

Appendix A: Response to Comments

On the

Municipal Stormwater Permits

National pollutant discharge elimination system (NPDES) and state waste discharge general permit for discharges from large and medium municipal separate stormwater sewers (The 2013 to 2018 Phase I Municipal Stormwater Permit)

NPDES and state waste discharge general permit for discharges from small municipal separate stormwater sewers in western Washington (The 2013 to 2018 Western Washington Phase II Municipal Stormwater Permit)

NPDES and state waste discharge general permit for discharges from small municipal separate stormwater sewers in eastern Washington (The 2014 to 2019 Eastern Washington Phase II Municipal Stormwater Permit)

Washington Department of Ecology

August 1, 2012

The Department of Ecology (Ecology) presents the Response to Comments (RTC) in one document (and electronic file) for the Table of Contents of the entire RTC, the Introduction and Part I, and four separate documents (and electronic files) for Parts II through V listed below. Each electronic file has a Table of Contents that is hyperlinked to the topic sections.

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Introduction

Summary of Permit Development

The Washington Department of Ecology (Ecology) issues this Response to Comments (RTC) as an Appendix to the November 9, 2011 Fact Sheet that accompanied the October 20, 2011 formal drafts of the following National Pollutant Discharge Elimination System (NPDES) and state waste discharge permits:

- Phase I Municipal Stormwater Permit (Phase I permit) effective August 1, 2013,
- Western Washington Phase II Municipal Stormwater Permit (Western Washington Phase II permit) effective August 1, 2013, and
- Eastern Washington Phase II Municipal Stormwater Permit (Eastern Washington Phase II permit) effective August 1, 2014.

The permits authorize discharges from municipal separate stormwater systems (MS4s) to meet requirements of the federal Clean Water Act and Chapter 90.48 RCW. Legislative amendments made in 2012 to RCW 90.48.260 direct Ecology to:

- (a) Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal stormwater general permit applicable to western Washington municipalities first issued on January 17, 2007; and*
- (b) Issue an updated national pollutant discharge elimination system municipal stormwater general permit applicable to western Washington municipalities for any permit first issued on January 17, 2007. An updated permit issued under this subsection shall become effective beginning August 1, 2013.*

While not required to do so, Ecology is using a two-permit process for the Phase I permit, similar to the process for reissuing the Western Washington Phase II permit. Regarding the Eastern Washington Phase II permit, the 2012 legislation directs Ecology to:

- (a) Reissue without modification and for a term of two years any national pollutant discharge elimination system municipal stormwater general permit applicable to eastern Washington municipalities first issued on January 17, 2007; and*
- (b) Issue an updated national pollutant discharge elimination system municipal stormwater general permit for any permit first issued on January 17, 2007, applicable to eastern Washington municipalities. An updated permit issued under this subsection becomes effective August 1, 2014.*

A separate RTC addresses comments on the reissued permits that will be effective in western Washington until August 1, 2013 and in eastern Washington until August 1, 2014. This RTC

responds to comments on the draft updated permits that Ecology released for public comment on October 20, 2011 until February 3, 2012.

The Phase I Municipal Stormwater Permit applies to Clark, King, Pierce, and Snohomish counties, as well as the cities of Seattle and Tacoma. Separate Phase II Municipal Stormwater Permits for Eastern and Western Washington regulate runoff from 98 cities and portions of 11 counties across the state. The updated Western Washington Phase II permit will also regulate two newly permitted cities in Western Washington.

A detailed history of the public process around these permits is available in the November 9, 2011 Fact Sheet and online at

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/2012Reissuance.html> . Ecology's public process included:

2008 to 2011: Ecology stakeholder advisory groups included a Stormwater Work Group that developed recommendations for Puget Sound monitoring requirements, and two advisory groups to provide input for western Washington Low Impact Development (LID) requirements. Both advisory groups held public meetings and solicited public comment on draft documents.

August to October 2010: Ecology held ten listening sessions around the state to take input used to update the permits. Over 200 people attended these sessions.

May and June 2011: Ecology issued preliminary draft requirements for LID and monitoring for informal public comment, and used the input from over 85 individuals and entities to develop the draft permits.

October 20, 2011 to February 2, 2012: Ecology held a three and one-half month public comment period on the draft permits and conducted 5 public hearings and 8 workshops statewide. Ecology received a large volume of comments that were helpful in developing the final permits. This document responds to those comments.

August 1, 2012: Ecology issued the final updated Phase I, Western Washington Phase II and Eastern Washington Phase II Municipal Stormwater Permits.

August 1, 2013: Effective date for Phase I and Western Washington Phase II Municipal Stormwater Permits.

August 1, 2014: Effective date for Eastern Washington Phase II Municipal Stormwater Permit.

Summary of Changes

Ecology made numerous changes to the permits to improve clarity and readability. The following changes are some of the more significant changes made between the draft and final permits:

Phase I Municipal Stormwater Permit

- Clarified that a TMDL or other water quality cleanup plan can supersede and terminate an S4.F implementation plan.
- Revised the deadline for new mapping to December 31, 2017 from August 1, 2017. Clearly distinguishes new mapping requirements from requirements to maintain existing mapping.
- Allows for greater flexibility in describing internal coordination mechanisms.
- Delayed the deadline for adopting and making effective local government codes, rules, and standards in accordance with Appendix 1 to June 30, 2015. Delayed the deadline for submitting enforceable documents for review to July 1, 2014.
- Delayed the deadline for reviewing, revising and making LID the preferred and commonly-used approach to site development until July 1, 2015.
- Revised and clarified requirements for watershed-scale stormwater planning, including allowing alternative watersheds. Requires Phase I County Permittees to submit a final watershed-scale stormwater plan to Ecology no later than October 1, 2016.
- Revised the list of projects to consider for structural stormwater controls based on comments. Requires Permittees to provide an initial list of structural stormwater control projects by March 31, 2014.
- Removed the limit on repeat source control compliance inspections that could count toward the 20% requirement. Made source control training requirements more consistent with other training requirements in the permit.
- Adjusted City and County permittees' field screening requirements to 12% of the permittees' conveyance systems, on average, each year.
- Aligns the deadline for updating maintenance standards to the June 30, 2015 adoption of local government codes, rules and standards in accordance with Appendix 1. Clarifies and increases the flexibility for alternative methods of inspections for catch basins.
- Reorganizes the public education and outreach section and allows for permittees to meet requirements to measure changes in behavior based on a previous or ongoing education effort.
- Clarified and revised a number of Definitions, including but not limited to illicit discharge and outfall.
- Revises Appendix I to provide more flexible LID requirements for smaller projects, moves the infeasibility criteria to the Stormwater Management Manual for Western Washington.

- Removes from the monitoring requirements the opt-out for the Source Identification and Diagnostic Monitoring Information Repository.
- Revised Appendix 10 to include two separate parts; Part 1 describes programs that are equivalent to the 2007-2012 permit requirements, and Part 2 will describe programs deemed equivalent to the 2013-2018 permit requirements.
- Clarified the reporting requirements in Appendix 11 based on comments.
- Removed TMDLs from Appendix 2 that EPA has not yet approved; edited other TMDL requirements in response to comments.
- Added Appendix 12 which contains the Annual Report questions for Phase I Cities and Counties.

Western Washington Phase II Municipal Stormwater Permit

- Expanded permit coverage for Whatcom County to include the unincorporated Birch Bay Urban Growth Area (UGA) and required permit coverage for the cities of Snoqualmie and Lynden.
- Clarified that a TMDL or other water quality cleanup plan can supersede and terminate an S4.F implementation plan.
- Removed the requirement not to repeal existing local requirements that go beyond the requirements of the permit.
- Allowed for greater flexibility in describing internal coordination mechanisms.
- Reorganized the public education and outreach section and allowed for permittees to meet requirements to measure changes in behavior based on a previous or ongoing education effort.
- Added to the list of conditionally allowed non-stormwater discharges and clarified that ordinance updates are required only if needed to address them. Delayed the change in field screening requirements to require 40 percent of the MS4 by December 31, 2016 (June 30, 2017 for permittees in Lewis and Cowlitz counties and June 30, 2018 for the City of Aberdeen), and clarified the level of effort. Reduced the subsequent annual screening requirement to, on average, 12 percent of the MS4.
- Delayed the deadline for eliminating the one-acre threshold for new development, redevelopment and construction sites to December 31, 2016.
- Clarified the requirement for permittees to require long-term maintenance on private property for projects permitted under requirements of S5.C.4.
- Delayed the deadline for adopting and making effective LID requirements for new and redevelopment until December 31, 2016, except for permittees in Lewis and Cowlitz counties and the City of Aberdeen, consistent with 2012 legislation. Required on the same timeline the review and revision of broader development codes to include LID BMPs and LID principles. Consistent with 2012 legislation, permittees in Lewis and

Cowlitz counties have deadlines of June 30, 2017 and the City of Aberdeen deadline is June 30, 2018.

- Retained the requirement for some permittees to participate in watershed-based stormwater planning led by Phase I permittees as described in revised Phase I permit requirements.
- Revised Appendix I to provide more flexible LID requirements for smaller projects, moved the infeasibility criteria to the Stormwater Management Manual for Western Washington.
- Aligned the deadline for updating maintenance standards to the December 31, 2016 adoption of LID and the revised Ecology manual, or an Ecology-approved Phase I manual updated to meet new requirements.
- Delayed the requirement for inspecting catch basins every two-years to begin after December 31, 2016, except June 30, 2017 for permittees in Lewis and Cowlitz counties and June 30, 2018 for the City of Aberdeen. Clarifies and increased the flexibility for alternative methods of inspection.
- Removed from the monitoring requirements the opt-out for the Source Identification and Diagnostic Monitoring Information Repository.
- Clarified and/or revised a number of Definitions, including but not limited to *illicit discharge* and *outfall*.
- Removed TMDLs from Appendix 2 that EPA has not yet approved; edited other TMDL requirements as suggested in comments.

Eastern Washington Phase II Municipal Stormwater Permit

- Expanded the coverage area for Yakima County to include the unincorporated Sunnyside UGA and removed the other proposed new permittees from the final permit.
- Clarified that a TMDL or other water quality cleanup plan can supersede and terminate an S4.F implementation plan.
- Removed the requirement not to repeal existing local requirements that go beyond the requirements of the permit.
- Allowed for greater flexibility in describing internal coordination mechanisms.
- Removed public education and outreach requirements to initiate stewardship activities and measure the results of an educational effort and use them to improve the program.
- Added to the list of conditionally allowed non-stormwater discharges and clarified that ordinance updates are required only where necessary to address them. Delayed the change in field screening requirements to require 40 percent of the MS4 by December 31, 2018, and clarified the level of effort. Reduced the subsequent annual screening requirement to, on average, 12 percent of the MS4.
- Provided greater flexibility in meeting the on-site retention LID requirement through regional facilities and reduced the need for jurisdictions to update ordinances if already

meeting a local equivalent. Delayed the deadline for adopting and making this effective until December 31, 2017.

- Delayed the requirements for inspecting catch basins to at least once by December 31, 2018 and every two years thereafter. Provided several alternative methods for inspection. Restored the size of the major storm event for spot checks. Clarified the deadline for updating Operations and Maintenance Plans.
- Removed the opt-out for stormwater discharge monitoring and revised the collaborative requirement to allow more flexibility for permittees to develop and implement effectiveness studies.
- Revised and clarified the definitions of *illicit discharge*, *outfall* and other terms.
- Revised the Appendix 2 the Spokane River TMDL requirements to change the target basins.

Organization of the Response to Comments (RTC)

Issues and Responses to Comments

The table of contents lists the issues for which Ecology received comments, assigns each a number, and lists the section in which the summary of and response to comments for each group of issues is located. For Part I, the page numbers are provided and issues in the table of contents are hyperlinked to the specific section in this document's electronic file. The remaining sections of the table of contents lists the contents of Part II through Part V, but each Part is in a separate document and electronic file with a Table of Contents hyperlinked to the issues. The issues are numbered by the section of the document and sequence, e.g., #II-1.3 is Part II, section 1 (Public Education and Outreach), issue number 3.

After the introductory sections, the Response to Comments section is divided into five parts:

- Part I: Contains the summary of the range of comments and response to comments and policy issues related to **more than one of the permits**.
- Part II: Contains the summary of the range of comments and response to comments related primarily to **Eastern Washington Phase II Municipal Stormwater Permit**.
- Part III: Contains the summary of the range of comments and response to comments related primarily to **Western Washington Phase II Municipal Stormwater Permit**.
- Part IV: Contains the summary of the range of comments and response to comments related primarily to the **Phase I Municipal Stormwater Permit**.

Municipal Stormwater Permits Response to Comments

- Part V: Contains the summary of the range of comments and response to comments related to requirements for **Appendix 1 and Low Impact Development for the Phase I and Western Washington Phase II permits.**

The Appendix to the Fact Sheet for each permit will consist of the following RTC Parts:

- Phase I – Part I, Part IV, and Part V
- Western Washington Phase II – Part I, Part III, and Part V
- Eastern Washington Phase II – Part I and Part II

Index of Commenters

In the next section is an index that lists the name of each commenter and the issue numbers associated with their comments. The person who signed the comment letter (or email) or provided public testimony is also listed. Where appropriate, an acronym, shortened name, or representative organization is provided to identify the commenter in Parts I-V of this document.

Index of Commenters

Commenter Name	Signatory	Issue Number
A. Nowell		PART I - 2.1, 2.2.
Abigail Lynam		PART V - 23.3.
AKS Engineering and Forestry	John Meier	PART V - 24.4.
Amanda Grantham	Amanda Grantham	PART V - 23.3, 28.
Ann Hirschi		PART V - 23.6.
Arnie Broadsword	Arnie Broadsword, PE	PART V - 11, 12, 13, 14, 16, 17, 23, 23.2, 23.3, 24, 24.3, 24.4, 25, 26, 26.1, 26.2, 26.3, 26.4.
Art Jenkins		PART I-1.6, 2.1. PART II - 1.2, 5.3.
Art Stubbs		PART I - 15.3, 15.14.
Asotin County Board of Commissioners (Asotin County)	Jim Jeffords, Harold O. Beggs, Brian Shinn	PART I - 1.1, 2.1, 3.1, 7.1, 7.4. PART II - 5.3, 7.1, 7.5.
Asotin Regional Stormwater Program	Cheryl Sonnen	PART II -1.1, 1.2, 6.1, 7.1, 7.5, 7.7, 12.
Association of Washington Cities	Dave Catterson, Dave Williams	PART I - 1.2, 1.5, 1.6, 2.1, 13.2, 15.1, 15.3, 15.12. PART II-1.1, 1.2, 5.3, 7.5, 7.7. PART III - 1.1, 1.4. PART V - 4, 5, 6.1, 23.2, 23.8, 24.6, 24.7, 24.11, 24.12, 27, 29.
Ballard Stormwater Consortium	Kim McDonald	PART I - 8.1. PART V - 5, 22, 23.1, 23.6, 29, 30.
Building Industry Association of Clark County (BIA of Clark County)	James D. Howsley	PART I - 13.2. PART V - 23.4, 23.7, 24.3, 24.6, 24.7, 24.9, 24.11, 24.12.
Building Industry Association of Washington (BIAW)	Jan Himebaugh	PART I - 13.2, 20.5, 20.14. PART V - 4, 5, 13, 23.2, 23.10, 24.3, 26, 29.
Burbank/Elliott Neighborhood Association	Lisa Riener	PART V - 23.6, 26.
Cari Simson		PART V - 5, 23.6.
Cary Butler		PART I-1.6. PART III - 1.1.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
Cascadia Green Building Council, (for Stewardship Partners, Salmon Safe, NW Ecobuilding Guild and the Girl Scouts of Western Washington)	Joel Sisolak	PART V - 7, 23.6, 24.3, 24.4, 26.
Cascadian Edible Landscapes	Michael Seliga	PART I - 1.4. PART V - 23.3, 28.
Celeste Johanson		PART I - 14.1.
Chelan County	Ron Walter, Jason Detamore	PART I - 8.2, 13.2, 18.1, 20.12. PART II - 1.1, 1.2, 1.3, 3, 6.2, 7.1, 7.8, 7.10.
Cheryl Morgan		PART II - 5.1.
Christine Castro		PART I-1.4.
City of Anacortes	Don Measamer	PART I - 13.2. PART III - 1.4, 2.1. PART V - 6.1, 23.8, 23.9.
City of Arlington	Bill Blake	PART I - 3.2, 10.1, 12.3, 15.1, 15.2, 15.12, 15.13, 15.19, 15.20, 18.5. PART V - 23.4, 24.1.
City of Asotin	Vikki Bonfield	PART I - 2.1.
City of Auburn	Dennis R. Dowdy, PE	PART I - 1.1, 1.2, 9.2, 10.4, 12.1, 12.13, 12.14, 20.14. PART III - 2.1. PART V - 5, 6.1, 12, 17, 21, 24, 24.3, 24.4.
City of Bainbridge Island	Lance Newkirk	PART I - 1.1, 1.2, 1.6, 2.1, 10.10, 12.6, 13.2, 20.12. PART III - 1.4. PART V - 5, 6.1, 13, 24.2, 24.7, 24.9, 24.12, 29.
City of Battle Ground	Bryan Kast, PE	PART I - 15.12. PART III - 1.1. PART V - 4, 13, 16, 23, 23.8, 24.3, 24.4, 24.15, 24.16, 26, 26.1, 26.2, 26.4, 26.5, 29.
City of Bellevue	Nav Otal	PART I - 1.1, 1.2, 2.1, 2.2, 12.1, 12.3, 12.4, 12.6, 13.2, 14.3, 14.5, 15.6, 15.9, 15.20, 20.11, 20.12, 20.16, 20.18, 20.27, 20.30, 21. PART III - 1.3, 2.2, 2.4. PART V - 4, 5, 6.1, 12, 12.1, 23.5, 23.7, 23.9, 24.3, 24.7, 24.11, 24.12, 24.16, 26, 26.1, 26.3, 27, 29.
City of Bellingham	William M. Reilly	PART I - 12.6, 12.13, 13.2, 19.5, 21. PART III - 1.1, 1.4, 2.2. PART V - 18, 22, 23.7, 24.2, 24.4, 24.7, 24.8, 24.10, 24.14, 24.15, 25, 26.1, 27, 29.
City of Bothell	Done Fiene, PE	PART I - 10.3, 10.4, 10.7, 12.1, 12.4, 12.13, 13.2, 15.1, 15.2, 15.12, 17.5, 18.1. PART III - 1.3. PART V - 6.1.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
City of Bremerton	Patty Lent	PART I - 1.6, 7.6, 12.1, 12.4, 12.6, 12.13, 14.1, 15.2, 15.4, 15.17, 20.14. PART III - 1.1, 1.4, 2.1. PART V - 6.1, 15, 20, 23.1, 23.5, 23.8, 23.9, 24.2, 24.6, 24.16, 25, 26, 26.2, 26.5, 28, 30.
City of Clarkston	Kathleen A. Warren	PART I - 2.1.
City of Clyde Hill	Craig M. Olson, PE	PART I - 1.2, 12.14, 13.2, 15.3, 15.12. PART III - 1.1. PART V - 4, 23.
City of Des Moines	Anthony A. Piasecki	PART I - 15.3. PART III - 1.1, 1.4, 2.1, 2.4. PART V - 5, 23, 23.7, 23.8, 23.10.
City of Duvall	Boyd Benson, PE	PART I - 12.6, 12.13, 13.2. PART V - 6.1, 15, 20, 24.4, 26.3, 26.4.
City of East Wenatchee	Steven C. Lacy & Brandon Mauseth	PART I - 7.1, 7.4, 7.5, 8.2, 8.3, 18.1, 20.12. PART II - 1.1, 1.2, 1.3, 2.1, 3, 6.1, 6.2, 7.5, 7.10.
City of Edmonds	Phil Williams	PART I - 15.9. PART III - 1.2. PART V - 13, 23.7, 23.8, 24.4.
City of Ellensburg	Jon Morrow	PART I - 7.4.
City of Everett	Heather Kibbey	PART I - 1.1, 1.2, 1.3, 2.1, 2.2, 3.1, 4.2, 6.1, 6.2, 7.4, 7.7, 9.2, 10.6, 10.7, 11.1, 11.2, 12.1, 12.3, 12.4, 12.5, 12.6, 12.9, 12.12, 12.13, 12.14, 13.2, 14.1, 14.3, 14.5, 15.1, 15.2, 15.17, 16.1, 19.1, 19.4, 20.6, 20.12, 20.17, 20.27, 21. PART III - 1.1, 1.2, 1.4, 2.1, 2.4. PART V - 5, 6.1, 11, 22, 23.10, 24.6, 29.
City of Federal Way	Ken Miller	PART I - 1.1, 2.1, 4.1, 9.4, 12.5, 12.13, 15.2, 15.3, 15.4, 15.5, 15.9, 15.12, 15.13, 15.20.
City of Fife	Ken Gill, PE	PART I - 15.5, 15.12.
City of Gig Harbor	Wayne Matthews	PART V - 24.15, 26.3.
City of Issaquah	Sheldon Lynne, PE	PART I - 1.1, 2.1, 2.2, 4.1, 8.3, 10.7, 12.2, 12.3, 12.6, 13.2, 15.2, 15.3, 15.4, 15.5, 15.6, 15.9, 15.12, 15.15, 15.21, 17.5, 20.12. PART III - 1.1, 2.1. PART V - 4, 5, 13, 23.2, 23.7, 23.8, 24.3, 24.4, 24.7, 24.8, 24.11, 24.12, 24.15, 24.17, 25, 26, 26.1, 26.3, 29.
City of Kelso	Van McKay, PE	PART I - 2.1, 6.3, 7.5, 10.3, 10.7, 10.9, 12.6, 14.1, 14.2, 21. PART III - 1.1, 2.1. PART V - 4, 6.1, 8, 12.1, 15, 23.7, 24.3, 24.6.
City of Kenmore	Richard Sawyer	PART I - 10.5, 12.6, 13.2, 14.1, 14.6, 15.12, 20.2, 20.3, 20.4, 20.12, 20.18, 21. PART III - 1.1, 1.4, 2.1, 2.2. PART V - 5.
City of Kennewick	Peter Beaudry	PART I - 2.1, 8.3, 18.1. PART II - 1.2, 5.3, 6.1, 7.1, 7.2.
City of Kent	Tim LaPorte, PE	PART I - 1.1, 2.2, 7.2, 9.6, 10.10, 12.1, 12.6, 13.2, 15.5, 15.7, 15.11. PART III - 2.1, 2.1, 2.4. PART V - 5, 12, 13, 14, 16.3, 18, 20, 23, 23.2, 23.7, 23.8, 24.3, 25, 26, 26.1, 29.

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Commenter Name	Signatory	Issue Number
City of Kirkland	Joan McBride	PART I - 2.1, 4.1, 7.5, 8.2, 10.3, 10.4, 10.5, 10.7, 12.1, 12.4, 12.6, 12.7, 12.9, 13.2. PART V - 13, 14, 23.7, 24, 24.16.
City of Lacey	Doug Christenson	PART I - 1.1, 1.2, 6.1, 9.2, 12.13, 12.14, 15.2, 15.3, 15.5, 15.9, 15.12, 17.3, 17.5, 20.12, 20.18. PART III - 1.1. PART V - 23, 23.2, 23.6, 23.7, 23.8, 23.9, 23.10, 24.1, 24.4, 29.
City of Longview	Josh Johnson, PE	PART I - 1.1, 1.2, 2.1, 2.2, 6.2, 7.6, 9.2, 10.4, 10.7, 12.1, 12.4, 12.6, 12.13, 13.2, 14.1, 15.1, 15.2, 15.13, 15.15, 20.2, 20.12, 20.14, 20.18. PART III - 1.1, 1.4, 2.1. PART V - 2, 6.1, 9, 12, 12.1, 15, 17, 22, 23.1, 23.2, 23.5, 23.7, 23.9, 24.3, 24.4, 26.1, 26.3, 30.
City of Marysville	Kevin Nielsen	PART I - 1.1, 1.3, 2.1, 10.1, 10.7, 12.1, 12.6, 12.13, 14.1, 15.11, 17.5, 20.12, 20.27, 21. PART III - 2.1. PART V - 3, 13, 24.3, 24.16, 26, 29.
City of Monroe	Vince Bertrand	PART I - 12.6, 12.13, 13.2. PART III - 1.3. PART V - 6.1, 12, 24.4.
City of Mount Vernon	Blaine Chesterfield	PART I - 1.1, 1.2, 2.1, 2.2, 12.6, 12.12, 15.2, 15.15, 20.12. PART V - 4, 13, 17, 23.1, 23.7, 23.8, 23.9, 24.3, 24.7, 24.11, 24.12, 25, 28, 29.
City of Mukilteo	R. James Niggemyer	PART I - 1.1, 1.2, 1.3, 2.1, 2.2. PART V - 4, 23, 23.8.
City of Newcastle	Laura Frolich	PART I - 1.1, 1.2, 1.3, 1.6, 10.7, 12.1, 12.6, 12.13, 14.1, 15.2, 15.3, 15.5, 15.9, 15.11, 20.12. PART III - 2.1. PART V - 6.1, 23.7, 23.9.
City of Oak Harbor	Brad Gluth	PART I - 1.1, 3.3, 7.1, 15.3, 15.5, 15.10. PART III - 1.1. PART V - 1, 11, 12, 13, 14, 15, 22, 23.2, 24.5, 24.15, 25, 26.1, 26.3, 27, 28.
City of Olympia	Andy Haub, PE	PART I - 1.1, 1.2, 2.1, 2.2, 5, 9.6, 12.14, 13.2, 15.1, 15.2, 15.12, 20.12, 20.32. PART III - 2.1. PART V - 6.1, 12, 13, 15, 23, 23.7, 24.2, 24.3, 24.5, 24.7, 24.9, 24.11, 24.12, 27, 29.
City of Port Angeles	Kent Myers , Glenn Cutler, Terry Partch	PART I - 3.3, 14.2. PART III - 1.1. PART V - 4, 6.1, 23.1, 23.4, 23.7, 24.2.
City of Port Orchard	Andrea Archer, PE	PART I - 2.2, 10.4, 10.7, 12.1, 12.6, 12.13, 13.2, 14.1, 14.2, 20.12. PART III - 1.1, 1.4, 2.1. PART V - 4, 6.1, 13, 23.1, 23.8, 24.4.
City of Poulsbo	Linda Barry-Maraist, Anya Funk & Andrzej Kasiniak, PE	PART I - 1.1, 1.2, 1.3, 2.1, 12.1, 12.13, 13.2. PART III - 1.1, 1.4, 2.1. PART V - 6.1, 22, 23.1, 23.2, 23.8, 24.2, 24.6, 24.9, 24.15, 24.16, 26.
City of Redmond	William J. Campbell, PE	PART I - 1.1, 1.2, 7.4, 10.4, 12.3, 12.12, 12.13. PART V - 4, 16, 17, 23.6, 24, 24.1, 24.4, 26, 26.1, 26.3.

