 2009 8:57 AM  
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**From:** Donald Gatchalian [donald.gatchalian@co.yakima.wa.us]  
**Sent:** Wednesday, July 01, 2009 12:14 PM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

John,

The only jurisdiction that I am aware of that did not abide by NPDES Phase I was Clark County in Washington State. Ecology and environmental groups sued and won. I will not advise any municipality to do the same.

I am not aware of any municipality in Washington State that did not comply with Phase II. You can ask Ecology for details.

Yakima County failed to pass the stormwater utility in 2004 because the public thought it was staff driven and not necessary. It finally passed in 2006 when the elected officials took the lead. Therefore, you need your elected officials to take the lead. You can only accomplish this if they are informed and aware of repercussions for failure to comply. Get your legal counsel to help convince your elected officials.

Don

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**From:** Timothy Heydon [heydon@ci.snohomish.wa.us]  
**Sent:** Wednesday, July 01, 2009 9:58 AM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

If they do not comply, they are opening up their City for citizen groups such as Puget Soundkeeper Alliance to take them to court. This is a very expensive and time consuming process. The City of Snohomish had this occur to us on wastewater issues, but the same can occur for stormwater.

Tim Heydon  
Public Works Director  
City of Snohomish

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**From:** John Carpita [mailto:jcarpita@mrsc.org]  
**Sent:** Wednesday, July 01, 2009 8:57 AM  
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**From:** Dennis Dowdy [ddowdy@auburnwa.gov]  
**Sent:** Wednesday, July 01, 2009 9:47 AM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

John  
I think the only relevant big stick that the state has is the governor's bully one. When Chelan County refused to abide by a recent rulling ( I do not recall exactly what the issue was) Gov Locke barred them from all state grants until they consented.

*Dennis* |

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## John Carpita

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**From:** Steven Leniszewski [steven.leniszewski@duvallwa.gov]  
**Sent:** Wednesday, July 01, 2009 9:38 AM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

John,  
We struggled a little with previous administration but aside from it being a type of unfunded mandate we're plugging away at it just fine. The \$75k from DOE helped us set up our program in full but that's gone and now we absorb the costs for the program. It's a good thing so we're moving ahead with it.

Steve Leniszewski, PE  
*Public Works Director*  
City of Duvall  
425-788-3434x 225

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## John Carpita

---

**From:** Rogalsky, Pete [PRogalsky@CI.RICHLAND.WA.US]  
**Sent:** Wednesday, July 01, 2009 9:08 AM  
**To:** John Carpita  
**Subject:** RE: Phase II Stormwater Regulations

John,

Richland has completed first reading (for us an ordinance takes two readings before Council) on the new regs. First reading passed 4-3 after a long discussion about the possibility and consequences of defying the federal and state mandate. My explanation of consequences is that the local jurisdiction would be subject to Ecology enforcement and would lose the permit coverage against a legal challenge from a non-government group or individual. Second reading is scheduled for next Tuesday. If the vote goes the other way I guess Richland will be set up as a guineau pig for the repercussions. I can sympathize with the jurisdiction.

### ***Pete Rogalsky, P.E.***

*Public Works Director*

*City of Richland*

*P.O. Box 190, MS #26*

*505 Swift Blvd.*

*Richland, WA 99352*

*(509) 942-7558*

*(509) 942-7468 - fax*

[\*progalsky@ci.richland.wa.us\*](mailto:progalsky@ci.richland.wa.us)

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## John Carpita

---

**From:** McKinley, Dick [dmckinley@ci.tacoma.wa.us]  
**Sent:** Wednesday, July 01, 2009 9:07 AM  
**To:** John Carpita  
**Subject:** Re: Phase II Stormwater Regulations

Talk to Bill Moore at the DOE home office. He can answer the question with authority.

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**From:** John Carpita  
**Sent:** Wed Jul 01 08:56:31 2009  
**Subject:** Phase II Stormwater Regulations

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