

Stormwater rules are upheld by state Supreme Court

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OLYMPIA — A [state Supreme Court decision](#) issued Thursday upheld stricter stormwater rules for building projects, handing a victory to clean-water advocates looking to protect Puget Sound from toxic runoff.

On the losing side were government officials in Snohomish County and King County and a homebuilders group.

At issue was whether new low-impact stormwater regulations that took effect statewide in 2015 would apply to projects that were submitted earlier, but had not yet broken ground.

In Thursday's ruling, all nine Supreme Court justices agreed that projects predating mid-2015 would not be protected indefinitely under older, less-strict rules. That reversed an earlier appellate court decision.

"It's a clear validation that protecting public waterways is a paramount concern," said Chris Wilke, executive director for Puget Soundkeeper, one of the petitioners to prevail in the suit. "These waterways belong to everyone in the community. If one specific entity is inconvenienced, it's not a valid reason for letting pollution to occur indefinitely."

Developers view the rules as a violation of their property rights. They object to the time and money it takes to comply.

Environmentalists counter that the issue is crucial because stormwater is the largest source of toxic pollution in Puget Sound. Motor oil, pesticides and other pollutants pose an ongoing threat to salmon, orcas and other marine life, as well as commercial fishing and swimming. Those substances are carried into streams, rivers and marine waters through runoff from parking lots and other hard surfaces.

The case stems from a 2013 decision by the [Pollution Control Hearings Board](#) concluding that stormwater regulations were different from land-use rules.

Under Washington law, property developers are protected under the land-use rules in place at the time they submit a building application. It's a principal known as vesting, which allows developers to build projects under rules out of date by years or even decades.

Snohomish and King counties appealed the hearings board ruling, along with the Building Industry Association of Clark County. Arguing in favor of the board were [the Department of Ecology](#), [Puget Soundkeeper Alliance](#), the [Washington Environmental Council](#) and the Rosemere Neighborhood Association.

In January 2016, a 2-1 majority on the appeals court sided with the counties and the builders by overturning the hearings board. Now, the Supreme Court has restored the board's ruling.

Builders called it "an unfortunate decision," but said it would affect relatively few developments.

"The ruling asserts that these stormwater regulations are not land-use controls, which in our opinion, is absurd," said Mike Pattison, a lobbyist for the [Master Builders Association of King and Snohomish Counties](#). "The new stormwater regulations dictate everything on new development from the size of new detention facilities, the makeup of your drainage systems and even the kind of pavement you use. The court really missed the point on that issue and demonstrated a lack of understanding of the land-use process."

The rules are known by the lengthy name the National Pollutant Discharge Elimination System, typically shortened to NPDES. When implementing them, state officials tried to strike a balance with developers by including a five-year grace period. It allows until mid-2020 to develop projects submitted before mid-2015.

The new drainage code differs from the old one by requiring low-impact development whenever feasible. That means more rain gardens, stormwater vaults and permeable pavement for all new development in the county.

The cost to study, design and develop stormwater systems under those rules can add \$10,000 to the cost of a single house, Pattison said.

Snohomish County also is defending itself in a separate lawsuit that Puget Soundkeeper filed in September over alleged violations of the Clean Water Act. That case is pending in federal court.

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