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Commenter Name	Signatory	Issue Number
City of Renton	Denis Law	PART I - 1.1, 1.2, 1.3, 2.2, 8.2, 9.2, 10.1, 10.4, 10.7, 12.1, 12.4, 12.5, 12.6, 12.7, 12.13, 13.2, 14.1, 15.2, 15.3, 15.4, 15.5, 15.9, 15.12, 20.2, 20.12, 20.14, 20.28, 21. PART V - 4, 5, 6.1, 7, 12.1, 13, 22, 23, 23.2, 23.4, 23.7, 23.8, 23.9, 23.10, 24.6, 24.7, 24.8, 24.9, 24.11, 24.12, 26.1, 26.3, 29.
City of Richland	Pete Rogalsky, PE	PART I - 2.1, 4.1, 7.4, 7.5, 8.2, 8.3, 13.2, 18.1, 20.10, 20.11, 20.12, 20.17. PART II - 1.1, 1.2, 1.3, 2.1, 3, 5.3, 6.1, 6.2, 7.1, 7.2, 7.3, 7.4, 7.5, 7.8, 7.9, 7.10, 7.11, 12.
City of Sammamish	Eric LaFrance, PE	PART I - 1.1, 1.2, 1.3, 2.1, 2.2, 6.1, 9.2, 10.4, 10.7, 12.1, 12.4, 12.6, 12.13, 13.2, 14.1, 15.3, 15.4, 15.20, 20.2, 20.12, 21. PART III - 1.1, 1.4, 2.1. PART V - 4, 6.1, 8, 12.1, 13, 23.2, 23.8, 24.3, 26.3.
City of SeaTac	Don Robinett	PART I - 1.1, 1.2, 1.3, 2.1, 2.2, 6.1, 9.2, 10.4, 10.7, 12.1, 12.4, 12.6, 12.13, 13.2, 14.1, 15.2, 15.3, 18.5, 20.2, 20.12, 20.14, 20.24. PART III - 1.4, 2.1. PART V - 4, 6.1, 12, 15, 17, 23, 23.2, 23.8, 24.3, 24.4, 24.7, 24.11, 24.12, 26.1, 26.3.
City of Seattle	Ray Hoffman, Peter Hahn, Diane Sugimura, Nancy Ahern	PART I - 4.1, 5, 7.1, 7.3, 7.7, 9.6, 10.4, 10.7, 12.2, 12.3, 12.6, 12.11, 12.12, 12.13, 12.14, 13.2, 14.2, 15.1, 15.2, 15.3, 15.6, 15.7, 15.8, 15.9, 15.11, 15.12, 15.19, 15.20, 15.21, 20.5, 20.10, 20.12, 20.17, 20.18, 20.24, 20.29, 20.31, 21. PART IV - 1.1, 2.4, 3.3, 4.1, 5.1, 5.2, 5.4, 6.3, 6.5, 6.6, 8.2, 8.3, 8.4. PART V - 6.1, 7, 12, 12.1, 13, 14, 16, 20, 24.2, 24.4, 24.6, 24.13, 25, 26.1, 26.2, 26.3, 27.
City of Sedro-Woolley	David Lee, PE	PART I - 1.2, 1.3, 2.1, 2.2, 9.2, 10.4, 10.7, 12.1, 12.4, 12.13, 13.2, 14.1, 15.2, 15.3, 15.5, 20.2, 20.12, 20.14, 21. PART III - 1.4, 2.1. PART V - 6.1, 12.1, 15, 17, 23.8, 24.3, 24.4, 26.1.
City of Shoreline	Mark Relph	PART I - 9.1, 9.2, 9.6, 12.2, 12.3, 12.6, 12.13, 13.2, 15.3, 15.4, 15.9, 15.11, 15.12. PART III - 1.2, 1.4. PART V - 8.
City of Snohomish	Larry Bauman	PART I - 2.1, 15.3, 15.4, 20.12. PART III - 2.1.
City of Spokane	Dale E. Arnold	PART I-7.1, 8.2, 13.2, 18.1, 19.7, 20.22. PART II - 1.1, 1.2, 3, 4.1, 5.3, 6.2, 7.1, 7.2, 7.3, 7.5, 7.7, 7.8, 7.11, 9, 12.
City of Sumner	Donnelle M. Nicaise	PART I - 1.1, 12.1, 13.2, 15.9, 15.12. PART V - 23.8, 23.10, 24.7, 24.9.

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Commenter Name	Signatory	Issue Number
City of Tacoma	Geoffrey Smyth, PE	PART I - 1.1, 1.2, 7.1, 7.3, 7.4, 7.5, 7.7, 8.2, 8.3, 8.4, 9.2, 9.4, 9.5, 9.6, 10.1, 10.4, 10.6, 10.7, 10.10, 11.1, 12.3, 12.5, 12.7, 12.8, 12.12, 12.14, 13.2, 14.4, 14.5, 15.1, 15.2, 15.3, 15.7, 15.9, 15.10, 15.12, 15.19, 15.20, 15.21, 16.4, 18.1, 18.5, 19.6, 20.30. PART IV - 2.1, 2.2, 2.3, 3.4, 3.5, 3.6, 4.1, 4.5, 4.6, 5.2, 5.3, 5.4, 5.5, 6.1, 6.4, 6.5, 6.7, 6.8, 7. PART V - 3, 4, 6.1, 11, 12, 13, 14, 16, 16.1, 16.3, 16.4, 17, 19, 23, 24.3, 24.4, 24.5, 24.10, 24.13, 24.15, 24.16, 25, 26, 26.1, 26.2, 26.3, 27, 29, 30.
City of Vancouver	Brian K. Carlson, PE	PART I - 1.1, 6.2, 9.1, 10.7, 12.1, 12.3, 12.6, 12.12, 13.2, 15.14, 15.20, 19.1, 20.2, 20.9, 20.11, 20.12, 20.17, 20.18, 20.22. PART III - 1.2. PART V - 12, 12.1, 13, 24.4.
City of Wenatchee	Steve King, PE (e-mail from Jessica Shaw)	PART I - 7.4, 7.5, 8.2, 8.3, 20.12. PART II - 1.1, 1.2, 1.3, 2.1, 3, 6.2, 7.1, 7.2, 7.4, 7.5, 7.6.
City of Woodinville	Thomas E. Hansen, PE	PART I - 12.6, 12.13, 13.2. PART III - 1.2, 1.4. PART V - 11, 16.3, 20, 23.5, 26.5.
Clallam County	Bob Martin, PE	PART I - 3.3.
Clark County Board of Commissioners (Clark County)	Marc Boldt	PART I - 1.1, 1.2, 1.3, 1.6, 1.7, 2.1, 2.2, 4.4, 6.2, 7.1, 7.3, 7.4, 7.6, 8.2, 9.1, 9.2, 10.1, 10.7, 11.1, 12.1, 12.6, 12.7, 12.12, 13.1, 13.2, 14.3, 14.4, 15.2, 15.4, 15.5, 15.12, 15.13, 15.14, 15.18, 15.19, 15.20, 15.21, 18.1, 20.11, 20.12, 20.18, 20.23, 21. PART IV - 2.1, 2.2, 3.2, 3.6, 4.1, 4.4, 5.1, 5.2, 5.4, 5.6, 6.1, 6.2, 6.3, 6.6, 6.7, 7, 8.3. PART V - 4, 5, 6.1, 12, 17, 18, 23.6, 23.10, 24.3, 24.4, 24.7, 24.12, 25.
Clark County Clean Water Commission	Nancy Olmsted, Susan Rasmussen, Art Stubbs	PART I - 1.1, 1.2, 1.6, 15.2, 15.14. PART V - 3, 23.
Columbia Riverkeeper	Lauren Goldberg	PART I - 1.1, 2.1, 15.14, 17.2, 17.3. PART II - 5.3, 7.1, 7.5. PART IV - 5.3, 5.4, 5.5, 5.6. PART V - 23.6.
Cowlitz County	Patrick N. Harbison	PART I - 1.3, 2.1, 3.3, 7.1, 7.3, 7.6, 20.18, 20.20. PART III - 1.1, 2.3. PART V - 12, 15, 20, 24.4, 24.6.
Cowlitz County Soil and Water Conservation District	Russell Kastberg	PART V - 12.
Dan White		PART III - 1.1. PART V - 5, 23.6, 26.
Darrell Johnson		PART I - 1.1.
Donald & Marilyn O'Malley		PART I - 2.1.

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Commenter Name	Signatory	Issue Number
Douglas County	Ken Staton and Jennifer Lange, PE	PART I-2.1, 7.1, 7.4, 8.2, 13.2, 18.1, 18.3. PART II - 1.1, 1.2, 1.3, 3, 5.3, 6.1, 7.1, 7.2, 7.3, 7.5, 7.7, 7.8, 7.9, 7.11, 12.
Duncan Clauson		PART I - 1.4.
EarthJustice (representing Puget Soundkeeper Alliance, People for Puget Sound, and Washington Environmental Council)	Jan Hasselman	PART I - 1.4, 1.7, 3.3, 7.4, 10.1, 10.2, 11.3, 12.4, 13.2, 15.1, 15.2, 15.7, 15.8, 15.20, 16.3, 17.2, 17.3, 18.2. PART III - 1.1. PART IV - 4.2, 4.3, 4.4, 5.3, 5.6. PART V - 4, 5, 6.1, 12, 13, 20, 20.1, 21, 22, 23.3, 23.6, 24.3, 24.4, 26, 26.2, 26.3, 27.
East King County Chambers of Commerce Legislative Coalition	Kathy Putt	PART I - 2.1.
Eastern Washington Phase II Coordinators Group (representing 18 Phase II EWA Permittees)	Russ Connole	PART I - 2.1, 4.1, 7.1, 7.4, 7.5, 8.2, 8.3, 13.2, 18.1, 20.10, 20.11, 20.12, 20.17. PART II - 1.1, 1.2, 1.3, 2.1, 3, 5.3, 6.1, 6.2, 7.1, 7.2, 7.3, 7.4, 7.5, 7.8, 7.9, 9, 12.
Environmental Clinic at Gonzaga University School of Law, the Spokane Riverkeeper and The Lands Council (Environmental Clinic at Gonzaga Law School)	Angelina Frazey	PART I - 1.4. PART II - 1.3, 5.3, 7.1, 7.5.
Eric Olsson		PART I - 4.2.
Frank I. Backus		PART V - 23.3, 28.
Garden Cycles	Steven Richmond	PART I - 1.5.
Green Light Gardening	Emily Bishton	PART I - 3.3, 15.13. PART V - 2, 12, 23.3, 23.6, 23.10, 24.15, 26.1, 27.
Harry Branch		PART I - 1.7.
Island County	William Oakes	PART I - 3.3.
Jan von Lehe		PART V - 23.3, 28.
Jeanine Eshpeter		PART V - 5, 23.6

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
Jeff Richter		PART I - 1.1, 1.6, 2.1. PART III - 1.1.
Jerome Parker		PART V - 5, 23.6
Jones Engineers, Inc.	Darcy Jones	PART V - 24.
Joyce Hannum		PART I - 15.1, 15.13. PART III - 1.1. PART V - 5, 23.3, 23.6, 26.
Judith W. Matchett		PART I - 15.1. PART III - 1.1. PART V - 5, 9, 23.3, 23.6, 26.
Judy LeBlanc		PART V - 26.
Kathryn Rodgers		PART V - 5, 23.6.
Kathy Humphrey		PART I - 15.1, 15.7. PART V - 22, 23.3, 23.6, 24.15, 26.1.
Katy Vanderpool		PART V - 23.3, 28.
Kendall Peterson		PART I - 1.6.
King County	Mark Isaacson	PART I - 1.7, 2.1, 3.1, 4.1, 5, 6.1, 7.1, 7.3, 7.6, 7.7, 8.2, 8.4, 9.2, 10.1, 10.4, 10.6, 10.7, 11.3, 12.1, 12.2, 12.3, 12.5, 12.6, 12.11, 12.12, 12.13, 12.14, 13.1, 13.2, 14.1, 14.3, 14.4, 14.5, 15.2, 15.9, 15.18, 15.20, 15.21, 17.1, 17.4, 17.5, 18.4, 19.1, 19.5, 20.1, 20.2, 20.3, 20.4, 20.10, 20.11, 20.12, 20.13, 20.14, 20.18, 20.19, 20.21, 20.23, 20.27, 20.30, 20.33, 21, 22. PART IV - 1.1, 2.1, 2.2, 2.3, 2.4, 3.3, 3.5, 4.1, 5.2, 5.4, 5.5, 5.6, 6.1, 6.2, 6.3, 6.4, 6.6, 6.7, 6.8, 6.9, 8.1, 8.2, 8.3, 8.4. PART V - 1, 4, 5, 6.1, 7, 12, 23, 23.8, 24.4, 24.6, 24.7, 24.8, 24.9, 24.11, 24.12, 29.
Kitsap County	Christopher W. May	PART I - 12.6, 14.1, 15.2, 15.10, 15.11, 19.8, 20.12. PART III - 1.3, 1.4, 2.1. PART V - 1, 5, 12, 16, 17, 24.2, 24.3, 24.16.
Kitsap Regional Coordinating Council	Mary McClure	PART I - 1.1.
Lake Burien Neighborhood	Chestine Edgar	PART I - 15.1. PART V - 23.3.
Lake Forest Park StreamKeepers	James Halliday & Mark Phillips	PART I - 15.1. PART III - 1.1. PART V - 23.6, 26.
League of Women Voters of Bellingham-Whatcom County	Jayne Freudenberger & Kay Ingram	PART V - 4, 5, 23.6, 27.
League of Women Voters of Seattle and King County	Judy Bevington	PART I - 15.1, 15.7. PART III - 1.1. PART V - 4.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
League of Women Voters of Washington	Ann Aagard	PART I - 1.5, 15.1, 15.7. PART III - 1.1. PART V - 5, 9, 23.6, 24.2, 24.4, 26, 26.2.
Lider Engineering, PLLC	William Lider	PART I - 1.1, 1.4, 1.5, 10.1, 15.1, 15.2, 15.7. PART III - 1.1. PART V - 3, 4, 5, 6.1, 23.6, 23.10, 24.4, 24.10, 26, 26.2.
Lisa Riemer		PART I - 1.4.
Lower Columbia Contractors Association	Kurt Hentholm	PART I - 1.6, 2.1. PART III - 1.1.
Lower Columbia Fish Recovery Board	Tom Linde	PART I - 15.13, 15.14.
Mark L. Evans		PART V - 5, 23.6.
Master Builders Association of King and Snohomish Counties	Samuel L. Anderson	PART I - 13.2. PART III - 1.1, 1.4. PART V - 22, 23.1, 23.2, 23.7, 23.10, 26.2, 28.
Michael Pagel		PART V - 28.
Muckleshoot Indian Tribe Fisheries Division (Muckleshoot Indian Tribe)	Karen Walter	PART I - 3.2, 3.3, 6.2, 7.2, 8.1, 8.4, 15.2, 15.15, 17.2. PART III - 1.1. PART V - 4, 9, 23.6.
Natasha Mosher		PART V - 5, 23.6, 26.
National Marine Fisheries Service	Steven W. Landino	PART I - 1.4, 7.2, 8.1, 8.3, 9.3, 10.10, 14.6, 15.1, 15.13, 15.15. PART V - 23.3, 23.6.
Neal Jander		PART I - 1.1, 1.4.
Neighbors of Seahurst Park	Melessa Rogers	PART I - 1.4.
Nisqually Indian Tribe	David Troutt	PART V - 5, 23.3, 23.6.
Norman T. Baker		PART I - 15.1, 15.4, 15.7. PART III - 1.1. PART V - 4, 5, 23.6, 26, 26.2.
North Central Home Builders Association	John A. Torrence, PE	PART I - 1.3, 2.1, 13.2. PART II - 5.3.
North Sound Baykeepers (also for ReSources for Sustainable Communities)	Lee First	PART I - 3.3, 12.14, 14.5, 14.6, 20.24. PART III - 1.1, 1.4. PART V - 23.6, 24.15, 26.1, 26.2.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
Northwest Indian Fisheries Commission	Billy Frank, Jr. and Todd Bolster	PART I - 1.4, 13.2, 17.2. PART IV - 4.3, 4.4, 5.3, 5.5. PART V - 4, 5, 23, 23.6, 25, 30.
Olympic Environmental Council	Darlene Schanfald	PART I - 1.5, 10.1, 10.10. PART V - 20, 23.3, 24.10.
People For Puget Sound (see also EarthJustice comments)	Bill Derry, Heather Trim, Bruce Wishart	PART I - 1.6, 7.4, 10.1, 11.1, 11.2, 15.1, 15.7, 17.2. PART III - 1.1. PART V - 4, 16.2, 20, 20.1, 22, 26, 26.2, 26.3.
People for Puget Sound Email and Petition Campaign	42 Individuals	PART I - 1.4, 15.7. PART III - 1.1. PART V - 5, 23, 23.7, 27.
People for Puget Sound Group Letter	19 organizations	PART I - 15.7. PART III - 1.1. PART V - 4, 5, 23.6, 24.4, 27.
Pepper Rogers		PART I - 3.1.
Peter Haase		PART I - 10.4, 10.10.
Pierce County	Dan D. Wrye	PART I - 1.1, 1.2, 1.3, 1.6, 2.1, 2.2, 7.1, 7.6, 8.2, 10.1, 10.4, 10.6, 10.7, 11.1, 11.2, 14.2, 14.3, 15.1, 15.2, 15.12, 15.21, 17.1, 18.1. PART IV - 2.1, 2.2, 4.1, 4.5, 5.1, 5.2, 5.6, 6.1, 6.2, 8.3. PART V - 5, 6.1, 14, 18, 24.16, 26, 26.1, 26.2, 26.3, 28.
Pilchuck Audubon Society Snohomish County	Mike Blackbird	PART V - 23.6, 23.10.
Port of Bellingham	Alan Birdsall	PART I - 16.1, 18.3, 20.7. PART V - 24.2, 26.
Port of Seattle	Marilyn Guthrie	PART I - 1.1, 1.2, 15.1, 15.10, 15.11, 15.20, 16.3. PART V - 1, 23.7, 24.1, 24.2, 26, 28.
Port of Tacoma	Jason Jordan	PART I - 1.1, 1.2, 1.4, 15.1, 15.5, 15.9, 15.10, 15.11, 16.3. PART V - 12, 13, 24.2, 25.
Port of Vancouver	Matt Graves	PART I - 1.4, 16.1, 16.2, 16.3, 16.4, 20.25, 20.32, 21. PART V - 12, 23.10, 24.2, 26, 26.1, 27.
Precautionary Group	Richard C. Honour, Richard Hermann	PART I - 15.1, 15.7. PART III - 1.1. PART V - 4, 5, 23.6, 24.4, 26, 26.2.
Puget Sound Partnership	Gerry O'Keefe	PART I - 3.3, 7.1, 7.4, 8.2, 10.3, 10.5, 10.8, 12.8, 13.2, 14.1, 14.5, 14.6, 15.1, 15.8, 15.21, 16.1. PART III - 1.1. PART IV - 2.3, 5.4. PART V - 5, 6.1, 8, 24.3, 24.4, 24.16, 26, 26.1, 26.2, 26.4.
Puget Soundkeeper Alliance (see also EarthJustice comments)	Chris Wilke, Kate Pflaumer	PART I - 1.7, 2.1, 10.1, 11.1. PART III - 1.1. PART V - 4, 6.1, 14, 20, 20.1, 23.6, 23.7, 23.9, 26, 27.
Puyallup Tribe	Bill Sullivan	PART I - 1.1.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
Regional Road Maintenance Forum Permit Committee (Regional Road Maintenance Forum)	Jeff Rudolph	PART I - 1.1, 1.2, 7.1, 8.2, 9.2, 9.4, 12.6, 14.1, 14.2, 14.4, 14.5, 20.2, 20.7, 20.11, 20.12, 20.14, 20.17, 20.23, 20.27, 20.30, 20.34. PART III - 1.4, 2.1. PART IV - 2.1, 2.2, 6.2. PART V - 4, 12, 12.1, 13, 25, 28.
Rein Atteman		PART V - 5, 23.6.
Respect Asotin County	Donald Johnson	PART I - 1.7.
Richard Rogers		PART I - 1.7, 3.1, 8.3. PART II - 5.3, 7.1, 7.5.
River Network & American Rivers	Gayle Killam & Brett Swift	PART I - 1.6, 3.3, 6.2, 6.3, 11.3, 12.4, 13.2, 15.1, 15.14, 17.1, 17.2. PART II - 4.1, 4.2, 5.1, 5.3, 7.1, 7.4, 7.7, 5.3. PART V - 6.1, 20, 23, 23.3, 24.4, 24.16.
Rob Ahlschwede		PART V - 23.6, 26.
Robert B. Mallahan	Robert B. Mallahan, PE	PART V - 24.5.
Robert Dashiell		PART I - 1.6. PART III 2.1. PART V - 12.
Robert E. Rutkowski		PART I - 1.4.
Ron McGuire		PART I - 1.6.
Rosemere Neighborhood Association	Dvija Michael Bertish	PART I - 3.1, 15.1, 15.13, 15.19, 18.2. PART IV - 3.2, 3.5, 5.5, 7. PART V - 23.3, 23.6.
Sammamish Plateau Water & Sewer District	James A. Tupper, Jr.	PART I - 4.4.
Sharron Coontz		PART I - 1.4.
Shorewood-on-the-Sound Community Club	Bob Edgar	PART I - 15.13. PART V - 23.3, 23.6.
Sierra Club Email Campaign	1930 Individual Emails coordinated by Graham Taylor	PART I - 1.5, 15.7. PART III - 1.1. PART V - 4, 5, 23.6, 24.4.
Skagit County	Tim Holloran	PART I - 1.1, 1.2. PART III - 1.1. PART V - 4, 10, 23.2, 23.7, 24.9, 26.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
Snohomish County	Bree Urban	PART I - 1.2, 1.6, 1.7, 2.1, 4.1, 4.3, 5, 6.2, 6.3, 7.1, 7.3, 7.6, 7.7, 8.1, 8.3, 8.4, 9.1, 9.2, 9.4, 9.5, 9.6, 10.1, 10.4, 10.5, 10.6, 10.7, 10.10, 11.1, 11.2, 11.4, 12.1, 12.2, 12.3, 12.5, 12.6, 12.7, 12.8, 12.10, 12.11, 12.12, 12.13, 12.14, 13.2, 14.1, 14.2, 14.3, 14.4, 14.5, 15.2, 15.6, 15.9, 15.10, 15.17, 15.18, 15.19, 15.20, 15.21, 17.1, 17.2, 17.3, 17.4, 17.5, 18.4, 19.1, 19.5, 20.8, 20.15, 20.18, 20.27, 20.29, 20.31, 21. PART IV - 1.1, 1.2, 2.1, 2.2, 2.3, 3.1, 3.3, 4.1, 4.6, 5.1, 5.2, 5.3, 5.4, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.9, 8.1. PART V - 1, 4, 5, 6.1, 6.2, 7, 11, 12, 12.1, 13, 14, 15, 18, 19, 21, 22, 24, 24.4, 24.5, 24.6, 24.7, 24.8, 24.10, 24.16, 25, 26.1, 26.2, 26.3, 26.4, 29.
Sno-King Watershed Council	Eric Adman	PART I - 10.1, 13.2, 15.1. PART III - 1.1. PART V - 2, 5, 13, 23.3, 23.6, 23.10, 24.4, 26, 26.1, 26.2.
Spokane River Stewardship Partners	Sarah Hubbard-Gray	PART I - 1.6.
Stewardship Partners and the 12,000 Rain Gardens campaign	David Burger	PART I - 15.1, 15.7, 15.13. PART III - 1.1. PART V - 4, 5, 9, 23.3, 23.6, 24.15, 26, 26.1, 27.
Stormwater Work Group	Jim Simmonds	PART I - 15.1, 15.2, 15.8.
Susan Baker		PART V - 5, 23.6, 26.
Susan Kaun		PART V - 23.6.
Sustainable Development Task Force of Snohomish County	Zsofia Pasztor & Dave Porter	PART I - 15.1, 15.7, 15.13. PART III - 1.1. PART V - 4, 5, 9, 12, 22, 23.3, 23.6, 23.10, 24.15, 26, 26.1, 26.2, 26.4, 27.
Sustainable Seattle	Amy Waterman & Terri Butler	PART I - 1.4, 3.3, 11.2, 15.1, 15.7. PART III - 1.1. PART V - 23.6, 24.4, 26.2.
Sustainable West Seattle (also for Sustainable Communities All Over Puget Sound)	Cate White	PART I - 15.13. PART V - 23.3, 23.6, 23.7, 26.
Taylor Shellfish	Bill Dewey	PART V - 23.2.
Theodore Anderson		PART V - 5, 23.6.
Thom McConathy		PART I - 1.1, 3.1, 6.2, 6.3, 7.4, 7.5, 8.1, 8.3, 9.3, 9.4, 10.2, 11.3, 12.3, 12.5, 12.6, 14.2, 14.6, 15.14, 17.1, 17.2, 19.1. PART IV - 4.4, 6.2. PART V - 5.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
Thomas Sattler		PART I - 1.7, 3.1.
Thomas W. Holz		PART V - 23.3, 26.
Thurston County	Jim Bachmeier	PART I - 2.2, 4.4, 10.7, 12.13, 13.2, 14.1, 15.1, 15.4, 15.5, 15.12, 17.3, 17.5, 20.12, 20.28. PART III - 1.4, 2.1. PART V - 5, 12, 12.1, 13, 16, 17, 21, 24.4, 24.6, 24.7, 24.9, 24.12, 26, 26.3, 27, 28.
Transition Port Gardner	Jennie Lindberg & Jackie Minchew	PART V - 23.6, 24.4, 26.
U.S. EPA Region 10 (EPA Region 10)	Mike Bussell	PART I - 1.4, 3.3, 13.2, 15.1. PART III - 1.1. PART IV - 4.2, 4.4, 4.5. PART V - 23, 23.5, 23.6, 26, 26.1, 26.3, 26.4, 27.
U.S. Fish and Wildlife Service	Ken S. Berg	PART I - 7.2, 8.1, 14.6, 15.1, 15.2, 15.10, 15.11. PART III - 1.1. PART IV - 4.2, 4.4, 4.5. PART V - 5, 9, 13, 17, 23.10, 30.
Val Mundell		PART I - 1.5.
Val Stewart		PART I - 15.1. PART III - 1.1. PART V - 5, 12, 13, 23.3, 23.6, 23.10, 24.10, 24.13.
Vivien Sharples		PART V - 23.3.
Walla Walla County Board of Commissioners (Walla Walla County)	Gregory A. Tompkins and Joy Bader (Public Works)	PART I - 18.1. PART II - 5.3, 7.1, 7.2, 7.5, 7.6, 7.7, 7.8.
Washington Dept of Transportation (WSDOT)	Megan White	PART I - 6.1, 9.1, 9.2, 9.5, 9.6, 12.3, 12.6, 15.2, 15.5, 15.6, 15.8, 15.16, 15.20, 19.1, 20.6, 20.12, 20.17, 20.18, 20.23, 20.30. PART IV - 2.1, 7, 8.1. PART V - 5, 12, 12.1, 13, 16.3, 23, 24.2, 24.3, 24.4, 26.2, 28.
Washington Public Ports Association	Johan Hellman	PART I - 16.2, 16.3, 19.5. PART V - 4, 23.10, 24.2, 26, 27.
Washington State Department of Natural Resources	Shayne Cothorn	PART I - 1.1, 1.4, 15.1, 15.2. PART V - 5, 23.1, 28.
Washington State University Pullman (WSU Pullman)	Gene Patterson	PART I - 18.1, 18.5, 20.10, 20.20.
Wes Wotring		PART I - 1.6.
Whatcom County	Charles Anderson	PART I - 1.1, 1.2, 1.3, 3.3, 6.2, 7.1, 10.6, 10.7, 10.9, 12.12, 12.14, 13.2, 20.12. PART V - 4, 6.1, 12, 15, 24.4, 26.3.
Whitney Johnson	Whitney Johnson	PART V - 23.3, 28.

Municipal Stormwater Permits Response to Comments

Commenter Name	Signatory	Issue Number
Yakima Area Stormwater Co-Permittees (for cities of Union Gap, Sunnyside, and Yakima, and Yakima County)	Donald H. Gatchalian, Dennis Henne, Mark Gervasi, Scott Schafer	PART I - 7.1, 7.4, 8.3, 18.1, 18.3, 18.5, 19.1, 19.1, 19.1, 19.9, 20.12, 20.26. PART II - 3, 4.2, 4.3, 5.1, 5.3, 6.1, 7.1, 7.2, 7.3, 7.5, 7.7, 7.8, 7.11, 12.
ZGF Architects	Ed Clark	PART V - 23.3, 28.

Part I: Responses to Comments on Issues Common to More than One Permit

Part I-1 General comments and Process

I-1.1 Timelines

Commenters: City of Bainbridge Island, City of Bellevue, Clark County Clean Water Commission, City of Federal Way, City of Issaquah, Jim Jeffords (Asotin County Commissioner), City of Kent, City of Longview, City of Marysville, City of Mount Vernon, City of Mukilteo, City of Newcastle, Pierce County, City of Renton, Jeff Richter, City of Sammamish, City of SeaTac, City of Sumner, Whatcom County

Delay the new permit

Summary of the range of comments

- Ecology should reissue the current permit for a longer period of time, delay reissuing the permit, or reissue the permit with minimal changes for a variety of reasons, including:
 - The stagnant development/redevelopment and the down economy.
 - Severely reduced city budgets.
 - The concurrent review of the draft permit, draft manual, and draft Low Impact Development (LID) manual was very difficult and permittees need more time to review of all of documents.
 - Ecology is seeking major regulatory changes too soon; full implementation of the existing permit was just achieved in August 2011. The initial Phase I permit had additional time between the reissuance of the second Phase I permit.
 - Ecology has not provided documentation of how the current permit is performing.
 - To synchronize Washington's MS4 Permits with EPA's new Stormwater Regulations and EPA audit results.
 - To continue improvement in stormwater quality through the use of adaptive management.
 - To allow for permits consistent with Legislative intent.
 - To allow for sequential review of the technical documents and then the permit.
 - To address concerns regarding effectiveness, scope and expense, and sets realistic timelines for meeting complex technical and public policy challenges.
 - To provide local governments time to prioritize local needs, to analyze the extensive monitoring results that are currently required by the existing permit, and to consider the appropriate types of low impact development technologies that would be most appropriate for Southwest Washington.

- Support and agree with Ecology’s decision to extend the current permit from February 2012 to August 2012. The findings of concerns for the economic impacts on local governments made by the Legislature clearly apply to all local governments.
- Concern about the burden and likelihood of mismanagement and lack of success that would occur if these modifications are approved and adopted within a short time frame.

Response to the range of comments

- Ecology is reissuing the current 2007-2012 Phase II permits concurrent with issuance of the updated permits consistent with legislative direction in 2012 amendments to RCW 90.48.260. Ecology is reissuing the 2007-2012 Phase II permits without modifications from September 1, 2012 to July 31, 2013 in western Washington and from September 1, 2012 to July 31, 2014 in eastern Washington.
- On July 17, 2012 EPA announced a delay in the schedule for revising the stormwater rule. EPA will propose the rule by June 2013 and finalize the rule by December 2014. A reasonable timeframe for the requirement implement the rule is two to three years later, in late 2016 or 2017. This fits well with Ecology’s timeline to reissue the next permits in 2018.
- Ecology is taking the same approach to the Phase I permit and reissuing the 2007-2012 permit from September 1, 2012 to July 31, 2013 with limited modifications, primarily to address completion of S8 monitoring studies.
- In addition, the final five year permits delay some deadlines according to legislative direction, and comments received. The final permits also reduce the level of effort for specific requirements, as described in the Costs and individual sections of the RTC.

Timelines are not aggressive enough

Commenters: Columbia Riverkeeper, Darrell Johnson, Neal Jander, Lake Forest Park Streamkeepers, Lider Engineering, Thom McConathy, Northwest Indian Fisheries Commission, Puget Soundkeeper Alliance, Puyallup Tribe, Washington State Department of Natural Resources

Summary of the response to comments

Ecology should not delay issuing the permits for various reasons including:

- Delays will lead to continued cost to human health, the environment, and our economy.
- Permit requirements and are not sufficient to meet the 2020 goal of cleaning up Puget Sound as articulated in the Puget Sound Partnership's Action Agenda.
- The lengthy process surrounding these permits has subjected water quality protection decisions to the sway of political pressures, to the detriment of resource protection.
- To prevent losing our quality of life, our salmon, orcas, and other wildlife populations.
- Puget Sound is a vital part of the Washington economy and culture. For far too long, we have used it as a dumping ground for waste of many types, including stormwater.

- The permit is moving slowly in the right direction, but it will not be enough to stem further deterioration of our streams and lakes.
- Object to the one year delay in implementing TMDLs.
- Need to act to see progress in improving water quality throughout the Puyallup basin.
- Ecology fails to impose or delays permit requirements that address known impacts of urban stormwater pollution on public health and the aquatic environment
- Ecology has not effectively renewed the permits within the lifetime of the permit thus leading to permit shock when strengthening the permit. Suggest adding incremental actions beyond those intended in this five year period.

Response to the range of comments

- Ecology is reissuing permits with effective dates and timelines consistent with 2012 amendments to RCW 90.48.260. The 2012 budget also provided funding for LID training to assist permitted communities prepare for what is a transition to LID.
- Ecology agrees that stormwater pollution is a threat to water quality and aquatic habitat statewide. Ongoing implementation of existing stormwater programs built during the 2007-2012 permit term will continue to prevent, find, and fix many pollution problems during the phasing in of new requirements.
- Although the final permits phase in new requirements incrementally, Ecology permits cover a specific time period and do not include new requirements to be met in timeframes beyond the permit term.

Timelines in the new permit are too aggressive

Commenters: Clark County, Clark County Clean Water Commission, City of Clyde Hill, City of Renton

Summary of the range of comments

- The timelines in the draft NPDES permit are too aggressive, increasing the potential for non-compliance and risk of litigation.
- Staff will be overburdened with LID code changes on top of other mandated code reviews and updates - all at a time when staff resources have been reduced by the bad economy.
- Timelines are unrealistically short for vague, complex or incomplete requirements.
- The draft Phase I permit framework and timelines cannot realistically be met by local governments.

Response to the range of comments

- Ecology revised a number of deadlines between the draft and final permits to allow more time to meet requirements. See the Costs and individual sections of this RTC.

- Ecology established requirements and schedules for implementation of each permit and believes they are realistic and achievable.
- Ecology provides guidance and training to assist permittees with permit compliance, as well as grants to cities and counties to develop resources for and fund implementation.

Extend the time for review and comment

Commenters: City of Auburn, City of Bainbridge Island, City of Bellevue, City of Everett, City of Issaquah, City of Kent, Kitsap Regional Coordinating Council, City of Lacey, City of Longview, City of Mount Vernon, City of Mukilteo, City of Newcastle, City of Oak Harbor, City of Olympia, City of Poulsbo, City of Redmond, Regional Road Maintenance Forum, City of Renton, City of Sammamish, City of SeaTac, Skagit County, City of Sumner, City of Tacoma, City of Vancouver, Port of Seattle, Port of Tacoma, Whatcom County

Summary of the range of comments

Ecology should extend the time for review and comment for the following reasons:

- Permittees have limited staff resources for review of these documents.
- The time allotted for review and analysis of all documents is insufficient to address the economic and operating impacts of the revised Permit components.
- The documents are very large and technical.
- The draft *Stormwater Management Manual for Western Washington* was not available when the draft permits were released, but was released two weeks later.
- The changes proposed are wide ranging, are very broad, and have interlocking effects with the GMA, PSP Action Agenda, and Puget Sound Regional Council proposed guidelines for Roadway Preservation transportation funding.
- The public meeting should have been scheduled closer to the release date of the drafts, not shortly before comments are due. Several public hearings were canceled due to snow and not rescheduled. They should have been rescheduled even if it pushed the comment due date back.
- Additional community dialogue is necessary.
- Several documents were not available for review for the full comment period.

Response to the range of comments

- Ecology provided three and one-half months of public comment and held eight workshops and five public hearings statewide. WAC 173-226-130(d) requires at least a 30-day public comment period and one public hearing, and Ecology far exceeded that requirement.
- The draft *Stormwater Management Manual for Western Washington* was available for three months of the public comment period.

- Ecology also conducted an extensive public input process for the updated permits over the past three to four years. That process included listening sessions, several advisory processes, and an informal public review and comment period on preliminary draft LID and monitoring requirements.
- Ecology cancelled one of six public hearings (Mount Vernon) as a public safety measure due to extreme weather and dangerous road conditions. The Renton public hearing was available for public testimony the following week. Ecology rescheduled two public workshops cancelled due to snow. Under WAC 173-226-130(a) and (b) Ecology must provide notice of a public hearing 30 days in advance of the hearing, and thus was unable to re-schedule the Mount Vernon public hearing. Ecology determined that it would significantly delay permit reissuance if it extended the public comment period by the one to two months needed to provide 30 days public notice required by the WAC for a rescheduled public hearing.

I-1.2 Western Washington manual review

Comments apply to Phase I and Western Washington Phase II permits.

Commenters: Association of Washington Cities, City of Auburn, City of Bainbridge Island, City of Bellevue, Clark County, Clark County Clean Water Commission, City of Clyde Hill, City of Everett, City of Lacey, City of Longview, City of Mount Vernon, City of Mukilteo, City of Newcastle, City of Olympia, Pierce County, Port of Seattle, Port of Tacoma, City of Poulsbo, Regional Road Maintenance Forum, City of Sammamish, City of SeaTac, City of Sedro Woolley, Skagit County, Snohomish County, City of Redmond, City of Renton, City of Tacoma, Whatcom County

Summary of the range of comments

All documents should be available for review concurrently

- Not all referenced documents were available during the entire comment period. The Puget Sound Partnership *LID Technical Guidance Manual* became available three weeks before the end of the comment period.
- The technical documents referenced in the permit are interrelated and changes to one will affect the other. All of the documents together form a regulatory package and one document may change the impact of another.
- Need to see the full SWMMWW and the LID Guidance manual to provide comments on the draft permits.

Documents should not be reviewed concurrently

- There are legal issues in regard to the process by which both manuals are being reviewed and then incorporated by reference into the permit without being given the full opportunity for review. The concurrent process likely conflicts with the state's Administrative Procedures Act for rulemaking Ch. 34.05 RCW.
- Previous stormwater design manuals have followed the rulemaking process during review. Because the Draft Permit and the Draft 2012 SWMMWW are interrelated documents, such a rulemaking process would have benefited the permit review process.
- Ecology should conduct separate, consecutive public review processes for the draft Manual, draft Permit and supporting documents. These processes should not be overlapping.
- Ecology's concurrent review process may not meet the State's Administrative Procedures Act as it does not allow for the completion of important scientific, engineering and cost – benefit analyses of new requirements before they are proposed as conditions in the next permit.
- Interrelated documents should be reviewed sequentially, beginning with technical documents.
- Some elements of requirements (e.g. LID maintenance standards) were not included for review and should be available during the comment period.
- Ecology should seek additional input on the most controversial permit issues before issuing final permit language.

Manual is incomplete

- The draft Stormwater Management Manual and LID Technical Guidance Manual are incomplete.
- Critical information is not available during the public review and comment period. The manuals attached to the permit are not complete.
- Guidance documents referenced by the permit are not included in the body of the permit, and this will complicate permit compliance.
- LID maintenance standards were not included for review in either the Draft 2012 SWMMWW or the Draft 2012 LID Manual. Successful implementation of LID is dependent on long-term maintenance. These details must be available for review and comment during the comment period.
- Concerned that Ecology is relying on documents other than the permit to impose legal obligations on local governments. We urge Ecology to clearly delineate legally binding conditions from generally applicable or recommended guidance.
- Object to the incorporation by reference into the Stormwater Manual (and thereby into the Permit) of a 260+ page document authored by third parties - the *LID Technical Guidance Manual* that was released in draft form by WSU Extension and Puget Sound Partnership on January 9, 2012. If there are specific portions of the *LID Technical Guidance Manual* that should be made mandatory for Permittees, those specific portions of the document should be inserted directly into the body of the Permit or the body of the Stormwater Manual.

- In order to use the 2012 Manual as the stormwater design standard the document should have the prescriptive specificity for design standards. Consequently the City must rely on a Phase I permittee to create an effective document or do it ourselves. We urge Ecology to reconsider how it writes the Stormwater Management Manual and abandon writing it as a guidance document and instead write it as design standard and enforceable document.

Response to the range of comments

- Ecology provided more than three months to review the manual, and determined that further review was unnecessary. Ecology believes that, given the LID advisory process and the 2011 preliminary draft informal comment period, the formal comment period materials and timeframes were sufficient.
- Ecology acknowledges that the package of LID documents to review was substantial, and for this reason provided a three-and-one half month public comment period. The majority of LID requirements, including thresholds, minimum requirements, and feasibility criteria were in Appendix 1 of the Western Washington permits published on October 19, 2011. Two weeks later, Ecology released the draft SWMMWW with a table detailing each proposed change and the rationale, and allowed for a three month comment period.
- The Puget Sound Partnership (PSP) released the final draft of the LID guidebook for *Integrating LID into Local Codes* in November 2011. PSP published the first draft for comment in June 2011 and held three public workshops, with Ecology holding a fourth workshop in Vancouver. PSP incorporated the comments into the version issued in November, 2011 and available for over two months of Ecology's public comment period. This is the most recent version and is available at http://www.psp.wa.gov/LID_GLG.php
- Ecology acknowledges the delay in the PSP's release of the draft *LID Technical Guidance Manual*, which was issued in early January for a separate comment period conducted by the PSP. Ecology's final permits do not rely on the document for permit requirements.
- Ecology stormwater manuals are not rules. The manuals have no independent authority and as such, are not the underlying basis for permit requirements. The underlying bases are the federal rules that require stormwater controls on new and redevelopment. The manuals represent an acceptable way to comply with existing state and federal regulatory requirements for managing stormwater runoff from construction sites, and post-construction stormwater runoff associated with new development and redevelopment.
- The use and reference to the stormwater manuals is consistent with Ecology's policy on the use of such manuals. The Policy Statement published in the Washington State Register (WSR 03-15-091) stated:

“Federal, state, and local permits may refer to this Manual or the BMPs contained in this manual. In most cases, elements of the Manual or the Manual itself may become permit requirements only if the authorities and standards under which the permit is issued support such a requirement. It is not permissible or appropriate to include the minimum requirements, thresholds, definitions, BMP selection processes, and BMP design criteria of this Manual as

permit conditions or use the Manual as a review standard solely because they are published in the Manual or part of the Manual.”

It is appropriate, even expected, that Ecology require use of its best available guidance in a permit that must satisfy federal and state statutory requirements (MEP and AKART, respectively).

- Ecology chose to provide all the documents for concurrent review in response to requests made during the May-June 2011 informal LID review, and also in order to meet the reissuance schedule in RCW 90.48.260. Ecology delayed reissuing the final permits by one month in order to provide the final revised manual along with the permits for the full 30-day appeal period. See the RTC section on LID for a description of how Ecology has modified the documents to provide for full review of all requirements during the appeal period, rather than relying on the now-delayed final LID Technical Guidance Manual.
- Ecology is no longer relying on the LID Technical Guidance Manual for permit requirements because it was not completed at the date of permit reissuance. The final LID requirements are contained in documents available during the appeal period. See the LID section of the RTC for further discussion.
- Ecology is funding a project to develop maintenance standards, guidance and training for LID facilities. Ecology plans for the guidance and training to be available in 2013, prior to the permit effective date, and well before the adoption and implementation deadlines for the LID requirements. Where specific techniques lack maintenance standards, Ecology refers permittees and contractors to maintenance information from the project engineer, the installer, or the manufacturer, a common practice with proprietary stormwater technologies.
- Ecology recognizes that some municipalities would prefer to adopt a manual of technical standards that is written as an enforceable document, not a guidance document. However, Ecology will continue to publish the stormwater manuals as guidance documents to.

I-1.3 Permits exceed federal requirements

Commenters: Clark County, Cowlitz County, City of Everett, City of Marysville, City of Mukilteo, City of Newcastle, Pierce County, City of Poulsbo, City of Renton, City of Sammamish, City of SeaTac, City of Sedro Woolley, North Central Homebuilders Association, Whatcom County

Summary of the range of comments

- Sections of this draft permit go well beyond the minimum requirements of the EPA and the Clean Water Act, and will create significant financial burdens on municipalities during a time when cities can ill afford additional costs. Examples include Low Impact Development (LID) and Monitoring requirements. We request that these sections be removed from the permit and be reassessed in future permits.

- The fact sheet should include a description of how the Ecology permit differs from EPA rules and the rationale for those differences. This would enable us to present this information to elected officials who approve programs & budgets.
- Requirements in the permit that go beyond federal requirements or that differ due to timing of permit deadlines create an uneven playing field regionally and nationally.
- We feel that the current draft permit goes well beyond what is required by the Puget Sound Pollution Control Hearings Board decision and is well beyond what is appropriate.
- EPA's intent to allow flexibility for permittees to focus resources on the greatest needs is not reflected in the Phase I permit.

Response to the range of comments

- Ecology retained the LID and monitoring requirements in the final permits. Ecology included these requirements to satisfy PCHB rulings on the appeal of the 2007 Phase I and Western Washington Phase II permits. (See the 2011 Fact Sheet and LID and monitoring section of this RTC for more information.)
- Ecology's municipal stormwater permits meet the MEP standard of the Clean Water Act but also meet the AKART standard of state law (RCW 90.48). See the discussion in the 2011 Fact Sheet and in the S3 and S4 sections of this RTC.
- The EPA federal rule does not include fully detailed specifics on the program elements required, and clarifies that these are minimum requirements. Ecology permits provide program benchmarks and more detailed requirements that establish clear thresholds for compliance to protect water quality to the MEP, and in addition, to satisfy the AKART standard.
- EPA's intent for flexibility is documented in the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, May 2012, and it "*...does not remove obligations to comply with the CWA, nor does it lower existing regulatory or permitting standard, but rather recognizes the flexibilities in the CWA for the appropriate sequencing and scheduling of work.*" This memorandum further explains that the responsibility to develop an integrated plan rests with the municipality that chooses to pursue this approach. Refer to <http://cfpub.epa.gov/npdes/integratedplans.cfm> for more information.

I-1.4 Support permit requirements or request stronger requirements

Commenters: Cascadian Edible Landscapes, Christine Castro, Duncan Clauson, Columbia Riverkeeper, Sharron Coontz, EarthJustice, Environmental Clinic at Gonzaga University School of Law, Neal Jander, Lider Engineering, National Marine Fisheries Service, Neighbors of Seahurst Park, Northwest Indian Fisheries Commission, Port of Tacoma, Port of Vancouver, Lisa Riemer, Robert E. Rutkowski, Sustainable Seattle, US EPA Region 10, Washington State

Department of Natural Resources, Multiple respondents of the People for Puget Sound E-mail and Petition Campaigns

Summary of the range of comments

Support for protection from stormwater impacts

- Support more resiliency of our water systems to prepare for climate change by issuing a permit to meet beneficial goals in reducing pollution.
- The permits are critically important to protect and restore Puget Sound and to aid in recovery of ESA-listed salmon species and killer whales.
- Overall, the draft permit takes a balanced approach to the environment and Washington's business economy.
- Support the efforts to improve stormwater quality and simplify the permit.
- Support the new proposed stormwater rules and encourage Ecology to move forward with rules that protect our residents as well as our ecosystem. Need a regulatory push or the changes will not take place.
- The permit process is acceptable to protect streams, rivers, lakes, and the Salish Sea. As the owner of a small construction company, I am willing to take some extra steps.
- Support the focus on enforcement for permit compliance when municipalities develop stormwater management programs.
- To protect the salmon resource and honor treaty rights, we support permits that fully address the many facets of stormwater pollution to protect the beneficial uses, including salmon and salmon habitat, and the treaty-reserved obligation to recover and maintain fishable waters. Support removing the one acre exemption in the Phase II permits, and a robust water quality monitoring program.
- It is urgent to change "business as usual" in land development and redevelopment in order to reduce pollution to Puget Sound.
- Master Gardeners supports Rain Garden training for homeowners, raising awareness of LID ideas and supporting the importance of retention, filtration, re-use of water on site before it moves on in transpiration or ground water.

Request stronger requirements

- Ecology fails to impose or delays permit requirements that address the known impacts of urban stormwater pollution on public health and the aquatic environment.
- It will take too long for the changes in the new manual to have any real effect on our stormwater quality, if we only rely on new construction or reconstruction.
- Please enact tough rules that are easy to understand and scientifically sound.
- A robust permit will protect water quality and require responsible building to protect Puget Sound, but the state is offering only baby steps.

- Support proven, commonsense building techniques, to clean up Puget Sound, reduce flooding risks, and support green building industries. This permit doesn't get us there.
- The draft permits fail to capitalize on this important opportunity to protect and restore the Sound.
- The permit overlaps the range of 15 federally-listed threatened or endangered salmon, as well as designated critical habitat for 13 of these populations. Some discharges will also affect listed marine species including Southern Resident Killer Whales and rockfish. Substantial improvements in the permits will reduce the adverse effects from stormwater discharges.
- NMFS supports using salmon biological effects thresholds for stormwater in the permits to advise local municipalities regarding potential effects to salmon. Reducing levels of pollutants (e.g. copper) in stormwater below these biological thresholds through NPDES permits works to improve water quality in Puget Sound.
- Request including stronger regulations and LID requirements and expanded requirements to monitor discharges, and to protect residents, open spaces, and water quality.
- Protecting water quality is integral to the overall salmon recovery effort and to keeping shellfish beds clean, safe, and harvestable. Impacts of stormwater runoff undermine what gains have been made. More needs to be done. Request Ecology implement more stringent stormwater controls, and timelines that do not unduly delay the protections that are needed now. We remain concerned about the excessive discretion granted to the permittee to self-determine compliance.
- The permit and LID standards should require developers to use LID techniques wherever feasible to effectively reduce toxic runoff.

Response to the range of comments

- Ecology appreciates the support for new requirements and agrees that stormwater contributes to pollution and habitat loss in many urban areas.
- Ecology worked with a broad range of stakeholders and considered substantial scientific and technical information in establishing the requirements and compliance thresholds for these permits. Ecology believes the final permits achieve a reasonable balance of requirements and timing for effective implementation.
- The final Phase I and Western Washington Phase II permits include requirements for watershed-based stormwater planning in the four most populated counties of western Washington. This analysis includes biological thresholds.
- The final permits (see the Coordination section of this RTC) encourage permittees within watersheds to coordinate stormwater management programs. Ecology also encourages permittees to work within existing watershed and salmon recovery planning groups to conduct quantitative stormwater basin studies to address existing and future development, but does not expand the watershed-based stormwater planning requirement at this time.

- Refer to the discussion of LID in this document for Ecology's response to suggestions regarding specific LID BMPs and LID principles.

I-1.5 Solutions beyond current permit requirements

Commenters: Association of Washington Cities, Garden Cycles, League of Women Voters of Washington, Lider Engineering, Val Mundel, Olympic Environmental Council, Sierra Club Email Campaign

Summary of the range of comments

- Support EPA efforts for a holistic approach to permitting to provide the most environmental benefit for the cost. Request that Ecology incorporate flexibility in the permits to take advantage of these efforts should they come to fruition.
- Ecology should encourage stormwater retrofitting of private property. Incentives could include property tax relief for properties that install LID retrofits, or low interest loans and grants.
- Combined storm sewer systems should be separated. Pipes needing replacement offer the opportunity to separate storm sewer pipes and insert good filters to reduce solids, and use ultraviolet lights to reduce bacteria. CSOs should not be approved if green alternatives are feasible.
- Stormwater permits should focus more on addressing the sources of pollution.
- A cost effective approach to mitigate pollution from stormwater is to better address forest health, including soil health, particularly in urban forests.
- Native plant restoration methods in urban forests unnecessarily expose topsoil/duff to erosion. Suggest a better practice such as tolerating infestations of blackberry "knockdowns," planting evergreens, and maintaining those trees until they eventually shade out the blackberry. Also support practices to address English ivy that is strangling trees.

Response to the range of comments

- Ecology did not include explicit flexibility within the permits to address EPA's approach as described in the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, May 2012. As discussed in the response to issue # I-1.3 above, the EPA memorandum explains that the responsibility to develop an integrated plan rests with the municipality that chooses to pursue this approach. Refer to <http://cfpub.epa.gov/npdes/integratedplans.cfm> for more information.
- The final Phase II permits do not require retrofit projects because of the potential significant costs to the public. The State has provided funding for public stormwater retrofit projects in

recent years that Ecology has awarded to project proposals with the greatest benefits to water quality and aquatic habitat, among other criteria.

- Ecology encourages permittees and others to protect and enhance native vegetation in urban and other forests.

I-1.6 Other general comments

Commenters: Association of Washington Cities, City of Bainbridge Island, City of Bremerton, Cary Butler, Clark County, Clark County Clean Water Commission, Robert Dashiell, Art Jenkins, Lower Columbia Contractors Association, Ron McGuire, City of Newcastle, Kendall Peterson, People for Puget Sound, Pierce County, Jeff Richter, River Network/American Rivers, Snohomish County, Spokane River Stewardship Partners, Wes Wotring

Summary of the range of comments

Permit requirements for smaller and larger communities

- Small cities have concerns over the extent of the new requirements and the lack of resources to meet them, with one person to manage the entire permit program.
- Support the stormwater program, but as a smaller Phase II, under 15,000 people, we have fewer abilities and resources for implementing new requirements. .
- Regulation of stormwater is hard on contractors economically in Cowlitz County, which is a smaller jurisdiction. We have done a good job and should not have more restrictions.
- Stormwater regulations infringe on private property, especially in rural areas.
- For smaller cities, compliance with this permit will be costly, complex, and difficult.
- Permittees discharging to the same watershed or water body should be held to the same standard and goals. This makes sense ecologically and creates a level playing field for regional economic development. Ecology should eliminate the differences in Phase I and Phase II permits.
- Individual permits are better suited to address the specific geographic issues associated with the larger communities, and that is the way that most other states handle Phase I MS4s. In particular, it is much easier to assign wasteload allocations from TMDLs to individual permits.
- Going to individual permits would allow for a “stormwater light” program for areas without impairments to water bodies.

Implementation and compliance

- Compliance is uncertain when so many requirements are modified in one permit update. Vague and complex requirements can be simplified, made more conclusive, and more fully developed based upon experience if the changes are anticipated but not enforced during this next permit update.

- The permit includes many new and untested approaches and requirements. Permittees will waste resources and fail to fully comply with the permit.
- The draft permit is too prescriptive, using minimum performance measures in place of asking permittees to measure and prioritize local needs. The draft permit is too expansive and shifts state responsibilities such as monitoring and LID education to local governments.
- Ecology should issue a technical implementation document to outline and clarify requirements.
- Permittees are not held to equivalent standards; rather, each permittee is measured against its own levels of effort to meet requirements in a previous permit. This nearly eliminates local government efforts to tailor stormwater management programs to local needs.
- In Rosemere Neighborhood Association, et al. v. Clark County, et al., PCHB Case No. 10-013, the PCHB held that an Agreed Order approved by Ecology cannot authorize the delay of a deadline specified in the Permit without requiring the Permittee to mitigate for the period of delay. Because it is no longer possible for a Permittee to obtain a reasonable extension of any Permit deadline, even for legitimate reasons beyond the control of the Permittee, the County recommends all deadlines specified in the Permit be (1) extended, and (2) be expressly made flexible. Recommend: “All deadlines specified in this Permit are aspirational rather than mandatory. So long as a Permittee is using good faith efforts to diligently achieve compliance with a particular component or requirement of this Permit, Ecology shall provide the Permittee with a reasonable amount of additional time in which to complete the Permit component or requirement at issue.”
- If permittees miss deadlines, they are not required to explain why and when they will comply. This should be in the permit.

Stormwater utilities and funding

- Oppose that Ecology is issuing a permit for the rain that falls on my property, and voted “no.”
- Stormwater permit has caused county to levy a tax as utility fee.
- Stormwater regulations are onerous and cost citizens too much.
- As stormwater permits extend farther from MS4 and flood control to watershed management, somebody soon will litigate the stormwater utility concept, much like the judicial ruling of fire hydrants in Seattle ... it's a general fund, overarching public good, not a deliverable or measurable utility. That would move stormwater from a fee to a tax. Ecology says that is not a permit issue but they should be an active player about possible future municipal defunding of the stormwater programs.
- Future funding for the Spokane River Regional Toxics Task Force should consider increasing the contribution for stormwater rather than wastewater customers, since 19 percent of the currently identified PCB load comes from CSO/stormwater (versus 8 percent from wastewater) discharges.

Response to the range of comments

- Ecology acknowledges that smaller jurisdictions' stormwater programs have less capacity than do larger jurisdictions, and made a number of final permit decisions in consideration of the smaller jurisdictions. The final permit requirements increased the flexibility for requirements such as LID, IDDE field screening, catch basin inspections, and public education and outreach. In addition, Ecology uses enforcement discretion and provides technical assistance in consideration of jurisdiction size and capacity.
- The issue of stormwater regulations as a matter of private property rights has been litigated in the past and determined to be reasonable to protect off-site public and private property, public health and safety, and natural resources that benefit the general public and future generations. A fundamental tenet of the federal Clean Water Act is that no one has the right to pollute public waters.
- Ecology reduced the differences between the Phase I and Western Washington Phase II permits, in particular removing the Phase II one-acre threshold for new and redevelopment.
- Ecology retained the general permit structure and used Appendix 2 to clarify compliance with TMDL requirements for individual permittees, but encourages coordination across watersheds. Ecology does not have the resources to develop and administer individual permits, but includes general permit requirements that can be scaled to the size of the community. Regional cooperation among permittees is a cost-efficient way for smaller jurisdictions to implement the permits.
- Ecology believes the permits achieve a good balance of prescriptive requirements and the flexibility for permittees to tailor requirements to local conditions.
- Ecology will prioritize and provide permittees with written guidance on specific permit requirements. Projects are currently underway to develop IDDE field screening guidance and LID O&M guidance.
- Ecology did not include language that all deadlines are "aspirational." Ecology has available and has used enforcement mechanisms such as an Agreed Order that can establish a compliance schedule for specific situations of delay. In addition, several permit requirements allow flexibility for "circumstances beyond the control" of permittees.
- General Condition G20 requires each permittee to notify Ecology when permit noncompliance has occurred, including a missed deadline, and further requires the permittee to describe when they expect to comply and the steps taken or planned to prevent reoccurrence of the noncompliance.
- The permits do not include requirements for stormwater utility fees, although this is the common funding mechanism for ongoing program support. Ecology will continue to work with the Association of Washington Cities, Washington Association of Counties, and other entities to support the ability of municipalities to fund stormwater programs.
- Ecology commends members of the Spokane River Regional Toxics Task Force for their work to reduce PCBs in the Spokane River. However, the MS4 permits do not cover combined sewer/stormwater discharges or the funding arrangements among local entities.

I-1.7 Fact Sheet

For comments on specific permit requirements that refer to the Fact Sheet, see the specific permit sections of this RTC.

Commenters: Harry Branch, Clark County, EarthJustice, King County, Respect Asotin County, Richard Rogers, Thomas Sattler, Snohomish County

Summary of the range of comments

- Ecology expects permittees to begin work on actions of the 2013 permit during 2012 such as code & manual adoption. The Fact Sheet should explain how this should be accomplished if the permit is under appeal.
- Generally, the fact sheet describes permit requirements, with little information explaining the basis in AKART and MEP.
- The Fact Sheet is not part of the permit and has no regulatory standing. Statements that add clarity or specify actions or requirements need to be included in the permit.
- The problem with stormwater is not that it is polluted. Copper is not present in ambient samples taken from Puget Sound, it is only present in localized places like the bases of freeway overpasses etc., that could be dealt with as point rather than non-point sources. There are no pharmaceuticals or phthalates in stormwater; they come primarily from municipal treatment systems and industrial discharges. There are no dioxins, PAHs or DDT leftovers; they come from groundwater intrusion into storm drains, not stormwater runoff.
- The Fact Sheet makes statements about stormwater impacts in urbanized areas that are not supported by data, in particular data from Asotin County.
- Phase I Fact Sheet: Page 10. Section 3.1. Given that Fact Sheets are part of the official record, all statements need to be accurate and fact-based:
 - This clause is inaccurate: “Also, since stormwater does not infiltrate during the wet season...”
 - The summary of the toxicity associated with pre-spawn coho mortality should include the new information about the association spawner mortality with the relative proportion of local roads, impervious surfaces, and commercial property within a basin. Nat Scholz and the NOAA team have now published updated studies related to the Coho pre-spawning mortality and these references should be used in the Fact Sheet:
 - Scholz NL, Myers MS, McCarthy SG, Labenia JS, McIntyre JK, et al. (2011) Recurrent Die-Offs of Adult Coho Salmon Returning to Spawn in Puget Sound Lowland Urban Streams. PLoS ONE 6(12): e28013. doi:10.1371/journal.pone.0028013.

- Spromberg JA and Scholz NL (2011) Estimating Coho Population Decline in Urbanizing Watersheds—Integrated Environmental Assessment and Management—Volume 7, Number 4—pp. 648–656.
- Feist BE, Buhle ER, Arnold P, Davis JW, Scholz NL (2011) Landscape Ecotoxicology of Coho Salmon Spawner Mortality in Urban Streams. PLoS ONE 6(8): e23424. doi:10.1371/journal.pone.0023424.
- Page 13. Section 3.2. *Recent Regional Efforts* and Page 16. The references to the report by the Sediment Phthalates Work Group should be caveated or should be removed from the Fact Sheet. This report was not credible and scientists/technical experts from the environmental community were excluded from the Work Group. We had strong objections to the committee’s recommendations. Dischargers were allowed to be included on the committee. It was a biased effort.
- Page 14. Toxic Loading Study for Puget Sound. The description of this study should include mention that another one of the limitations of the study (due to limited funds) is that it was limited to sampling in only two watersheds.

Response to the range of comments

- The final permits established timelines within the permit term based on input from advisory groups, public comments, and legislative direction. While Ecology encourages permittees to begin working to prepare for new permit requirements, it is not required.
- The Fact Sheet is required under WAC 173-226-210 and is part of the official record. Ecology is appending this RTC to the November 2011 Fact Sheet and posting it online as a component of the final permits. Permittees should rely on information in the Fact Sheet and RTC to understand, for example, the rationale for a permit change such as streamlining permit language as opposed to substantively changing requirements.
- Ecology does not agree that urban stormwater is not polluted with copper, phthalates, or PAHs and other contaminants. National and regional data and studies have documented the presence of these pollutants and can trace them to known sources as described and referenced in the Fact Sheet. Please refer to the information on Puget Sound, the Columbia River Basin, the Spokane River Basin and the Yakima River Basin at <http://www.ecy.wa.gov/geographic/basins.html> and multiple TMDL studies at <http://www.ecy.wa.gov/programs/wq/tmdl/TMDLsbyWria/TMDLbyWria.html>
- Ecology relied on multiple sources of data and studies conducted by qualified scientists that document pollution and other impacts of stormwater from land use activities common to all urbanized areas (such as clearing land, paving and building at high densities, concentrated vehicle use, and common residential, industrial and commercial activities).
- Ecology appreciates the additional information on studies related to stormwater pollution and includes the full list in the RTC which is an Appendix to the Fact Sheet.

I-2 Cost

Comments address all three municipal stormwater permits. Additional comments on costs of specific requirements are also incorporated into specific permit sections of this document.

I-2.1 General comments on cost impacts of new requirements

Commenters: City of Asotin, Asotin County, Association of Washington Cities, City of Bainbridge Island, City of Bellevue, Clark County, City of Clarkston, Columbia Riverkeeper, Cowlitz County, Douglas County, East King County Chamber of Commerce Legislative Coalition, Eastern Washington Coordinators Group, City of Everett, City of Federal Way, City of Issaquah, Art Jenkins, City of Kelso, City of Kennewick, King County, City of Kirkland, City of Longview, Lower Columbia Contractors Association, City of Marysville, City of Mount Vernon, City of Mukilteo, North Central Homebuilders Association, A. Nowell, City of Olympia, Donald and Marilyn O'Malley, Pierce County, City of Port Orchard, City of Poulsbo, Puget Soundkeeper Alliance, City of Richland, Jeff Richter, City of SeaTac, City of Sedro Woolley, Snohomish County, City of Sammamish, City of Snohomish.

Summary of the range of comments

Concerns:

- The draft permit does not consider the current recession's impacts on permittees.
- The cost is too high and will slow economic recovery and new jobs, particularly of the development and construction industry which has suffered big losses.
- Permit elements provide long-term protections that will reduce high costs of addressing urban stormwater pollution to Columbia River and tributaries.
- Need to weigh the recovery of Puget Sound against the economy, and it may require some sacrifices.
- The new requirements add a lot of cost as an unfunded mandate with no clear benefits.
- It is unreasonable to ask citizens to increase utility fees at a time when basic services like police, fire, streets, planning, youth programs and parks have been significantly cut.
- Affects local governments with severely reduced revenues and subjects them to liability and costs of potential lawsuits and violations when they are not able to comply.
- Affects the private sector, especially developers and businesses (increased rents).
- Higher costs of doing business reduce Washington State's competitive position in the global economy and will cause businesses to close or move away.
- Generating utility fee increases is difficult, especially in a predominantly dry eastern Washington context.
- Local governments implemented utility rate increases for the current permits and have not had time to evaluate the increased costs through rates to our taxpayers.

- Increased costs will lead to significant reductions to other stormwater services.
- New requirements cost a lot but do not focus on priorities, like cleaning up pollution.
- Examples of costs to local governments:
 - King County estimates increased costs of \$1.5 to \$3.5 million per year for new requirements in TMDLs, LID, basin plan, and mapping and outfall screening.
 - Bellevue costs from increased inspections, and IDDE screening could exceed \$500,000 annually.
 - Clark County estimates costs at an additional \$1.3 million annually.
 - Asotin County program costs are \$800,000 annually for the stormwater program, which is a lot for a small rural community in an arid climate.
 - Impacts on small cities:
 - Kelso's unemployment and poverty are above the state average. Even under current requirements, it has cut over half of the stormwater staff.
 - New requirements would require a 24% increase in utility rates for Longview to fund geotechnical, engineering and inspection costs, catch basin cleaning every 2 years, expanded field screening.
- Examples of higher cost requirements:
 - Low impact development (LID) requirements for new and redevelopment including geotechnical, engineering, permitting, inspection, and maintenance.
 - Costs for reviewing, inspecting, and enforcing projects under one acre.
 - Development projects site testing for LID for developers.
 - Expanded field screening and source control to follow up on screening.
 - Monitoring, stewardship, training, inspection, reporting.
 - Cleaning catch basins every two years.

Recommendations:

- Delay the permit by an additional one or two years.
- Reduce the new requirements, in particular for smaller jurisdictions.
- Give current requirements an opportunity to show their effectiveness and evaluate them before adding new requirements.
- Find ways to achieve permit improvements while minimizing fiscal impacts to municipalities.
- Allow changes in LID development regulations to be market-driven and incentive-based.

Response to the range of comments

- Ecology acknowledges and is aware of the challenges of local governments to meet expanded requirements during a time of shrinking revenue. This was addressed in 2012 legislation amending RCW 90.48.260 to direct Ecology to reissue the existing Phase II permits unmodified for one (western Washington) and two (eastern Washington) years,

prior to making effective the updated five-year permits. Ecology has taken the same approach for the Phase I permit, with limited changes to the one year permit. The hiatus in new requirements will provide time for economic recovery, and give permittees time to prepare and pass budgets, adjust utility rates, and plan to meet new requirements.

- Ecology has provided grants to permittees to assist them in implementing the permits, as well as for capital stormwater projects in permitted communities. Ecology will continue to seek funding for technical assistance, guidance, training, and grants. Since 2005, Ecology has provided grants to local governments of \$183 million for stormwater, both from state funding and federal American Reinvestment and Recovery Act dollars.
- Ecology made a number of changes between the draft permits and the final permits to reduce the cost burden of new requirements, including but not limited to the following:
 - Reduced the level of effort for public education requirements in eastern Washington; increased flexibility to build on previous work in western Washington.
 - For IDDE:
 - Clarified that ordinance updates are required only if necessary to accommodate the minor changes to the IDDE ordinance section.
 - Clarified that the field screening requirement is not an increased level of effort but provides more flexibility.
 - Reduced the field screening from 20% of the system each year to 12%, and delayed the timeline as directed by 2012 legislation.
 - Clarified definitions and use of terms related to groundwater that would have increased the obligations under the IDDE program.
 - Western Washington construction and post-construction runoff controls:
 - Reduced requirements for inspection and long-term maintenance for small projects that are not subject to Minimum Requirements #6 and/or #7 of Appendix I.
 - Extended timelines for updating codes to require LID and eliminate the one-acre threshold. The timelines from 2012 legislation for permittees in Lewis, Cowlitz and Grays Harbor counties are extended by an additional one to two years.
 - Clarified eastern Washington LID requirements to reduce the need to update ordinances and to allow for regional facilities; delayed the deadline for implementation.
 - Municipal operation and maintenance
 - Reduced the catch basin inspection requirement according to 2012 legislation, and clarified and expanded alternatives to the standard inspection frequency.
 - In eastern Washington, provided a three-year timeline (2017) for updated O&M Plan procedures.

- Reduced the number of annual reporting questions.
- Phase I: reduced the frequency of the update of the list of sites for source control.

I-2.2 Ecology should evaluate the cost of new requirements

Commenters: City of Bainbridge Island, City of Bellevue, Clark County, City of Everett, City of Issaquah, City of Kent, City of Longview, City of Mount Vernon, City of Mukilteo, A. Nowell, City of Olympia, Pierce County, City of Port Orchard, City of Sammamish, City of Renton, City of SeaTac, City of Sedro Woolley, Thurston County

Summary of the range of comments

- Ecology should conduct a cost-benefit analysis of new requirements, including those for new development and redevelopment.
- Ecology should conduct a SEPA/NEPA review of the draft permit.
- Under RCW 43.135.060 Ecology is prohibited from imposing significant increased responsibility or levels of service on political subdivisions without reimbursing them. Ecology should determine the increased level of service for local governments that the permits require, and reimburse local governments for those costs.
- Ecology should conduct an analysis to compare the costs and benefits of the new requirements to those of existing permit requirements.
- Ecology should prepare a small business economic impact statement for LID requirements, to comply with RCW 19.85.030, the Regulatory Fairness Act. The statement should address increased costs for engineering, technical analysis, specialized installation, inspections, maintenance and replacement (life cycle) for long term operation of LID systems.

Response to the range of comments

- Ecology did not determine all of the costs and the benefits of the NPDES municipal stormwater permit requirements. The additional cost of stormwater management for each permittee is a function of local factors such as population, geographic scope, types of land use, existing and potential water quality and habitat damage, the extent of previous stormwater management, and the administrative methods that permittees use to meet the requirements. The benefits of stormwater management, in addition to protecting public and private property and infrastructure, include primarily protection of water quality and aquatic habitat from the impacts of urbanization. Water quality protection is necessary for human health, industry, recreation and tourism, and is a necessary component of all ecosystems across the state. The value of the benefits at risk is incalculable, given the complexity of restoring ecosystem functions. Ecology, local governments, and other entities spend a considerable amount of funding to implement Clean Water Act

provisions to clean up impaired waters in urban and developing areas through Total Maximum Daily Load studies. The federal and state governments and many others have invested significant funding to restore aquatic habitat for threatened salmon and other species, shellfish harvesting, recreation, navigation, and cleanup of contaminated sediment sites.

- Ecology did not provide a cost-benefit analysis for the new permit requirements related to LID and monitoring. The Pollution Control Hearings Board (PCHB) rulings on the 2007 permits for western Washington included language directing Ecology to address these issues in the permits.
- Ecology is funding a 2012 grant project for the City of Puyallup and the Washington Stormwater Center to evaluate the costs of implementing LID requirements in western Washington. This project will build on previously published cost analyses from Ecology that examined the implications of new stormwater management requirements for typical development projects, comparing the cost of traditional development to LID development. Ecology will make the report publicly available on completion.
- The provisions of RCW 43.135.060 apply to actions by the legislature, and do not apply to Ecology's actions in administering the NPDES permit program.
- State law requirements cited in RCW 19.85.030 apply to rule making. Reissuance of NPDES Clean Water Act permits for municipal stormwater is not a rule-making activity.

I-3 S1 Permit Coverage Area and Permittees, and Appendix 5

Comments apply to all three municipal stormwater permits, except where otherwise noted. See comments related to the term Municipal Storm Sewer (MS3) in the Definitions section of Part I.

I-3.1 General Comments on Permit Coverage

Commenters: Asotin County, City of Everett, King County, Thom McConathy, Pepper Rogers, Richard Rogers, Rosemere Neighborhood Association, Tom Sattler

Summary of the range of comments

- Request the permit clarify that coverage applies to areas served by the MS4, in order to differentiate from areas of combined sewer systems. The current language establishes a potential liability to implement the permit in the combined sewer areas.
- If a Phase II municipality such as Vancouver surpasses the 100,000 population threshold through annexation and/or growth, it should be re-classified as a Phase I permittee.
- S1.E.1.a – Clarify the coverage requirements for special purpose districts in Snohomish, King, and Pierce counties under the Phase II permit, in particular Drainage District, Sewer and Water Utilities in these counties. Diking or drainage districts that partly or

principally convey non-agricultural stormwater should be addressed under this section where they are in coverage areas.

- S1.F - Clarify for King County activities, properties, and facilities that may be owned or operated by a permittee in another jurisdiction's coverage area: are two jurisdictions responsibly for inspection and source control? We recommend that the permit clarify which of the two is responsible for design, construction, maintenance and enforcement, to eliminate redundancy. Add the following language *"A permittee owning or operating facilities or properties, or conducting activities, in another municipality operating under a municipal stormwater permit, is responsible for complying with the permittee's permit obligations. This does not excuse the owner/operator permittee from complying with all the codes and ordinances of the other municipality.*
- King County properties or facilities that are covered under an Industrial Stormwater NPDES should not be required to also meet Municipal NPDES permit requirements New language *"Property, facilities, or actions covered under another individual or general stormwater permit are not included in the coverage of this permit. "*
- Clarify why permit coverage for three entities in Asotin County is needed in an arid area. EPA has no authority to include Asotin County in the Lewiston Urbanized Area.
- EPA mandating Asotin County as a permittee requires us to solve a problem that does not exist.

Response to the range of comments

- Ecology relied on the definition of "municipal separate storm sewer system" in the Definitions section to clarify that areas served by the MS4 do not include areas served by combined sewer systems.
- The federal rule does not include provisions to change a Phase II jurisdiction to a Phase I designation based on population growth. The "phases" refer to the sequenced timing of implementation of the NPDES municipal stormwater program, with the medium and large MS4's covered in Phase I of the program.
- Diking and drainage districts located in a permit coverage area are subject to permit coverage as Secondary Permittees. One criterion for coverage is that the MS4 must serve a minimum population of 1,000 people on an average day. For more information, see Ecology's webpage for Secondary Permittees at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/secondary.html> and specific guidance on drainage districts at <http://www.ecy.wa.gov/biblio/0710094.html> .
- Ecology agreed with the proposed statement, but did not revise this permit condition. Special Condition S1.F (S1.A.4 in the Western Washington Phase II permit) refers to facilities owned or operated by the permittee located in other permitted jurisdictions. For example, if a Phase I county owns a facility in a Phase I city, the Phase I county must implement the permit requirement as the facility operator. The Phase I city inspects the

facility under the source control program as the regulator. The permitted jurisdiction must meet the requirements of local codes and ordinances.

- Facilities covered by an Industrial Stormwater Permit are subject to local government regulations adopted under the requirements of this permit. The permits specify when permit conditions do not apply, as for the municipal facility requirement in Phase I S5.C.5.g requiring a Stormwater Pollution Prevention Plan (SWPPP) for certain facilities that are not required to have coverage under the Industrial Stormwater Permit.
- Ecology has no discretion in applying the permit for federally designated Urbanized Areas and minimum population thresholds, and had no choice other than to include in the permit the Asotin County jurisdictions that are within the Lewiston, Idaho Urbanized Area.

I-3.2 Appendix 5 – Notice of Intent

Commenters: City of Arlington, Muckleshoot Indian Tribe

Summary of the range of comments

- Please clarify the date when application is required. Suggest adding a date for reapplying to inform permittees.
- The fact sheets and draft permits do not specify how affected Indian Tribes will be notified when potential permittees apply for coverage under these two general permits. Specifically, we request that permit applications in WRIA 8, 9, and 10 be made available to the Muckleshoot Indian Tribe Fisheries Division for review and comment prior to Ecology approval.
- MS4 systems operated by federally recognized tribes within Indian Country Lands should be excluded specifically from the Phase I and II permits, as these activities are already regulated by US EPA as applicable. Indian Country Lands should be added to the definition section for both permits.

Response to the range of comments

- Ecology edited Appendix 5 to clarify that the Notice of Intent for Coverage under a NPDES Municipal Stormwater General Permit is intended for “initial” permit coverage of new permittees, including Secondary Permittees. General Condition G18 provides a deadline for permittees to reapply for coverage.
- Ecology contacted permittees with an abbreviated *Duty to Reapply-NOI* in 2011 (referenced in S1.D.2 of the final permit) which all permittees submitted for coverage under both the permit to be effective on September 1, 2012 and these updated permits to be effective in western Washington on August 1, 2013 and in eastern Washington on August 1, 2014. More information is available at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/DUTY2REAPPLY.html> .

- Ecology lists potential and actual New Permittees in the draft permits. New permittees, including Secondary Permittees, are required to publish notice of their application twice in a newspaper of general circulation.
- Permit condition S1.C clarifies that small MS4s operated by federally recognized Indian Tribes located within Indian Country are not required to obtain these permits. Permit condition S2.E clarifies that this permit does not authorize discharge to Indian Country Lands and that authority rests with the U.S. EPA.

I-3.3 New permittees and expanded coverage areas

Comments and responses apply to the Western Washington and Eastern Washington Phase II permits.

Permit Reference: Western Washington Phase II Permit, S1.A.2 and S1.D.2.c
Eastern Washington Phase II Permit, S1.A.2

Commenters: Clallam County, Cowlitz County, EarthJustice, EPA Region 10, Green Light Gardening, Island County, Muckleshoot Indian Tribe Fisheries Division, North Sound Baykeeper Team/ReSources, City of Oak Harbor, City of Port Angeles, Puget Sound Partnership, River Network/American Rivers, Sustainable Seattle, Whatcom County

Summary of range of comments

Support expanded coverage areas in western Washington

- Ecology should use residual designation authority to designate for coverage significant contributors to defined stormwater problems, citing the results of legal actions in EPA Region 1 (Vermont, Massachusetts, and Maine).
- The petition process has failed because no petitions have been submitted and no other expansion of coverage has occurred. This is because the factual and evidentiary burden of putting together a complete petition is very high. Ecology should not place this burden on citizen groups.
- The recommendations from EPA that remove the urbanized area boundary and requires a Phase II county to regulate the entire county to these standards in the future raises questions as to how the proposed permit can be practically and financially implemented within our rural areas.
- North Sound Baykeeper/Resources submits with its comments a petition for coverage of the City of Blaine and the unincorporated Whatcom County Urban Growth Areas (UGAs) of Birch Bay and Blaine. Reasons include impacts to Puget Sound from growth,

seasonal tourism, and high traffic areas adjacent to areas of Puget Sound with documented pollution concerns.

- Areas suggested for expansion beyond those proposed in the draft permit include:
 - All of Puget Sound.
 - All Puget Sound UGAs because new development continues to destroy tree cover and create impervious surface.
 - Areas significantly contributing to the runoff pollution and volume going into an MS4
 - Areas draining to TMDL segments, because the science and art of determining significant contributions of stormwater is not well developed.
 - Specific UGAs including: cities of Blaine, Stanwood, Sulton, Eatonville, Yelm, Shelton, Port Townsend, and Sequim and unpermitted UGAs in Whatcom, Thurston, Mason, Kitsap, Jefferson, and Clallam counties.
 - Whatcom County unincorporated UGAs including the Lynden UGA, the Birch Bay UGA, and the Cherry Point UGA, due to shellfish harvest beaches in Birch Bay and herring spawning areas adjacent to Cherry Point.
 - UGA for Kingston in Kitsap County, because adjacent to Puget Sound.
 - UGAs in Mason County, draining to shellfish growth areas in lower Hood Canal, Case Inlet and Oakland Bay that are currently degraded by stormwater runoff, and suffer from low dissolved oxygen (Hood Canal).
 - MS4s that are physically connected to regulated MS4s.
 - Unregulated portions of Phase II counties, to avoid incentivizing development in the unregulated areas and contributing to sprawl.

Comments on specific areas proposed for coverage

- Island County unincorporated Oak Harbor UGA
 - City of Oak Harbor supports coverage of the unincorporated UGA.
 - Island County opposes coverage because the area does not meet federal rule population thresholds of either an Urbanized Area (UA) of 50,000 or a population outside a UA with a density of 1,000 per square mile. There are probably not 1,000 people residing in the UGA. The UGA is not contributing substantial pollutant loading to the Oak Harbor MS4.
- Clallam County unincorporated Port Angeles UGA
 - The City of Port Angeles supports coverage of the UGA to equalize the playing field for development that is now going out into the UGA where stormwater standards are lower. The City also requests that Ecology include the area south of the city and outside the UGA. Drainage from these upper watersheds contributes to impairments of small urban streams in the city.
 - Clallam County opposes the coverage as it would drain financial resources, and because the UGA does not meet the population threshold of 1,000 people served by

the MS4. There is no evidence the county is a contributor of pollutants. The UGA will eventually be annexed to the City. The county has developed a comprehensive stormwater program and plans to implement it countywide. With little growth in the UGA, the county does not want to focus limited resources in the UGA rather than addressing the larger county.

- Whatcom County – unincorporated portion of Lake Whatcom Watershed not in the UGA
 - Whatcom County opposes coverage as it does not meet CWA intent of managing and treating stormwater discharges from urbanized or dense residential development, rather than rural areas.
 - These areas are not yet subject to a TMDL because it has not yet been approved by EPA. The full contents of the TMDL are not known. Imposing urban stormwater requirements on a rural area could hamper an effective response to the TMDL.
 - Significant portions of this area are zoned for commercial forestry and exempt from County environmental regulation, raising false expectations that the County is responsible for the impacts from these areas.

Clarify the process for determining coverage areas

- Clarify Ecology’s process for determining that jurisdictions with populations under 1,000 are not contributing significantly to pollutant loadings of a physically interconnected MS4.
- Clarify whether Ecology is including areas with MS4s draining to “TMDL segments” by determining that controls on the MS4 are not necessary.
- Clarify why Ecology did not notify the jurisdictions under evaluation of the final determination before the draft permit was issued.
- Ecology must decide whether the permits will have a time frame (e.g. 1 year) or a date (e.g., August 1, 2014) in these footnotes for new permittees. It is currently inconsistent within and across permits and will lead to confusion.

Response to the range of comments

- Ecology included jurisdictions and areas for coverage under this permit in accordance with applicable evaluation criteria and 40 CFR Section 123.32. Ecology evaluated potential new permittees using consistent criteria statewide, based on the federal rule and petition criteria developed by Ecology. Criteria for cities over 10,000 in population outside of federally-designated urbanized areas are at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/2012NewPermitteeEval.html> The petition criteria used to evaluate unincorporated UGAs and the City of Blaine are available online at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/PermitsPermittees.html>
- Ecology included in the final permit the following jurisdictions and areas proposed in the draft permit:

- City of Lynden - Ecology evaluated Lynden as a city of more than 10,000 in population outside of federal Urbanized Areas. Ecology determined that the City should be covered under the Western Washington Phase II Permit as a New Permittee. Permit coverage was deemed appropriate because the City's MS4 discharges to waterbodies with known bacterial problems (Bertrand Creek, Fishtrap Creek, Double Ditch, Bender Ditch, and the Nooksack River), and in consideration of the City's current population and recent population growth.
- City of Snoqualmie - Ecology evaluated the City of Snoqualmie for coverage using the criteria for cities outside of urbanized areas with a population greater than 10,000. Ecology determined that the Snoqualmie should be covered under the Western Washington Phase II Permit as a New Permittees. Permit coverage was deemed appropriate because the City's MS4 discharges to waterbodies with known bacterial problems (Snoqualmie River Basin, including Kimball Creek), and in consideration of the City's current population and recent population growth. Snoqualmie was the fastest growing City in Washington State from 2000-2010, with a population increase from 1,631 to 10,670 residents. While the rate of growth has slowed substantially, additional development is contemplated in the Snoqualmie Ridge portion of the City.
- Yakima County's unincorporated UGA of the City of Sunnyside – Ecology expanded the County's coverage based on the petition criteria. The area meets the population threshold of 1,000 people served by the MS4, and has impaired waterbodies within the UGA for fecal coliform, dissolved oxygen, and pH. Yakima County is already implementing its stormwater management program in this area. Based upon communications with County staff, Ecology understands that the County is currently implementing the SWMP in this area. Therefore, in the letter of notification to Yakima County, Ecology established a schedule to implement the SWMP from the previous permit no later than 30 days after the effective date of the permit. Ecology expects the County to implement the new requirements in the 2014 permit according to the schedule for all permittees.
- Whatcom County's unincorporated UGA of Birch Bay – Ecology evaluated this area based on a petition submitted by North Sound Baykeeper Team and ReSources for Sustainable Communities and determined that it meets the petition criteria for coverage. The population of Birch Bay has increased 69% from 4,961 to 8,413 between 2000 and 2010, and is one of the fastest growing unincorporated urban growth areas in Washington State. The current population is estimated to double during the summer months with seasonal residents and tourist populations. In addition, water quality monitoring data has identified urban stormwater as a significant source of pollution in Birch Bay. Whatcom County does not currently apply the permit stormwater management program in the Birch Bay UGA, and Ecology determined that the stormwater contribution to impairments must be

addressed through implementation of the NPDES Phase II Municipal Stormwater permit in the Birch Bay UGA. In the letter of final notification to Whatcom County, Ecology established a schedule for implementation of the SWMP from the previous permit program consistent with the schedule for New Permittees.

- Ecology did not include the following areas that were listed in the draft permits, based on the evaluation and public comments:
 - City of Grandview - Ecology evaluated the City of Grandview as an isolated city with a population of greater than 10,000 in the 2010 U.S. Census. Ecology determined that Grandview does not meet the criteria for coverage. A primary factor was the determination that the population served by the MS4 is below the 10,000 population threshold for permit coverage when areas that infiltrate all stormwater are subtracted from the 2010 federal census population figures. The Grandview Municipal Code states that “Storm runoff occurring on all new lots and developments (private property) shall be retained and disposed of on-site.” In 2011-2012, the City worked with the Sunnyside Valley Irrigation District to remove an additional portion of the MS4 from surface water discharges to infiltration. Another planned project will remove additional portions of the stormwater system from the MS4. For this reason the population served by the MS4 is likely to decrease instead of increasing.
 - Kittitas County – OFM population estimates identified the UGA around the city of Ellensburg in Kittitas County as a UGA with a population over 1,000 people. Ecology evaluated the area to determine the population served by the MS4, and identified three areas within the UGA that infiltrate all stormwater on site. With these three areas removed from the total population, and in consideration of limited surface water discharges from the stormwater system, Ecology determined that the Kittitas County UGA associated with the City of Ellensburg does not meet the 1,000 population criteria for permit coverage.
 - Lewis County - Ecology determined that the Lewis County unincorporated UGA for the City of Centralia does not meet the criteria for coverage. A primary factor was the determination that the MS4 within the UGA serves fewer than 1,000 residents. Additionally, much of the UGA’s stormwater infrastructure consists of ditches that infiltrate and are not connected to surface water. Lewis County also has a low growth rate (1 percent) and has a long-standing memorandum of understanding with Centralia to implement Phase II construction and development permit requirements within the UGA.
 - Clallam County - Ecology evaluated the Port Angeles unincorporated UGA using the petition criteria and determined that the UGA does not meet the criteria for coverage at this time. A primary factor was the determination that the UGA MS4 serves a population of less than 1,000 people. The UGA also had a negative growth rate between 2000 and 2010 of -2.4%. Much of the UGA is rural in character with little to no stormwater infrastructure. A developed portion of the eastern UGA contains no

identifiable MS4. Soils in this area indicate the potential for rapid infiltration of stormwater runoff, corroborating the finding of no stormwater conveyance in the area. Ecology acknowledges the potential for contributions to impairment of small streams within Port Angeles from the upstream discharges within the County outside of the UGA, particularly in drainages to the western portion of the UGA, and strongly recommends that the County adopt the recommendations in its recently drafted *Comprehensive Stormwater Management Plan*.

- Island County – Ecology evaluated the Oak Harbor unincorporated UGA using petition criteria and determined that the Island County UGA does not currently meet the criteria for coverage at this time. A primary factor was the determination that much of the UGA was previously built out. Current zoning codes for the remaining parcels limit residential parcels to 5 acre lots to maintain the rural character of Island County’s UGA. In addition, Island County has many stormwater program elements in place. Ecology acknowledges the potential for contribution to Oak Harbor’s MS4 from the stormwater discharges within the County’s MS4, and strongly recommends that the County evaluate the on-site septic systems and adopt similar new development codes to the City of Oak Harbor.
- Whatcom County Lake Whatcom Watershed – Ecology evaluated expanding the County’s coverage area to include the unpermitted portion of the Lake Whatcom watershed. Ecology evaluated this area outside of the unincorporated UGA for the City of Bellingham as recommended in a TMDL for Lake Whatcom. Because the Lake Whatcom TMDL has not been approved by EPA, this additional permit coverage area will not be included in the Western Washington Phase II Permit at this time.
- Ecology did not include the following areas evaluated under a petition submitted during the public comment period by North Sound Baykeeper Team and ReSources of Whatcom County:
 - Whatcom County UGA for City of Blaine – Ecology evaluated a petition to expand the coverage area of Whatcom County for the unincorporated UGA of the City of Blaine, and determined that the area does not meet the criteria for coverage because the population does not exceed 1,000 people. The current OFM population estimate for the unincorporated Blaine UGA is 344 people.
 - City of Blaine – Ecology determined that the City of Blaine does not meet the petition criteria for permit coverage. The Drayton Harbor TMDL does not identify municipal stormwater from the City as a source of pollutants. In addition, Blaine’s stormwater program already has in place many key stormwater program elements covered in the permit.
- Ecology relies on other parties to submit a petition to initiate an evaluation of areas for coverage in addition to those listed in the draft permits. The petition requires data and information specific to the area being petitioned to demonstrate that the area meets the

criteria and to justify coverage under the NPDES regulatory program. Ecology disagrees that the petition process has failed, as demonstrated by the evaluation and designation for coverage of the Whatcom County's Birch Bay UGA under a petition submitted by North Sound Baykeeper Team and ReSources.

- Ecology evaluated cities of over 10,000 outside of urbanized areas, as required by the federal rule, and used its residual designation authority to evaluate the unincorporated UGAs around cities of over 10,000 covered by the 2007 permits. In evaluating areas for permit coverage, Ecology used federal criteria for determining the population served by the MS4 and discharging to "waters of the United States," which under the federal definition is limited to discharges to surface waters. The populations of all the areas Ecology evaluated are not significantly greater than the population thresholds of 1,000 and 10,000, according to the 2010 U.S. Census. Several of the unincorporated UGAs did not exceed the federal minimum threshold for coverage of 1,000 people served by the MS4 (40 CFR Section 122.32(c)), in part because of annexations by associated cities, in part because of large areas of infiltration, and in part because of the rural nature of land use and lack of MS4 infrastructure. Ecology plans to re-evaluate these areas for the next permit, and provided recommendations to each evaluated jurisdiction and area to improve the stormwater management program in the interim.
- Ecology criteria for evaluating coverage by petition or as a city of over 10,000 outside an urbanized area includes consideration of TMDLs for impaired waterbodies with a potential contribution to the impairment by the MS4. See comments under S7 Total Maximum Daily Load section of Part I for discussion of designating areas for coverage based on TMDL drainage areas.
- Ecology agrees that regulating rural areas of Phase II counties is not appropriate under the Phase II permits at this time, as most of these areas would not meet the criteria for coverage. In addition to the questionable cost/benefits of implementing an urban stormwater program in a rural setting, such an expansion would include lands regulated under authorities such as the Forest Practices Act, and large areas of agricultural land that are specifically exempted from the permits in the federal rule.
- During the initial evaluation phase, Ecology reviewed the population figures for the Whatcom County unincorporated Lynden UGA and determined that, with an OFM estimate of less than 200 residents, it does not meet the criteria for further evaluation.
- Ecology did not make final determinations of coverage for the areas listed in the draft permits until after it considered all the comments received, as required by WAC 173-226-130. Ecology made preliminary determinations in the draft permit in order to provide public notice and invite public comment. Several of the preliminary determinations changed based on information submitted to or collected by Ecology and evaluated after the end of the comment period.
- The permits include footnotes for two types of new permittees. Requirements in footnotes of the Western Washington Phase II permit for New Permittees and expanded coverage

areas that are cities, towns and counties named in S1.A.2 and S1.D.2.b.i include specific dates based on the effective date of the permit, which is the date coverage begins. Requirements in footnotes for New Secondary Permittees in all three permits are based on the initial date of permit coverage, which vary depending on the date the permittee begins coverage. New Secondary Permittees may begin coverage at any time during the permit term, and most have different dates of coverage. Cities, towns and counties that begin coverage after the effective date of the permit will meet schedules for implementation provided as a condition of coverage by Ecology, consistent with S5.A.

I-4 S2 Authorized Discharges

Comments apply to all three municipal stormwater permits, except where otherwise noted. See comments related to the definitions of “ground water” and “outfall” in the Definitions section of Part I.

I-4.1 Exemption for discharges from emergency fire fighting activities

Commenters: Eastern Washington Coordinators Group, City of Federal Way, City of Issaquah, King County, City of Kirkland, City of Seattle, Snohomish County, City of Richland

Summary of the range of comments

Concerns:

- Need to provide for flexibility in determining when the emergency is over.
- Who determines when emergency is over, the permittee or fire department?
- Does S2.C then mean that the fire department (“entities that cause illicit discharges”) is responsible for cleaning the MS4 of any illicit discharges?
- Increases permittee liability if there is no clear line between actual fire and the clean up.
- Puts permittee in position of regulating fire fighting activities.

Suggested alternatives:

- Delete proposed change
- Replace “occurred during with “associated with” to allow some flexibility
- Add “resulting from” to allow for discharges well after the emergency is over.
- Need clarification on when the emergency is over.
- Re-word to clearly define emergency fire fighting as distinct from cleanup and provide guidance.
- Allow for discharges during emergency fire fighting training activities

Response to the range of comments

- Ecology restored the original language to prevent confusion.
- This exemption does not apply to discharges from planned, non-emergency activities such as training exercises or equipment maintenance. Appropriate BMPs should be applied to avoid planned discharges of pollutants to the MS4.

I-4.2 Clarify discharges authorized under permit

Commenters: Eric Olsson, City of Everett

Summary of the range of comments

- What permit authorizes discharges from Washington State Ferry System vessels and holding areas?
- S1.C.1.b refers to “federally recognized Indian Tribes located within Indian County Lands.” Washington State has non-reservation Indian Tribes (such as the Puyallup Tribe) in non-reservation areas, yet the state does not authorize discharges from those lands. Please clarify whether this applies to both reservation tribes and non-reservation tribes.

Response to the range of comments

- Ecology administers an individual NPDES municipal stormwater permit for the Washington Department of Transportation (WSDOT), which includes the WSDOT ferry terminals and other Washington State Ferry facilities. The permit is available online at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/wsdot.html>
- Ecology agreed that this provision should be clarified, and consulted EPA Region X for the appropriate language. EPA provided updated language for the final permit related to the Puyallup Tribe. Ecology also updated the description of Federal Operators to the EPA’s as found at http://www.epa.gov/npdes/pubs/cgp2012_finalpermit.pdf. Appendix A. EPA provided further information on the language related the Puyallup Tribe below:
 - The U.S. EPA retains environmental regulatory authority for managing federal Clean Water Act programs within Indian Country, except where a State agency has an express grant of jurisdiction from Congress sufficient to support delegation, or the EPA has authorized the Tribal Government under Section 518(e) of the Clean Water Act to administer the program. For purposes of determining jurisdiction over NPDES permitted dischargers, it is the location of the discharge outfall, not the location of the activity producing the discharge that determines which governmental entity has jurisdiction. See *Memorandum of Agreement Among the USEPA, WA Dept. of Ecology and the Puyallup Tribe of Indians* (1997). "Indian country" is defined in 18 USC § 1151 to include all lands

within the exterior boundaries of a reservation notwithstanding ownership; all dependent Indian communities, and all Indian allotments still in trust, whether they are located within reservations or not.

http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00677.htm

- The *Puyallup Land Claims Settlement Agreement* has further clarified the jurisdictional issues within the Puyallup Indian Reservation by providing that the Puyallup Tribe and EPA have exclusive jurisdiction for administration and implementation of environmental laws on trust lands within the 1873 Survey Area of the Reservation. See *Agreement between the Puyallup Tribe of Indians, local Governments in Pierce County, the State of Washington, the United States of America, and Certain Private Property Owners* (1988).

I-4.3 Clarify permit authority for discharges to ground

Commenters: Snohomish County

Summary of the range of comments

- Clarify Ecology’s purpose and authority for regulating non-UIC discharges to ground water under a state waste discharge permit. The NPDES permit program only regulates discharges to surface waters. The inclusion of “ground water” as a receiving water is inconsistent with the federal program.
- Ecology should consider whether it is prudent to combine a State permit issued pursuant to Chapter 90.48 RCW with an NPDES permit issued pursuant to the CWA, or whether it might be more appropriate to issue separate permits for each regulatory scheme.

Response to the range of comments

- Permit special condition S2 clarifies that the Municipal Stormwater Permits meet the provisions of the federal NPDES permit program for discharges to surface waters (“waters of the United States”), and at the same time meets the provisions of Washington State’s Water Pollution Control Act (Chapter 90.48 RCW), which also addresses discharges to ground water. As discussed under comments for S1, when Ecology considered whether potential new permittees meet the thresholds of the NPDES program for coverage, it applied the criteria for “served by the MS4” to areas that discharge to surface waters consistent with the definition of “waters of the United States.” Once permittees are covered by a municipal stormwater permit, however, they are subject to provisions of chapter 90.48 RCW to protect “waters of the State,” including ground water.
- Ecology did not agree to issue a separate state discharge permit for compliance with Chapter 90.48 RCW. WAC 173-220-170 governs the NPDES program’s relationship with non-NPDES permits and states that “...*permit requirements under this chapter and*

permit requirements under RCW 90.48.160 shall be contained in a single permit document.”

I-4.4 Clarify relationship of permits to Underground Injection Control (UIC) program

Commenters: Clark County, Sammamish Plateau Water and Sewer District, Thurston County

Summary of the range of comments

Clarify permit authority to regulate infiltration facilities

- Clarify the regulation of non-UIC infiltration BMPs, specifically whether bioretention facilities and retention basins are regulated as discharges authorized under state law. Are they “outfalls” under this permit?
- Clarify the meaning of the provision that states that discharges to ground waters through facilities regulated under the UIC program... are “not authorized” under this permit. Does this prohibit use of new or existing infiltration facilities that are designed to meet the UIC program requirements? Rephrase provision to indicate that discharges to ground water authorized by this permit must also meet the provisions of the UIC program.
- Some infiltration facilities designed to comply with the requirements of Special Condition S5.C.5 Controlling Runoff from New Development, Redevelopment and Construction Sites may also be regulated under the UIC program. In those cases, would the infiltration facilities be excluded from being required to meet the conditions of this permit? Additionally, would those infiltration facilities regulated under the UIC program not be allowed to be used to meet the requirements of this permit? Please clarify the meaning of “authorize” in relation to these issues.

Clarify relationship of MS4 permits to UIC program

- The UIC program rule (Chapter 173-218 WAC) authorizes any UIC structure operated by a covered municipality, suggesting that Ecology will regulate these structures under the Phase II permit. The draft permit, however, excludes those facilities from coverage leaving a regulatory gap in public education and outreach, municipal operations and maintenance, and annual reporting.
- Ecology has no process by which it verifies the ongoing compliance of UIC structures and UIC discharges with applicable laws, regulations, and water quality standards.
- Municipal UIC operators are not subject to the requirements in the Phase II Permit applicable to “discharges.” Thus a Permittee’s obligation to notify Ecology within 30 days of becoming aware of a violation of water quality standards caused by a “discharge”, S4.F.1., does not clearly apply to stormwater merely conveyed to a permit-exempt, rule-authorized UIC structure.

- The UIC structures are rule authorized but do not have to meet any endangerment standards including design and location standards to operate. This potentially allows UIC structures to operate without a waste discharge permit, and without any protection against degradation of groundwater quality. The revised Stormwater Management Manual have added no references to the Manuals specific to UIC structures to fill the gaps left by rule-authorization of UIC structures.
- Ecology should regulate the UICs under the MS4 discharge permit.

Response to the range of comments

- Chapter 173-218 WAC regulates discharges to UIC wells. UIC wells are defined as: “a well that is used to discharge fluids into the subsurface. A UIC well is one of the following: (1) a bored, drilled or driven shaft, or dug hole whose depth is greater than the largest surface dimension; (2) an improved sinkhole; or (3) a subsurface fluid distribution system (i.e., an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.” Many stormwater facilities that infiltrate stormwater, including certain bioretention facilities and retention basins, are not UIC wells and discharges are thus not authorized under Chapter 173-218 WAC. Rather, discharges from these non-UIC facilities to ground water are authorized under the Municipal Stormwater Permits. Where these non-UIC infiltration facilities meet the definition of “outfall” they are considered an outfall. Refer to the RTC Definitions section on the term “outfall” for additional information.
- Refer to WAC 173-218-090 for information about UIC wells that manage stormwater. Presumptive compliance with the UIC nonendangerment standard is based on applying the SWMP in the municipal stormwater permits to the area served by the UIC. The municipality would apply the same stormwater management program activities, including public education and operations and maintenance, under the requirements of Chapter 173-218 WAC and under the municipal stormwater permit. However, this does not extend to the other aspects of the permit such as S4.
- The intent of the provision which states that discharges to ground waters through facilities regulated under the UIC program... are “not authorized’ under this permit is to indicate that such discharges (through UIC wells) are regulated and authorized by a separate program: Chapter 173-218 WAC, Underground Injection Control Program. For any UIC well, Chapter 173-218 WAC applies. Ecology does not agree that all discharges to ground allowed under the requirements of the Municipal Stormwater Permits must meet the requirements of the UIC program. The UIC program regulates many, but not all, discharges to ground water.
- Ecology relies on permit condition S2 stating that this permit authorizes the discharge of stormwater to surface and ground waters of the state from MS4s. It does not authorize the discharge of stormwater to waters of the state from UICs, because discharges from UIC facilities are authorized under and must comply with a separate regulatory program. The

word “authorize” refers to Ecology’s legal authority to permit and regulate stormwater discharges.

- Ecology does not agree to regulate UIC wells under the municipal stormwater program. The UIC program authorizes discharges from a specific type of facility statewide on lands subject to Washington State laws. The MS4 program authorizes discharges from MS4s within specific geographic coverage areas that meet population and other criteria for coverage under the NPDES municipal stormwater permit program.

I-5 S3 Responsibilities of Permittees

Comments apply to the Phase I and Western Washington Phase II permits. No comments were received for the Eastern Washington Phase II permit.

Commenters: King County, City of Olympia, City of Seattle, Snohomish County

Summary of the range of comments

- S3.A – add “that are covered by this permit” to clarify that this does not apply to discharges to waters not subject to state jurisdiction.
- S3.A.2 - Request deleting the Phase I section for “Co-Permittees” for consistency with changes to S6.
- S3.D – The permit is likely to be appealed and the PCHB held in Rosemere Neighborhood Association, et al. v. Clark County, et al., PCHB Case No. 10-013, Findings of Fact, Conclusions of Law and Order (January 5, 20 11) at 54-56; 2011 WL 62921 at *25-26, that an Agreed Order cannot authorize the delay of a deadline specified in the Permit without imposing compensatory mitigation obligations on the Permittee, permittees should not be required to expend resources for compliance with contested sections of the permit. Add language allowing Ecology to extend deadlines for conditions under appeal, and: “*Any Permittee may request that Ecology extend one or more Permit deadlines pursuant to this Section S3.D, and Ecology shall not unreasonably deny such requests. No Permittee shall be penalized, nor shall any type of compensatory mitigation be required due to an extension issued pursuant to this Section S3.D.*”
- Delete language related to relying on another entity in S3.B, as the citation is the Phase II federal rule, and the existing permit language assigns responsibility.
- Add language to relieve permittees of responsibility for permit compliance if another entity fails to implement those permit conditions related to the Regional Stormwater Monitoring Program.

Response to the range of comments

- Refer to S2 for permit language clarifying that the permit authorizes discharges from the MS4 to waters under state jurisdiction.
- Ecology agreed and deleted the former S3.A.2 language regarding “Co-Permittees.”
- Previously submitted statements do not count under this condition and if permittees wish to rely on another permittee they are required to submit a statement during this permit term.
- Ecology did not add language to extend deadlines, as it is unnecessary and confusing.

I-6 S4 Compliance with Standards

Comments apply to all three municipal stormwater permits.

I-6.1 Clarify the differences between S4.F and other permit conditions

Commenters: City of Everett, King County, City of Lacey, City of Longview, City of Sammamish, City of SeaTac, WSDOT

Summary of the range of comments

- Clarify the difference between S4.F notification and G20 notification and how they should be used. (For example, clarify as to whether S4.F pertains to a single event vs. an ongoing situation.). Perhaps both notification types should be listed in the General Conditions section.
- Clarify the differences between the S4.F, G3 and G20 notifications and how Ecology intends them to be used, including how they relate to S5.C.3.d in the IDDE program.
- Clarify reporting and response requirements between the IDDE (Phase I S5.C.8) program as reported “in accordance with General Condition G3” and the reporting and response requirements found in Section S4F. The IDDE program responds to discharges that “*constitutes a threat*” and the S4F program addresses “*a discharge is causing or contributing to a known or likely violation of Water Quality standards in receiving waters.*”
- Is the IDDE program for a single event or a single source while the S4F section of the permit an ongoing discharge that is systemic to the catchment? Add to S4.F: *Pollutant discharges that are a one-time event (illicit discharge) or are coming from a single source (illicit connection) are addressed by the Permittees Illicit Connections and Illicit Discharges Detection and Elimination (S5.C.8) program and shall be reported in accordance with General Condition G3.*
- There is uncertainty how S4.F and G3 meshes with TMDLs. There needs to be an off-ramp here that leads to a TMDL looking at long-term actions with appropriate partners, rather than

spending a lot of money immediately for something that may not solve the problem entirely, and remove money from other programs which may be of greater value.

- S4.F.d.(1) - Once a Total Maximum Daily Load or other enforceable water quality cleanup plan is developed for the pollutant of concern the S4F Implementation Plan will sunset. Add the Following Text: "*Once a Total Maximum Daily Load or other enforceable water quality cleanup plan has been developed for the impacted water body for the pollutant of concern, the S4F implementation plan will be terminated in lieu of the requirements of the cleanup plan.*"

Response to the range of comments

- To clarify, S4.F may apply to situations that are either single events or ongoing violations of water quality standards in receiving waters. Ecology will respond according to the nature of and reason for the discharge. See Ecology guidance for S4.F notifications at <http://www.ecy.wa.gov/biblio/0910068.html> and the associated guidance related to notification of spills and other discharges at <http://www.ecy.wa.gov/biblio/0710089.html>
- Ecology recognizes that in some situations, more than one condition may apply, but points out that in some cases, only one condition may apply. The required timing for reporting a G3 situation is within 24 hours with action taken to minimize the threat. Once the discharge has been addressed, a permittee may notify Ecology under S4.F within 30 days, by only if it determines that the discharge caused or contributed to a likely violation of water quality standards in the receiving waters. If the discharge also is the result of noncompliance with a permit condition, the permit allows 30 days for a G20 notification. The G20 condition also applies to noncompliance with all other permit conditions, such as missed maintenance deadlines, lack of enforcement, or failure to provide training as required.
- Ecology continued to keep the requirements of S4.F, G3, and G20 distinct and separate. A discharge may meet one, two or all three conditions depending on whether:
 - S4.F – the discharge results in a likely violation of water quality standards in receiving waters;
 - G3 – the discharge could constitute a threat to human health, welfare, or the environment;
 - G20 – the discharge is the result of a violation of permit conditions.
- The rationale for retaining each of these as separate requirements from the IDDE program requirements is that only one may apply in a situation. A discharge triggering S4.F, G3, or G20 may not be a prohibited or illicit discharge, for example, if it is an inadvertent discharge of high volumes of an allowed discharge. Conversely, an illicit discharge into the MS4 may not trigger S4.F the discharge from the MS4 does not reach receiving waters, nor G3 if the permittee determines that the discharge could not constitute a threat to human health, welfare or the environment, nor G20 if it is not

associated with a violation of permit conditions by the permittee. See the IDDE and General Conditions sections of this document for further discussion of the relationship of conditions S4.F and G3 to a response to an illicit discharge.

- Ecology agrees that resolving an ongoing water quality standards violation in receiving waters may be addressed through implementation of a TMDL, and adds language in S4.F.3.e for terminating the adaptive management plan if this occurs.

I-6.2 S4.F Recommended changes

Commenters: Clark County, City of Everett, City of Longview, Thom McConathy, Muckleshoot Indian Tribe, River Network/American Rivers, Snohomish County, City of Vancouver, Whatcom County

Summary of the range of comments

- S4.F.1 - "known or likely" violation of water quality standards: Remove any reference to "likely" water quality violation. Only water quality testing can verify a water quality violation.
- S4.F.3.a and S4.F.3.b - The timeline applicable to the permittee under S4.F.3.a should match the timeline applicable to Ecology under S4.F.3.b. Recommendation: Within a reasonable time of receiving a notification under S4.F.2, the permittee shall review its Stormwater Management Program and submit a report to Ecology.
- S4.F.3.f - The permit should clarify that the owner is responsible for their drainage system. The city is not the owner of a development, private property or waters of the State/US (receiving waters) outside of the MS4 under the CWA NPDES permit.
- Adaptive Management response: Each permit discusses the description of potential monitoring or other assessment and evaluation efforts (S4. F.3.iii.), but there is no requirement for monitoring to occur associated with this adaptive management procedure. In order for adaptive management to be effective, there must be some way to intentionally assess the effectiveness of the different or additional BMPs put in place in a timely fashion.
- S.4F - Conditions do not ensure water quality violations will be remedied. Recommend that once a violation has been reported by a permittee to Ecology and the affected Indian Tribes, monitoring requirements should be initiated at the location of the violation for a specific period of time. Once there is sufficient information to conclude water quality standards are no longer being violated, then these monitoring requirements could be discontinued in the related area.
- S4.F.1: There should be a way for third party complaints to access this system otherwise this will almost never occur.
- S4.F "A Permittee remains in compliance..." Do not change this section. During the 2008 appeals of Municipal Stormwater NPDES Permits, the PCHB held that Washington law

allows for the use of adaptive management in those permits. This approach is a key tool for jurisdictions needing to manage various unavoidable situations which, by a municipal stormwater system's very nature, may be difficult to control and may require complicated, staged responses to effect a suitable resolution.

- Suggest edits as follows: “A Permittee remains in compliance with S4 despite any discharges prohibited by S4.A. or S4.B., when the Permittee undertakes the appropriate action steps toward long-term water quality improvement based on the following responses: ~~toward long-term water quality improvement~~”
- S4.F.2 - Delete “MS4 contribution to the” for consistency with efforts to date. This removes the assumption language from Ecology that concluded that permittees contributed to any potential violation.

Response to the range of comments

- Ecology did not agree to the wording suggestions and made edits to this section only where necessary. The detailed S4.F language was provided to Ecology by the PCHB in an order to implement a ruling on appeal of the 2007 permits.
- Ecology relies on the definition of MS4 and permit conditions S1 and S2 for applicability of permit conditions.
- Adaptive management plans may include monitoring, depending on the specifics of the situation. It is not needed in permit language nor is it appropriate to every situation.
- Ecology is transitioning to a reporting system with online municipal permit compliance information. Information is currently available upon request using the public disclosure process.
- Ecology added “MS4 contribution to the” as a minor edit to S4.F.2.b. This edit provides internal consistency with S4.F.2 which outlines the process after Ecology has determined that a discharge is “causing or contributing to” a violation of water quality standards in a receiving water.

I-6.3 Other S4 recommended changes

Commenters: City of Kelso, Thom McConathy, River Network/American Rivers, Snohomish County

Summary of the range of comments

S4.A: Washington State Standards do not acknowledge or provide for the needs of critical receiving waters like lakes, impaired waters, or estuaries. Not acknowledging these areas with TMDLs has led to situations where these TMDLs institutionalize the degradation of these critical receiving waters.

- S4.B and C: This permit fails to regulate or manage negative and pervasive ground and surface (hydrophilic zone) water pollution coming from septic systems. These systems are not meant to be permanent systems and need to be only permitted for a time specific. Proper maintenance is not the answer as nutrient removal relies on aerobic drain fields, which are saturated under winter conditions.
- S4.B - Replace “protect water quality” with “comply with water quality standards.” Each permit reads “This permit does not authorize a discharge which would be a violation of Washington State surface water quality standards (Chapter 173 – 201A WAC)...” Yet, all three permits repeatedly require that permittees develop program elements that “protect water quality.” We recommend that Ecology change that phrase in all places to “comply with water quality standards.”
- S4.D - Replace the sentence with *"The Permittee meets all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent and control pollution of waters of the state of Washington when it meets the requirements of the Permit."* The Permit is a prescriptive-approach permit and is one of the most restrictive Phase II permits in the nation. We believe that Ecology drafted the permit to meet AKART and if we meet the requirements of the permit then we meet AKART.
- S4.G contains no independent substance and is only a cross- reference to Section G14. Section S4.G should be deleted for purposes of clarity.

Response to the range of comments

- These permits do not address the adequacy of state water quality standards. Rather, the municipal stormwater permits require compliance of discharges from a regulated MS4 with state water quality standards that apply to all waters of the State, whether lakes, estuaries, or whether they are impaired waters. These permits do not regulate discharges from septic systems except as they affect the MS4, such as when seepage from failing septic systems is identified as an illicit discharge to the MS4, and subject to requirements to eliminate the discharge in the S5 (or S6 for Secondary Permittees) Illicit Discharge Detection and Elimination (IDDE) program component.
- Ecology did not change the permit language to “comply with water quality standards” because that would establish a lower standard than allowed by state and federal law. The Clean Water Act and WAC 173-201A-300 anti-degradation policy requires the permit to protect existing water quality from degradation, even if the existing water quality is better than what is required by state water quality standards.
- Ecology did not change the language of S4.D. See comments in this document on S5.A regarding meeting MEP and AKART.
- Ecology did not delete S4.G because it includes language specific to S4 that is not in G14. General Condition G14 is broader and would not replace the intent of S4.G.

I-7 S5.A Stormwater Management Program for Cities, Towns, and Counties

Comments apply to all three municipal permits, except where specified.

I-7.1 Provision to not repeal existing ordinances (“anti-backsliding”)

Permit Reference: Phase I Permit – S5.B
Western Washington Phase II - S5.A.4
Eastern Washington Phase II - S5.A.1

Commenters: Asotin County, Clark County, Cowlitz County, Douglas County, Eastern Washington Coordinators Group, City of East Wenatchee, King County, City of Oak Harbor, Pierce County, Puget Sound Partnership, Regional Road Maintenance Forum, City of Seattle, Snohomish County, City of Spokane, City of Tacoma, Whatcom County, Yakima County Area Stormwater Co-Permittees

Summary of the range of comments

- Support the language as it prevents weakening strong elements already in place locally.

Oppose and request Ecology delete the proposed language:

- Interferes with local authority under RCW 35.67.020 for full jurisdiction and authority over drainage systems and funding.
- Administratively could prohibit repeal of existing ordinances to adopt the new stormwater ordinance.
- Discourages permittees from adopting innovative stormwater regulations, which in particular would reduce further expansion of LID BMPs.
- Penalizes jurisdictions that have shown good stewardship in the past.
- Phase I programs are mature and this removes flexibility to adjust requirements based on technical feasibility, operations and maintenance, basin needs, and experience.
- Changes to existing programs outside the permit are beyond the scope of this permit.
- Ecology can use other measures, such as a jurisdiction-specific permit, to address situations where an individual permittee makes changes with which it disagrees.
- The language is vague and susceptible to numerous inconsistent interpretations.
- The proposed new language, "prohibiting non- stormwater discharges" significantly expands the existing "no backsliding" requirement and is unnecessary due to the IDDE ordinance already in place through the existing permit.

- During a downturn in the economy and limited local budgets, it prevents permittees from adjusting previously adopted regulations and programs that are not required by the permit to address new permit requirements. This creates an unfair playing field for development.
- This does not implement the “anti-backsliding” provisions of the CWA. 33 USC § 1342(o) and 40 CFR § 122.44(l)(1) which generally prohibit a newly issued NPDES permit from containing water quality based effluent limitations (“WQBELs”) that are less stringent than the comparable WQBELs in a previous NPDES permit. However, the Phase I Municipal Stormwater Permit is a programmatic permit; there are no WQBELs.
- This is neither AKART nor MEP because it would cover requirements that are not in the permit, which presumably is itself AKART and MEP. It implies that existing local requirements that go beyond the permit are MEP and AKART.
- This does not meet the “reasonable” part of AKART.
- Federal rules are intended to allow a permittee flexibility to reduce a part of the SWMP by reallocating resources to produce a greater benefit.
- Removes flexibility to reduce and adopt local resources to meet new permit requirements.
- Communities sometimes adopt regulations that are excessive, and do not work. They should be free to adjust them.
- For counties this provision makes it difficult to adjust requirements for rural areas that are appropriate, but are less restrictive.
- Delete this provision because it is beyond the scope of Ecology’s regulatory program.
- The provision is contrary to Ecology’s stated goals of adaptive management.

Clarify the language

- Amend to allow for new information.
- Suggest replacing entire sentence with: “Permittees with SWMPs shall continue actions and activities of those SWMPs.”
- What if a permittee adopted requirements after the effective date of the permit that are stricter than those in the permit?
- Add language to allow permittees to revise local laws and stormwater programs based on new data, advancements in technology, old laws becoming obscure and not relevant, and other updates and revisions.

Response to the range of comments

- Ecology acknowledges the difficulties reflected in many of the comments for adaptive management and flexibility in local government program management, and deleted the requirement to retain more stringent program elements adopted previously in all three permits.
- Ecology modified this condition to require ongoing implementation of the SWMP components until permittees adopt and implement new requirements according to the implementation schedules in the permits.

I-7.2 General Comments on SWMP

Commenters: City of Kent, Muckleshoot Indian Tribe, National Marine Fisheries Service, U.S. Fish and Wildlife Service

Summary of the range of comments

- Support the proposed revisions and work of the permittees as they will meaningfully improve discharge controls.
- Ecology should include more requirements for enforcement. Specific program requirements for follow-up inspections, warning letters, re-inspect and enforcement are not in place at local governments. Recommend requiring a penalty calculation matrix to establish benchmarks for enforcement.
- There is too much discretion to permittees to design stormwater control measures and evaluate their effectiveness. Permits should have clear performance standards and targets and Ecology should have a clear role in evaluating the design and effectiveness of the measures.
- There are signs that the requirements in the current permit are making significant improvements in the protection of surface water quality and water resources. Many permittees are seeing tangible improvements in pollution prevention efforts and citizen and developer-awareness of the importance of surface water pollution prevention. Before adding new requirements, Ecology should more thoroughly analyze the substantive improvements achieved by the current municipal permit and work to ensure that all permittees are fully implementing the requirements.

Response to the range of comments

- Ecology did not add new requirements for enforcement. The local government regulatory requirements for IDDE and runoff controls for new and redevelopment include ordinances or other enforceable mechanisms with escalating steps of enforcement. Ecology relies on local jurisdictions to develop and adopt the specific enforcement procedures, which are often based on existing local procedures and enforcement codes. In addition to review and follow up on annual reports, Ecology will use program audits to review program compliance at a greater level of detail.
- The permits establish performance measures and standards for each program component, and require detailed and specific annual reporting. The Washington State permits are more prescriptive than those in most other states, and Ecology included modifications to improve the performance measures. For example, the final permits include a revised stormwater manual, advance LID statewide, require effectiveness monitoring, and establish a new approach to measuring performance for the structural stormwater controls component of the Phase I permit.

- In 2012, EPA is conducting audits of Phase I stormwater programs with Ecology’s assistance. Ecology plans to begin Phase II program audits in the next few years. In addition, monitoring requirements established under these permits will inform Ecology on improvements to receiving waters and program effectiveness.

I-7.3 Definition of the SWMP

Permit Reference: Phase I Permit - S5.A
Western Washington Phase II Permit – S5.A

Commenters: Clark County, Cowlitz County, King County, City of Seattle, Snohomish County, City of Tacoma

Summary of the range of comments

- Definition of SWMP does not clarify the required elements.
- Moving the SWMP to the definitions section provides less clarity.
- Delete definition for SWMP and add acronym to Definitions and Acronyms section.
- Continue to limit the scope to elements in Sections S5 and S6 to have a well-defined list of activities required for reporting and compliance. S7 & S8 are not part of the S5 SWMP and are covered by annual reports.
- Recommendations:
 - Return to original language.
 - Revise the definition of the SWMP in the Definitions and Acronyms to eliminate the language “and any additional actions necessary to meet ... Permit.”
 - Restore deleted definition of SWMP.
 - Reinsert the deleted language into S5.A that specifies: “*For the purpose of this permit a stormwater management program is a set of actions and activities comprising the components listed in S5.C of this Permit, any applicable actions required by S7 (TMDL) and Appendix 2, activities required by S8 (monitoring), and activities required to meet S4.F obligations.*”
 - Retain the language in S5.A (modified to add S7 and S8) to inform permittees and the public about what constitutes the components of a and compliance in the absence of an Ecology-approved SWMP. Retaining the language provides clarity and greater certainty about the scope of each permittee’s obligations, to assist with planning, implementing, budgeting, and compliance.

Response to the range of comments

- Ecology revised the draft language to restore the definition of the SWMP as the actions necessary to meet the requirements of S5 (for cities, towns and counties) or S6 (for

Secondary Permittees) and any additional actions necessary to meet the requirements of applicable TMDLs pursuant to *S7 Compliance with TMDL Requirements*, and *S8 Monitoring and Assessment*. Ecology returns the definition to S5 in response to permittee requests to retain it for clarification.

- Ecology clarified in this section and the Definitions that the SWMP comprises the requirements of S5 and applicable TMDLs pursuant to S7 and S8 monitoring for cities, towns and counties. Ecology clarified that other permit requirements such as S4 and General Conditions, which may include actions associated with SWMP components, are not defined as part of the SWMP.

I-7.4 Comments on the SWMP Report

Permit reference:

- Phase I – S5.A (See also Public Involvement and Participation - S5.C.4)
- WWA Phase II - S5.A.2 (See also Public Involvement and Participation - S5.C.2.b)
- EWA Phase II – S5.A.2 (See also Public Involvement and Participation - S5.B.2.b)

Commenters: Asotin County, Clark County, Douglas County, EarthJustice, City of East Wenatchee, Eastern Washington Coordinators Group, City of Ellensburg, City of Everett, Thom McConathy, People for Puget Sound, Puget Sound Partnership, City of Redmond, City of Richland, City of Tacoma, City of Wenatchee, Yakima Area Stormwater Co-Permittees

Summary of the range of comments

General Comments on SWMP Report

- Clarify the confusion that this is not a new report with respect to evaluation of BMPs.
- Delete the requirement for this ‘new’ SWMP Report, which is a burden on staff time and resources, and retain the previous SWMP requirement.
- The SWMP should define the activities for the upcoming year rather than include them within the proposed "SWMPR," which should be the Annual Report on the activities of the previous year.
- Delete the change in title and retain original title to avoid confusion. Address individual permittees where clarification is needed.
- Allow flexibility in organization and formats, including online webpages and videos for the public.
- Delete “at least” or specify which circumstances might require more frequent update than annual.
- Support the reporting requirement and annual update with posting for the public.

- Reduce submittal from annual to first annual report, except when there are significant changes.

Clarify the purpose and organization of the SWMP Report

- Continue to use for activities for the upcoming year
- Allow for other organizational schemes.
- Rewrite: “The SWMPR shall ~~be written to~~ inform the public....”
- EPA rule calls for evaluation of BMPs which comprise the SWMP. The list of BMPs comprises in the SWMPR. Ecology should review and approve to determine where BMPs should be revised to meet MEP. This would prevent violations and provide feedback on Ecology expectations.

Clarify or change the requirement

- Clarify that planned activity in SWMPR will not create an enforceable permit obligation if not completed.
- Clarify that planned activities in SWMP do not create an enforceable compliance obligation. Can permittees eliminate a “planned activity?”
- Add requirement for annual public comment on the SWMP Report to improve public involvement.

Response to the range of comments

- The “written documentation of the SWMP” is not a new requirement. The revision was limited to assigning it a title to differentiate it from the “SWMP” as a section of actions. This title does not change the submittal from the 2007-2012 permit term, during which permittees developed and updated these documents annually and posted them on their websites.
- Ecology revised the proposed title of this report from “SWMP Report” in the draft permit to “SWMP Plan,” and clarified in the final permit that this title refers to the “written documentation of the SWMP.” The final permit retains the purpose of the document as written to inform a public audience of activities planned for the upcoming year.
- Ecology included for this permit term the requirement to update the SWMP annually for submittal with the annual report. The report need not be extensive, but should inform the public and Ecology of future planned activities. Ecology retained “at least” to indicate that if needed permittees should update it more frequently, such as a change in budget that adds or removes a program, or the change in focus of an education program.
- Ecology did not require permittees to evaluate the BMPs in this document, but will use other methods, forums, and activities such as effectiveness monitoring to collect this information. Refer to the November 2011 Fact Sheet discussion of anti-degradation for more on the evaluation of BMPs.

- Planned activities listed in the SWMP Plan do not create an enforceable obligation for the permittee, but did not add such language to the permit. Ecology agrees that permittees may eliminate a “planned activity” listed in the SWMP Plan. For example, permittees can eliminate, postpone or change a public education activity targeting a specific audience that it has listed in its SWMP Plan, as long as the permittee meets the public education requirements through other activities and according to the schedule in the permit. Activities listed in the SWMP Plan that go beyond the requirements in the permit do not create a compliance obligation under the permit.
- Ecology added language to allow flexibility in SWMP Plan organization or format, as approved by Ecology. Alternative suggestions include a watershed-based organization or an online and/or video format.
- See the Public Involvement and Participation section of Part I regarding additional comments on the SWMP.

I-7.5 Cost-tracking and record-keeping

Permit reference: Phase I Permit – S5.A.2 and 3
Western Washington Phase II Permit – S5.A.3
Eastern Washington Phase II Permit – S5.A.3

Commenters: Eastern Washington Coordinators Group, City of East Wenatchee, City of Kelso, City of Kirkland, Thom McConathy, City of Richland, City of Tacoma, City of Wenatchee

Summary of the range of comments

- Eastern Washington Phase II permit:
 - The change from a "process" to a "program" is significant. Developing a program takes considerably more work than having "an ongoing process". Delete the word "program."
 - The proposed word "tracking" adds an additional element that not only makes the title inaccurate it also adds complexity, additional work load and higher cost to local jurisdictions. Delete the word "tracking."
 - The proposed wording "to set priorities" adds complexity, additional work load and additional cost to local jurisdictions. Delete the words "to set priorities."
- Delete S5.A.3 on the items to track, as this is not comprehensive enough to be helpful and are listed in individual program components.
- Ecology should provide guidance on cost-tracking and indicate how it is using this information. This takes time and such guidance would help limit time involved.
- There is no tracking requirement, which should occur for every part of the permit.

Response to the range of comments

- Ecology made the edits to the Eastern Washington Phase II Permit for consistency with the Western Washington Phase II Permit and did not add new requirements. Ecology does not intend “process” and “program” to differ in level of effort. Ecology used the word “tracking” to more accurately reflect the language in (a) and (b) which requires permittees to track costs and activities. Ecology clarifies that permittees should not interpret these edits to change ongoing procedures already in place.
- Ecology retained the specific requirements to track and report inspections, enforcement actions, and public education activities. Annual report responses summarize this information. Individual program components include more detailed requirements to keep records of training, development permits and inspections, and maintenance activities.
- Ecology agrees that guidance on cost tracking would help some permittees. However, because permittees have various internal accounting systems and internal organizational structures, statewide or permit-specific guidance would have limited value.
- The information that permittees track to submit in answer to annual report questions is one level of information, but permittees also must track the additional information identified in the permit, including costs. During program audits Ecology will likely request this information for a more detailed evaluation of program compliance.

I-7.6 Meeting MEP and AKART

Permit Reference: Phase I Permit – S5.B
Western Washington Phase II Permit – S5.B
Eastern Washington Phase II Permit – S5.A.1

Commenters: City of Bremerton, Clark County, Cowlitz County, King County, City of Longview, Pierce County, Snohomish County

Summary of the range of comments

- The first sentence of S5.B, regarding MEP and AKART, duplicates S4.C and S4.D, which already state the Permittee must meet MEP and AKART.
- The definition of SWMP includes the reduction of pollutants to the MEP. The first sentence of S5.B (Phase I permit) should be deleted for clarity.
- Permit should be explicit that the requirements meet MEP, AKART, and protect water quality. The current wording leaves Permittees open to liability if pollutants are not reduced when the SWMP is implemented.
- The Fact Sheet states that SWMP shall be designed to meet AKART and federal MEP. Presumably the minimum performance measures represent AKART and performing a

SWMP that meets the minimum measures is AKART. It is not up to the permittee to decide what AKART is, that is in the permit.

- Ecology acknowledges that the SWMP is MEP and AKART but does not provide clarity to the permittee that this is the case.
- The permit states that it is the applicants' responsibility to make sure they meet MEP and AKART. The permit issued to the phase II permittees is a prescriptive permit with detailed requirements for the SWMP. It should not be the responsibility of the permittees to meet MEP and AKART requirements. This section allows for third parties to file lawsuits alleging a permittee's SWMP do not meet MEP and AKART requirements, even though they have met all requirements from Ecology and both the permittee and Ecology agree they are in compliance.
- **Recommendations:**
 - Delete this sentence.
 - *“The SWMP should be designed....”*
 - *“The SWMP requirements of this Permit are designed to reduce the discharge of pollutants from MS4s to the maximum extent practicable (MEP), meet state AKART requirements, and protect water quality. Permittees implementing their SWMP meet the MEP, AKART, and water quality requirements of this Permit.”*
 - Add language *“Implementation of the permittee’s SWMP constitutes compliance with S4.C and S4.D.”*
 - Revise to state that meeting the SWMP requirements set forth in the permit in accordance with Ecology's approval also means that MEP and AKART are met. *“The SWMP shall be in accordance with the permit requirements as, identified in Section S5 .SWMPs that meet the requirements of this permit are considered to have met MEP and meet state AKART requirements, and protect water quality.”*
 - Add: *“Implementation of the SWMP as described herein constitutes MEP and AKART.”*

Response to the range of comments

- Ecology did not change or delete the requirement that the SWMP shall be designed to meet MEP and state AKART requirements. Although Ecology considers the requirements of this permit to be MEP and AKART, each program component includes areas of flexibility for permittees to design and implement individual activities tailored to local conditions to meet the requirements.
- This is a requirement for permittees to design their SWMPs to MEP and AKART standards to protect water quality. Ecology does not agree that the permit should state that permittees who implement the SWMP are meeting MEP and AKART.

I-7.7 Geographic Coverage Area of SWMP

Permit Reference: Phase I Permit S5.C
Western Washington Phase II Permit S5.A.1

Commenters: City of Everett, King County, City of Seattle, Snohomish County, City of Tacoma

Summary of the range of comments

- Language about “areas served” should be consistent with Section S1.A as it is ambiguous.
- Need to include this for jurisdictions with combined sewer areas, as provided for in 40 CFR 122.26(a)(7).
- Ecology states in the Fact Sheet that this language was removed because it was redundant with S3.A. Ecology should retain this language to clarify the scope of the permit and SWMP. The language clarifies that the SWMP applies to the MS3 owned and operated by the Permittee, and not to stormwater discharges into the combined or direct discharges into receiving water bodies, which would extend beyond the authority established by the Clean Water Act.
- Recommendations:
 - Strike the added language and reinsert the deleted language into S5.C that specifies that: *“The requirements of the stormwater management program shall apply to municipal separate storm sewers, and areas served by municipal separate storm sewers owned or operated by the Permittee.”*
 - “The SWMP shall include the components listed below. The requirements of the SWMP apply to the geographic area of Permit coverage described in Section S1.A.”
 - *“The requirements of the stormwater management program shall apply to municipal separate storm sewer systems, and areas served by municipal separate storm sewer systems owned or operated by the Permittee and located within the jurisdictional boundaries of the Permittee.”*
 - Add “...served by the MS4.”

Response to the range of comments

- Ecology restored the original language to the Phase I and Western Washington Phase II Permits to clarify that permittees must implement the SWMP in the geographic coverage area served by the MS4. The proposed deletion was to streamline permit language, since

the geographic coverage area is defined in S1 and the responsibility for the MS4 it “owns and operates” in S3.A. Ecology intends for the permit to be taken as a whole and did not duplicate this language throughout each permit component, as some comments request.

- The geographic area of coverage includes “areas served by the MS4.” Refer to the definition of MS4 to clarify that the MS4 does not include areas of combined sewers.

I-8 Coordination

Permit Reference: Phase I Permit - S5.C.3.a
Western Washington Phase II Permit - S5.A.5
Eastern Washington Phase II Permit – S5.A.5

I-8.1 External coordination requirements

Commenters: Ballard Stormwater Consortium, Thom McConathy, Muckleshoot Indian Tribe Fisheries Division, National Marine Fisheries Service, River Network/American Rivers, Snohomish County, U.S. Fish and Wildlife Service

Summary of the range of comments

- Tribal notification and coordination language should be more explicit, including requiring permittees to send all maps generated under this permit to tribes with on-reservation and off-reservation treaty protected water and fisheries resources and selection of monitoring sites under Regional Stormwater Management Program. Request notification when permittees apply for coverage, especially in WRIA 8, 9, and 10 for review and comment.
- Support Ecology encouraging watershed coordination, and think it can go farther. See permits in California which are structured so that Phase II communities are co-permittees of larger Phase I and require watershed management plans.
- Multiple agencies (planning, public works, transportation, parks, natural resources, ports) with activities addressing stormwater issues that need to be coordinated to reduce flows into Puget Sound.
- Agree that coordination and watershed planning are important.
- Coordination should extend to other permits (industrial, wastewater, WSDOT) with letters of coordination reviewed by regional stakeholders groups.
- Permittee compliance should not need to rely on the willingness of other entities.

Response to the range of comments

- Ecology agrees that permittees should coordinate with affected Tribes, and added language to mapping requirements that permittees must provide mapping information upon request. Ecology did not require permittees to send maps and other information unless requested, as the maps are updated continually. Public notice for new Phase II permittees is provided by the draft permit notice. The permits require public notice in local newspapers for new Secondary Permittees as well as other new permittees that may obtain coverage mid-permit term.
- Ecology does not plan to restructure permits for the next permit term. Ecology included in the permits language to encourage coordination across watersheds, and in guidance has suggested this as a cost effective measure. The final permits include requirements for watershed-based stormwater planning to protect water quality from new and redevelopment impacts, a watershed approach to monitoring, and TMDL actions for specific drainage basins.
- Ecology's policy is to issue and administer permits by jurisdiction, since municipal stormwater systems are administered by jurisdiction. While Ecology encourages watershed coordination, individual watershed-based permits are not feasible in terms of the additional staff to write and administer them, and the complexity of compliance for permittees that may fall under two or three different permits for parts of their MS4.
- It is Ecology's position that a watershed-based permit would contain the same requirements as are in the final permits for each jurisdiction to implement to meet MEP and AKART, but within a more complicated structure. Additional costs would be incurred for participating in several permit processes if a jurisdiction is located in more than one watershed. Costs would also increase to address regulatory gaps for cities and areas of the watershed not covered by a permit, and to coordinate compliance with multiple co-permittees. There would also be costs to permittees to restructure their programs and align ordinances and other requirements across the watershed, ordinances which permittees established under the existing permit structure.
- Ecology agrees that permittees should coordinate with other NPDES permittees where appropriate, but did not add this as a requirement. The WSDOT permit includes requirements for local coordination where relevant to permit implementation.

I-8.2 Requirement to submit organizational chart

Commenters: Chelan County, Clark County, Douglas County, Eastern Washington Coordinators Group, City of East Wenatchee, King County, City of Kirkland, Pierce County, Puget Sound Partnership, Regional Road Maintenance Forum, City of Renton, City of Richland, City of Spokane, City of Tacoma, City of Wenatchee

Summary of the range of comments

- Delete “key personnel” and replace with “key positions or jobs” as personnel changes too often for this to be meaningful.
- Use point of contact listed in annual report to identify personnel responsible for activities.
- Identify “permittee departments...” rather than personnel.
- Delete requirement for organizational chart as it is unnecessary detail, and is costly and time consuming for permittees.
- Ecology should define “stormwater-related activities.”

Response to the range of comments

- Ecology agreed that an organizational chart is not essential, and in the final permit removed that requirement in favor of submitting a written description of how the coordination across departments and divisions occurs. The description may be an organizational chart and/or narrative description, and in a small city may be a brief paragraph explaining that coordination mechanisms are not needed because of the small number of staff. An organization chart is a good way to show internal coordination and operation but is not required.
- Ecology would expect to review such documentation during a program audit.

I-8.3 Requirement to coordinate internally

Commenters: Eastern Washington Coordinators Group, City of East Wenatchee, City of Issaquah, City of Kennewick, National Marine Fisheries Service, Thom McConathy, Snohomish County, Richard Rogers, City of Richland, City of Tacoma, City of Wenatchee, Yakima Area Stormwater Co-Permittees

Summary of range of comments

- Support requiring internal coordination to clarify roles and responsibilities between departments.
- Delete as not necessary because internal coordination mechanisms were established under the current permit.
- Permits should require that a failure to coordinate be reported to and addressed by Ecology.
- Ecology should not require internal coordination as long as permittees meet substantive permit requirements.
- Ecology should define terms “coordination mechanism” and “barriers to compliance.”

Response to range of comments

- The final Phase II permits retained the proposed change to make internal coordination a requirement. As explained in the Fact Sheet, Ecology determined this is necessary based on the lessons of the previous permit term. Ongoing coordination is necessary for implementing

new requirements and to address staff or organizational changes for existing program requirements.

- Where a failure to coordinate results in a permit violation, permittees will notify Ecology under G20.
- Ecology did not define the terms as requested in the permits. Examples of coordination mechanisms are measures such as an organizational chart, interdepartmental meetings, an e-mail distribution list, a formal spreadsheet of program assignments, a reporting task, or other measures. Examples of barriers to compliance could be poor communication methods, unclear assignments for tasks or reporting, inadequate training, lack of proper equipment, actions of one department that conflict with a stormwater requirement, or other problems that limit permit compliance.

I-8.4 Coordination with physically interconnected systems and shared water bodies

Commenters: King County, Muckleshoot Indian Tribe Fisheries Division, Snohomish County, City of Tacoma

Summary of the range of comments

- Add qualifying language: “may occur on a variety of scales appropriate to the activities being coordinated” to the permit (now in Fact Sheet).
- New language is confusing and focuses too much on new Secondary Permittees.
- Add language to clarify that good faith efforts to comply with other entities constitutes compliance. Replace “refuse to cooperate” with language reflecting simple failure to come to an agreement.
- Strengthen the language to require greater coordination with federally-recognized Indian Tribes.

Response to the range of comments

- Ecology did not add the language from the Fact Sheet on the variety of watershed scales to the permit language. The Fact Sheet is part of the official permit record, so Ecology’s statement in that document is sufficient clarification.
- The language in S5.C.3 b applies to all permittees but provides a timeline for new Secondary Permittees because they may obtain coverage at any time throughout the permit term.
- Ecology did not add the language suggested to S5.C.3.b of the Phase I permit, but retained existing language that recognizes that, because the Phase I Permit requires this coordination (which is optional in Phase II permits), permittees are not responsible for failure to come to agreement with another entity over which it has no control.

- Ecology agrees that permittees should coordinate with Indian Tribes on issues related to stormwater and habitat, but did not strengthen coordination language for permittees to coordinate with Indian Tribes. Ecology added language in the mapping section of the permits to require sharing of maps and other information upon request with Indian Tribes.

I-9 Mapping

Comments apply to the Western Washington Phase II Permit S5.C.3.a (IDDE mapping requirements) and the Phase I Permit S5.C.2.

I-9.1 Clarify mapping requirements for discharges to ground water

Permit reference: Phase I – S5.C.2
WWA Phase II – S5.C.3

Commenters: Clark County, City of Shoreline, Snohomish County, City of Tacoma, City of Vancouver, WSDOT

Summary of the range of Comments:

- Adding ground water to the definition of outfall creates a new, confusing mapping requirement. Current requirements for stormwater facilities that discharge to groundwater should be sufficient. Revise definitions for outfall, receiving waters, and ground water to address these concerns.
- Clarify mapping requirement for geographic areas served the by the MS4 that do not discharge to surface waters. Ground waters are not regulated by CWA. Mapping areas not draining to surface water is unnecessary and serves no useful purpose.
- Specify that requirements to map receiving waters would not include ground waters. Otherwise, permit language would indicate an obligation to map ground water.
- Permittees should not be responsible for mapping waters of the state. Delete requirement to map receiving waters as this is not a part of the MS4.

Response to the range of comments:

- This permit regulates discharges to both surface and ground water. Refer to S2.A of the permit and the definition of “Waters of the State”. Ecology clarifies that outfalls to both surface and ground waters must be mapped. Refer to response to comments on the definition of “outfall” in the Definitions section for further clarification.
- Ecology required that permittees map general geographic areas that do not discharge to surface water because this permit also regulates discharges to ground. Ecology did not

require mapping of individual infiltration facilities, unless they meet criteria in Phase I S5.C.2.a. Ecology considered a requirement to separate underground injection control (UIC) areas from non-UIC areas burdensome. Permittees have the option of separating out areas served by UIC facilities when meeting this requirement.

- Ecology added language to clarify that permittees are not required to map ground waters. Ecology retained the requirement to map surface receiving waters. The federal rule requires mapping of waters of the U.S. that receive discharges from the MS4.

I-9.2 Clarify mapping of stormwater treatment and flow control BMPs/facilities.

Permit reference: Phase I Permit – S5.C.2
Western Washington Phase II Permit – S5.C.3

Commenters: City of Auburn, Clark County, City of Everett, King County, City of Lacey, City of Longview, Regional Road Maintenance Forum, City of Renton, City of Sammamish, City of SeaTac, City of Sedro Woolley, City of Shoreline, Snohomish County, City of Tacoma, WSDOT

Summary of the range of comments

- Define permanent stormwater control plans or insert language to clearly define these plans.
- Recommend adding clarification of permanent stormwater control plans “from Volume 1, section 3.15 of the *2012 Stormwater Management Manual for Western Washington*”.
- Revise permit language included in lines 31-34 to read as follows: “Permittees may rely on permanent stormwater control plans and as-built record drawings for mapping stormwater treatment and flow control facilities/ BMPs provided they are spatially referenced to the MS4 map and maintained on an ongoing basis”.
- Delete LID and replace with ‘permittee-owned BMPs’ in S5.C.2.a.ii. Permanent stormwater control plans should be considered a valid mapping format for any of the attributes of the tributary conveyances or connections to the MS4 under S5.C.2.c. There is no reason to treat data regarding LID BMPs differently from data regarding non-LID BMPs.
- Clarify that only stormwater treatment and flow control BMPs/facilities installed on projects subject to MR#6 and #7 are required to be mapped.
- Does the requirement to map LID BMPs apply to private LID BMPs? Clarify that the mapping of LID BMPs requirement only applies within the MS4 system.
- The proposed permit language gives the impression that mapping of LID BMPs shall start in August 2013. This is unrealistic, since LID implementation and construction will be required after January 1, 2016.

Response to the range of comments

- Ecology deleted the term “permanent stormwater control plans” from the permit. Permit requirements for mapping format do not preclude the use of permanent stormwater control plans, final plans, as-builts, or record drawings to map the MS4.
- Only stormwater treatment and flow control BMPs/facilities that help to meet Minimum Requirements #6, #7, or both are required to be mapped. If more than one BMP/facility is required to meet either of these minimum requirements, all must be mapped.
- Mapping requirements apply only to the permittee’s MS4.
- New LID BMPs owned or operated by the permittee that meet the definition of stormwater treatment and flow control BMPs/facilities must be mapped on an ongoing basis even if they are constructed before permit requirements for new and redevelopment take effect.

I-9.3 Increase mapping requirements

Permit reference: Phase I Permit – S5.C.2
Western Washington Phase II Permit – No comments received

Commenters: Thom McConathy, National Marine Fisheries Service

Summary of the range of comments

- Incorporate more mapping requirements for watershed planning.
- Require permittees to list salmon critical habitat and waterbodies with listed salmon species as an additional mapping requirement in S5.C.2.

Response to the range of comments

- Ecology agrees that mapping watershed planning elements, critical habitats and waterbodies with listed salmon species can be incorporated into municipal maps. Ecology chose to remain consistent with federal requirements for features that are not part of the permittee’s MS4 and did not include additional mapping requirements for receiving water attributes. These data are generally available from other sources.

I-9.4 Public availability of maps

Permit reference: Phase I – S5.C.2
WWA Phase II – S5.C.3

Commenters: City of Federal Way, Thom McConathy, Regional Road Maintenance Forum, Snohomish County, City of Tacoma

Summary of the range of comments

- Require that map formats be non-proprietary and publically available.

- Delete requirements related to disclosing maps (S5.C.2.d), as the Public Records Act already requires this. If the language is retained, clarify that the phrase “to the extent appropriate” is intended to have the same meaning as “to the extent consistent with national security laws and directives” contained in S5.C.2.c. If it is, use the same language.
- Permittees should retain the option of using paper maps. Not all entities have the capability to scan and georeference these features

Response to the range of comments

- Washington State citizens have access to public records through the Washington State Public Records Act (chapter 42.56 RCW) and can obtain permittee maps through a request. Many permittees have their maps publicly available through their Web sites or in print. Although the Public Records Act may require disclosure of public documents, Ecology did not cite this rule in the permits. This provision reduces barriers between permittees to share information and is in no way intended to breach national security laws and directives. All Phase I permittees currently have electronic mapping capabilities. The Phase II permit does not require electronic format. Ecology did not change the requirement.

I-9.5 Clarify mapping related to tributary conveyances

Permit reference: Phase I Permit – S5.C.2
Western Washington Phase II Permit – S5.C.3

Commenters: Snohomish County, City of Tacoma, WSDOT

Summary of the range of comments

- Define tributary conveyances as used in the mapping section.
- The language “or an equivalent cross-sectional area for non-pipe systems” should be deleted. Ditch systems are not designed to the minimum possible size as piped system often are. This language places a higher priority on mapping rural road drainage. Suggest the following language: *“Tributary conveyances owned or operated by the Permittee that flow either to piped system outfalls having a 24-inch nominal diameter or larger, or to open channel outfalls for which the tributary conveyance includes a piped system with minimum nominal diameter of 24 inches; provided, however, that tributary conveyances having a larger diameter solely to enable fish passage and not for purposes of handling a large volume of stormwater need not be mapped pursuant to this provision.”*

Response to the range of comments

- Ecology defined tributary conveyance in the final permit to clearly identify components of the MS4 required to be mapped. Maps are intended to help permittees implement permit requirements and permittees are encouraged to map additional features.
- Ecology did not agree to the recommended distinction for non-piped systems that may be larger than required to convey stormwater runoff to allow fish passage. Tributary conveyance mapping requirements for Phase I counties already limit the requirement to urban/higher density rural sub-basins.

I-9.6 General mapping edits and clarifications

Permit reference: Phase I Permit – S5.C.2
Western Washington Phase II Permit – S5.C.3

Commenters: City of Olympia, City of Kent, City of Seattle, City of Shoreline, Snohomish County, City of Tacoma, WSDOT

Summary of the range of comments

- Delete the words ‘or maintained’ from S5.C.2.b.iii as ‘operate’ covers maintenance.
- Replace ‘tributary conveyances’ with ‘attributes’ in S5.C.2.a.v as the items in the list are attributes which include tributary conveyances.
- Permit language requiring mapping and documenting of the MS4 is ambiguous and confusing.
- Requirement to map in electronic format should be moved to the beginning of the section since it applies to the whole section.
- Delete or clarify the term ‘land-use’ as used in mapping requirements. Land uses are not physical components of the conveyance system and are not a proper subject of mapping.
- Mapping should be defined in more detail to assure consistency among all permittees and so that interconnected systems can more accurately match up.

Response to the range of comments

- Ecology agreed that “operate” and “maintain” have the same meaning in this requirement and deleted “or maintained”.
- Ecology did not agree that tributary conveyances are attributes. The items listed in Phase I S5.C.2.a.v are attributes of tributary conveyances.
- Ecology edited the language to clarify mapping requirements.

- Ecology agreed that the requirement for electronic format applies to the entire section, and maintained its location for consistency.
- Ecology agreed that it might be useful to standardize land use descriptions. However, permittees rely on comprehensive planning and zoning maps to meet this requirement, and municipalities define land use classifications differently.
- Ecology agreed that consistency among permittees would be highly beneficial for interconnected systems. Ecology considered the specific mapping format requirements that would be needed to assure consistency would be too burdensome. Ecology supports permittee efforts to improve consistency.

I-10 Public Education and Outreach

Comments apply to the Phase I and Western Washington Phase II permits.

I-10.1 Comments on Ecology oversight and flexibility in audiences and topics

Permit reference: Phase I Permit – S5.C.10.a
Western Washington Phase II – S5.C.1.a

Commenters: City of Arlington, Clark County, EarthJustice, King County, Lider Engineering, City of Marysville, Olympic Environmental Council, Pierce County, People for Puget Sound, Puget Soundkeeper Alliance, Puget Sound Partnership, City of Renton, Snohomish County, Sno-King Watershed Council, City of Tacoma

Summary of the range of comments

- Support public outreach and education. More emphasis needs to be put on public education and outreach, and encouraging homeowners to voluntarily retrofit the properties.
- Suggest that permittees submit an education plan to Ecology that includes how the public can access information. Ecology should review and approve programs to assure that the highest priority audiences/behaviors are selected to reduce the threat/pressure.
- Permit requirements should be defined first by locally and regionally prioritized problems, then by the specific audiences and behaviors that can address those problems. Provide ability to change program priorities.
- Align Phase I requirements with Phase II language.
- Allow local programs to be focused on where they are most effective.
- Suggest permit language align with Fact Sheet (page 50) and that subject areas should match the appropriate target audience in each section as appropriate.

- Recommend Ecology provide specific audience and behavior choices to allow common messages and measurable results across western Washington. Data could be used for adaptive management.
- Proposed requirements will require an immeasurable increase in cost as all audiences and all topics will need to be addressed. The draft language implies that all audiences listed in each grouping must receive every message listed in their section, which is not always appropriate.
- Permittees should not be responsible for training licensed professionals. Ecology should provide training for permit-adopted manuals.
- S5.C.10.c (Phase I) should be amended to provide flexibility to determine what subject areas and target audiences are a priority within the jurisdiction.
- Ecology should play a stronger role, including more tracking and recordkeeping.
- Ecology could set up a pay-in option like the monitoring program, and take the lead on education statewide.

Response to the range of comments

- Ecology agrees that the public education and outreach requirements emphasize the importance of building understanding and changing behavior to improve water quality.
- Ecology did not require permittees to submit a plan for review and approval but has the option of requesting the permittee's public education and outreach plan for review during program audits and other inquiries.
- Ecology intends for Phase II permittees to select the highest priority audiences and subject areas based on local and/or regional pollution problems. Permittees have developed common messages regionally and in many cases measure results at a regional level, in part with Ecology grant funding. Ecology also provides general stormwater educational materials and examples from permittees online, but expects permittees to evaluate behavior change and adapt their programs. (See Ecology guidance at <http://www.ecy.wa.gov/biblio/0710092.html>)
- Ecology did not align the language in the Phase I and II permits regarding the number of target audiences to be reached. Phase I permittees are required to implement a program that reaches the entire list, while the Phase II permittees are required to prioritize the audiences, general awareness topics and behavior changes. Ecology did not amend the Phase I S5.C.10.c language and expects Phase I permittees to reach the required audiences and topics, but recognizes that each topic may require a different level of effort.
- Ecology believes permittees should provide education and awareness building of professionals who implement permittees' ordinances and manuals. Ecology supports education programs and training through grant funding and various other sources. Ecology recently received additional resources from the State Legislature to plan for and provide LID training in the upcoming permit term.

I-10.2 Continue to require that public education activities be tracked

Permit reference: Phase I Permit – S5.C.10
Western Washington Phase II Permit – S5.C.1

Commenters: EarthJustice, Thom McConathy

Summary of the range of comments

- Ecology should not eliminate the requirement that public education activities be tracked and for records to be kept. It is the key to assessing compliance and measuring effectiveness.

Response to the range of comments

- Ecology did not eliminate the requirement to track and maintain records, but deleted it from this section to streamline permit language. The language in S5.A.3.b requires tracking of public education activities and this information is required in the annual report. Ecology intends for permittees to provide a summary of activities (which will require the permittee to keep track of activities) in the annual report.

I-10.3 Distinguish between building public awareness and achieving behavior change

Permit reference: Phase I Permit – S5.C.10.a.
Western Washington Phase II Permit – S5.C.1.a.

Commenters: City of Bothell, City of Kelso, City of Kirkland, Puget Sound Partnership

Summary of the range of comments

- Recommend that public awareness and behavior change be clearly distinguished and separately defined. Each is important, but has different objectives and delivery methods (social marketing and public information). Objectives for changing behavior and building public awareness are blended, which creates ambiguities.
- Recommend changing language to “understanding and/or adoption of targeted behaviors”.

Response to the range of comments

- Ecology agreed that the draft permit blended public education/awareness and behavior change. Ecology revised the final Phase I and Phase II permits to separate the two approaches as they each have unique goals, delivery methods and outcomes.

- Ecology did not intend this change to require a higher level of effort than under the previous organization, since the requirement to measure and use the results to improve education programs in the 2007 permits targeted behavior change, as well.
- Ecology separated the topics associated with building public education/awareness for general audiences from those for changing behaviors. Ecology intends that permittees narrow these general audiences to a specific audience to match the awareness building or behavior change topic based on reducing a specific local pollution problem. For example, efforts would target residents on yard care techniques, and businesses on dumpster maintenance.
- Ecology will provide additional guidance on Public Education, Outreach and Stewardship activities early in the 2013-2018 permit term.

I-10.4 Comments on new audiences and/or topic areas.

Permit reference: Phase I Permit – S5.C.10.a
Western Washington Phase II Permit – S5.C.1.a

Commenters: City of Auburn, City of Bothell, King County, City of Kirkland, City of Longview, Peter Haase, Pierce County, City of Port Orchard, City of Redmond, City of Renton, City of Sammamish, City of SeaTac, City of Seattle, City of Sedro Woolley, Snohomish County, City of Tacoma

Summary of range of comments

- Support including school age children in the education and outreach requirements as this will allow permittees to receive credit for current efforts.
- LID education and training should target permit reviewers and the regulated public.
- Add public officials and policy makers to the targeted audiences and clarify the areas of understanding.
- Education is important to build support among the general public. Ecology could provide this along with the Puget Sound Partnership and environmental groups.
- Support educating the general public re: LID so that they can help advocate for this approach.
- Remove home-based and mobile businesses from the list of target audiences. This group is very difficult to track and keep up to date with their contact information.
- Specify or identify the types of BMPs and equipment needed for BMPs used in home based and mobile businesses such as carpet cleaning.
- Add LID facility maintenance to stormwater facility list.
- Remove or revise “for property owners” from dumpster maintenance, as the language is limiting. Insert the term “BMPs for” as more accurate and consistent.

- Enhance the language of S5.C.1 to fully detail the stormwater pollution issues near and around dumpsters. Suggest: "Dumpster and trash compactor management and management of the dumpster and trash compactor areas."
- Move BMPs for dumpster maintenance and property owners to a different part of the permit in order to be more consistent with other subject areas.

Response to the range of comments

- Ecology agreed that school age children are included in the general public and listed them separately to provide additional clarity. Focusing on stormwater outreach to children through school-based programs linked to the Learning Standards set by Washington Office of the Superintendent of Public Instruction (OSPI) may prove highly effective for permittees, and Ecology plans to provide guidance and resources for permittees to assist this process. See <http://www.k12.wa.us/CurriculumInstruct/default.aspx> for more information on the OSPI learning standards for Environment and Sustainability.
- Ecology removed elected officials, policy makers, and permittee staff from the opening paragraph of S5.C.1. Ecology expects and elsewhere requires permittees to provide elected officials and staff information and training to effectively implement and understand the permit requirements.
- Ecology added LID principles and LID BMPs to the topics to build awareness among the general public. Ecology did not add LID facility maintenance to the list and removed other facilities previously listed, in that the terms "LID principles" and "LID BMPs" as defined in *Definitions and Acronyms* is more flexible and inclusive.
- Ecology did not remove home-based and mobile businesses from the target list of audiences as they are an important audience that can contribute stormwater pollution. Recent public education campaigns (www.dumpsmart.org) are already targeting these audiences.
- Best Management Practices for behavior change topics for mobile businesses may be specified in future Ecology guidance. Guidance on this topic for carpet cleaners is already available at: http://www.ecy.wa.gov/washington_waters/docs/Carpet_Cleaning_2011.pdf and <http://dumpsmart.org/index.php>.
- Ecology deleted the word "flows" from the stormwater problem topic to clarify that efforts to build general awareness should also provide information on sources of pollution and their effects on surface waters.
- Ecology replaced "homeowners" with "residents" to clarify that permittees should include broader residential audiences in addition to homeowners in the topics for changing behavior.
- Ecology revised the language regarding dumpster maintenance to include "trash compactors," and deleted "property owners" from this BMP but added it to the target audiences.

I-10.5 Meeting education and outreach requirements in regional efforts.

Permit reference: Phase I Permit– S5.C.10
Western Washington Phase II Permit – S5.C.1

Commenters: City of Kenmore, City of Kirkland, Puget Sound Partnership, Snohomish County

Summary of the range of comments:

- The permits should offer incentives and include requirements that count towards permit compliance for participation in regional Education and Outreach programs. Regional programs are most effective when all collaborators are committed and will provide a stronger regional foundation for local programs.
- Support allowing regional evaluation of education efforts.
- Clarify whether section S5.C.1.a (Phase II) allows for regional coordination to satisfy permit requirements. Clarify intent of S5.C.10.d (Phase I) to allow permittees to partner in regional programs and evaluations to measure the success of those programs.

Response to the range of comments:

- Ecology revised the permit to clarify that permittees may coordinate regionally to satisfy permit public education and outreach requirements. This applies to both the education program in S5.C.1.a and the evaluations to measure success of those programs required in S5.C.1.c (Phase II). As described in the October 19, 2011 Fact Sheet, however, the regional education activities must be appropriate to the jurisdiction and must be implemented in the jurisdiction.
- Ecology did not include specific incentives for permittees that participate in regional programs, since some permittees do not share water bodies or geographic areas or have established their own programs.

I-10.6 Requirement to create stewardship activities

Permit reference: Phase I Permit – S5.C.10
Western Washington Phase II Permit – S5.C.1

Commenters: City of Everett, King County, Pierce County, Snohomish County, City of Tacoma, Whatcom County

Summary of the range of comments

- Confirm that stewardship activities conducted by a non-permittee can be used to satisfy permit requirement. Suggest: “create stewardship opportunities or coordinate with and promote existing organization’s activities and programs...”
- Clarify intent to allow permittees to partner with existing organizations to implement stewardship activities.
- Change the language in S5.C.10.b to “storm drain ~~stenciling~~ marking” to include both curb markers and stenciling techniques.
- Leave the stewardship language in Public Involvement (not Public Education). Requiring stewardship activities provides little benefit and is costly.

Response to the range of comments

- Ecology agrees that permittees may partner with existing organizations to satisfy stewardship requirements. Partnering with an existing organization may be more efficient and effective. Ecology revised the permit language accordingly.
- To clarify, permittees may work with a non-permittee to satisfy this permit requirement.
- Ecology changed “stenciling” to “marking” and intends that storm drain marking includes stenciling or installing emblems.
- Public engagement and involvement through stewardship activities such as stream teams is linked to public education and outreach. The 2007 permit included stewardship in the introductory paragraph and as a topic of building general awareness. Ecology intends that in addition to providing stewardship opportunities, permittees will make residents aware of those opportunities.

I-10.7 Requirement to evaluate a “new” target audience and subject area.

Permit reference: Phase I Permit – S5.C.10.d
Western Washington Phase II Permit – S5.C.1.c

Commenters: City of Bothell, Clark County, City of Everett, City of Issaquah, City of Kelso, King County, City of Kirkland, City of Longview, City of Marysville, City of Newcastle, Pierce County, City of Port Orchard, City of Renton, City of Sammamish, City of SeaTac, City of Seattle, City of Sedro Woolley, Snohomish County, City of Tacoma, Thurston County, City of Vancouver, Whatcom County

Summary of the range of comments

- Suggest that the word “new” be removed from the evaluation requirement. For Phase I permittees, there is only one “new” audience and two “new” behaviors in this permit. It is not appropriate to limit the evaluation to only “new” subjects.

- Evaluating existing programs or re-evaluating a program has the potential to provide valuable information that can be used to adapt programs and target audiences in different ways. The permit language with the word “new” eliminates the ability for re-evaluation and expansion of existing programs.
- Permittees should have flexibility to evaluate/reevaluate and make improvements and expand existing programs to meet this requirement. Change the word “new” to “additional” or “priority targeted audience in at least one priority subject area”.
- Market research measures education of targeted audiences over the long-term. If new audiences and subject areas are required, previous research results will have little worth.
- Provide clarification on the word “new.” If we targeted residents once, are we no longer allowed to use residents as a target audience for other evaluation purposes? Is it a current targeted audience not previously surveyed?
- Many permittees are already covering most of the target audiences.
- Provide clarification on what actions are required in S5.C.10.d. (results of measurements shall be used to direct education and outreach resources...)

Response to the range of comments

- Ecology revised the permit language to delete the requirement for “new” audiences/behaviors. Ecology expects that permittees will continue to improve current programs and build on past education and outreach efforts, as appropriate.
- Ecology expects permittees to measure/evaluate the results of an education effort to learn whether it helps achieve a better understanding and/or adoption of desired behaviors in the target audience, and then to apply the evaluation results to update and refine ongoing education and outreach programs.
- Ecology does not intend the requirement to measure and use results to apply to all the target audiences.

I-10.8 Clearly define compliance points with this permit requirement

Permit reference: Phase I Permit – S5.C.10
Western Washington Phase II Permit – S5.C.1

Commenters: Puget Sound Partnership

Summary of the range of comments

- The permits should more clearly delineate thresholds of compliance for education and outreach requirements. Define clear, measurable, and equitable thresholds of compliance.

Response to the range of comments

- Ecology believes the current permit requirements to measure and use the results of an education effort to one audience and subject area and to create stewardship opportunities are appropriate compliance thresholds. Ecology did not provide more detailed goals and objectives for specific education efforts, but provided requirements and guidance with adequate structure and flexibility to measure compliance. Ecology clarifies that compliance with this requirement will vary with the size and capacity of the jurisdiction.
- Ecology has provided guidance ([Publication 07-10-092](#)) and will use several methods to evaluate compliance. Permittee annual reports include a summary of education and outreach activities, and more detailed review of plans will occur during program audits. Ecology will review how the permittee selected the target audience, what efforts were made to reach the audience, what specific local pollution problems were targeted, whether the program addresses them and how they were selected, whether the target audiences' knowledge and awareness increased, whether behavior change occurred, and how the program built on past efforts.
- Ecology will provide additional guidance on Public Education, Outreach and Stewardship activities and will provide grant funding to permittees as it becomes available for cooperative education projects.

I-10.9 Allow more time for permittees to meet requirement to apply results of evaluations

Permit reference: Phase I Permit – S5.C.10
Western Washington Phase II Permit – S5.C.1.c

Commenters: City of Kelso, Whatcom County

Summary of the range of comments

- The timelines for further expanding the activities are unrealistic.
- Extend the deadline to use the public education evaluation results to direct education and outreach resources to July 2018. It takes a minimum of two months to receive the results, and then they have to be interpreted and analyzed to develop guides to direct our education and outreach sources most effectively.

Response to the range of comments

- Ecology believes two and one half years is sufficient to measure the understanding and adoption of targeted behaviors and direct outreach programs. Ecology deleted the timeline to begin measuring by February 2, 2015. In addition, by deleting the requirement to measure an

effort targeting new audiences and subject areas, the final permit provides flexibility to build on or expand on an audience and/or topic area from an earlier effort.

I-10.10 General comments on public education and outreach

Permit reference: Phase I Permit – S5.C.10
Western Washington Phase II Permit – S5.C.1

Commenters: City of Bainbridge Island, City of Kent, National Marine Fisheries Service, Olympic Environmental Council, Peter Haase, Snohomish County, City of Tacoma,

Summary of range of comments

- The educational and public outreach requirements contained in the permit have improved to include a broader range of constituents, (i.e. elected officials, policy makers, and planning staff) and audiences and subject areas. The permit highlights the types of Best Management Practices that individual homeowners can utilize to improve stormwater quality.
- Suggest including a targeted education program for LID. It is an important tool in preserving and improving Puget Sound. Ecology should partner with the PSP and environmental groups to produce an education package and coordinate region-wide presentations aimed at the general public.
- Revise S5.C.10 for clarity, it is too narrowly written. The language could be read to exclude actions the County suspects that Ecology intended to include.
- Public Education and Outreach (S5.C.1). Define “stormwater problem”.
- Public outreach and education is essential. Ecology should require clear language on how the community can access relevant documents. The language should be complete, easy to read, comprehensible, and accessible.

Response to the range of comments

- Ecology deleted elected officials, policy makers, and permittee staff from the opening paragraph of S5.C.1. Ecology believes permittees should routinely provide staff information and training to effectively implement and understand the permit requirements. See previous comments.
- Ecology clarified S5.C.1.a. to distinguish between building awareness and changing behavior. LID is a targeted subject area for building general awareness. Ecology supports permittee education through grants, including education related to LID.
- Ecology refers commenters to an explanation of the stormwater problem in the November, 2011 *Fact Sheet*.

- Ecology agrees that educational materials should be clear and accessible. Permittees are subject to public disclosure requirements to provide access to local government documents.

I-11 Public Involvement

Comments apply to the Phase I and Western Washington Phase II municipal stormwater permits.

I-11.1 Examples of when permittees should seek public participation

Permit reference: Phase I Permit – S5.C.4.b
Western Washington Phase II Permit – S5.C.2.b

Commenters: Clark County, City of Everett, People for Puget Sound, Pierce County, Puget Soundkeeper Alliance, Snohomish County, City of Tacoma

Summary of the range of comments

- Support for public participation and review of the SWMP. Permit should allow permittees to clarify which areas of SWMP are discretionary when seeking input.
- Citizens are not involved in local decision-making, per se. Revise to focus on the appropriate role: “create opportunities for the public to comment on the development, implementation, and update of the SWMP.”
- Provide additional examples of public participation, such as public input on development code updates and budget approval.
- Rate structure adjustments should not be subject to public hearings.

Response to range of comments

- Ecology believes that public involvement and participation through a range of opportunities and venues helps advance successful permit implementation. Ecology understands, however, that not every aspect of a permittee’s SWMP is flexible and that public input on every component without clear boundaries of what can be changed and what is required may not be useful.
- Ecology provided several examples of how public input can be sought and on what aspects of the SWMP, but did not add examples in the final permit. Ecology does not expect permittees to pursue all of the opportunities or topics noted. Each permittee is capable of determining where public involvement and input is most meaningful.
- Ecology did not add language requiring or excluding code, budget and rate structure amendments from public hearings. Local and state law requires public comment and public hearings for most ordinance and fee structure amendments.

I-11.2 Comments on level of effort for public involvement.

Permit reference: Phase I Permit – S5.C.4.b
Western Washington Phase II Permit– S5.C.2.b

Commenters: City of Everett, People for Puget Sound, Pierce County, Snohomish County, Sustainable Seattle

Summary of the range of comments

- The SWMP is too vague and should include stronger requirements for public involvement.
- The permits' prescriptive nature and specific deadlines may effectively deprive citizens and businesses of opportunities for meaningful public involvement. If Ecology intends for permittees to engage citizens in decision-making, additional flexibility and longer permit deadlines are needed.
- There is insufficient time to seek comment on SWMP document via advisory committees, public hearings, etc. given that document is prepared early in the calendar year and must be submitted by March 31.
- The public involvement language should include specific minimum requirements to allow citizen processes more time for comments.

Response to the range of comments

- Ecology agrees with comments in support of requirements for public involvement but did not add more detailed permit requirements.
- Ecology expects permittees to schedule public input so that it can be meaningfully considered and reflected in the SWMP document. Soliciting input on the SWMP Plan is not limited to any specific timeframe, as it is posted online, and permittees may receive input after it is posted. Listing proposed activities in the SWMP Plan does not convey a permit obligation. The proposed actions are subject to change based on public input, as long as the permit requirements are met through other activities.
- Minimum program requirements for the SWMP Plan specify that the document be updated annually, submitted by a specific date, and posted online for public access.

I-11.3 Clarify requirements for online posting of SWMP and Annual Report documents

Permit reference: Phase I – S5.C.4.b
WWA Phase II – S5.C.2.b

Commenters: River Network/American Rivers, EarthJustice, King County, Thom McConathy

Summary of range of comments

- Public online access to Stormwater Management Program Plans (SWMP Plans), annual reports, monitoring QAPPs and monitoring results is essential.
- Add requirement for annual public comment on the SWMP Report to improve public involvement.
- Require that all correspondence and reporting related to the permit be posted on the permittee's website.
- Add requirement for annual public comment on the SWMP Report to improve public involvement.

Response to the range of comments

- Ecology agreed that public access to the SWMP Plans and annual reports is essential and clarified in the permit that permittees must make these reports available online no later than May 31 of each year. Other documents must also be made available to the public upon request, in keeping with state public disclosure requirements.
- Ecology did not require that additional materials (e.g., correspondence) must also be posted on a permittee's website, as these are available through local public disclosure requirements.
- Ecology did not require annual public comment on the SWMP Plan. The requirement to post online the most current version by May 31 of each year makes it available for public input at any time.

I-11.4 Making submittals available upon request

Permit reference: Phase I Permit – S5.C.4.b
Western Washington Phase II Permit – S5.C.2.b

Commenter: Snohomish County

Summary of the range of comments

- Public entities are already subject to public disclosure laws. The requirement to make submittals available upon request subjects permittees to additional potential liability under the Clean Water Act.

Response to the range of comments

- Ecology agrees that public entities are subject to public disclosure laws. Ecology does not agree that this statement subjects permittees to additional potential liability under the Clean Water Act. No change to permit language.

I-12 Illicit Discharge Detection and Elimination (IDDE)

Comments apply to the Phase I and Western Washington Phase II permits.

I-12.1 Clarify overall IDDE program purpose and focus

Permit reference: Phase I – S5.C.8
Western Washington Phase II – S5.C.3

Commenters: City of Auburn, City of Bellevue, City of Bothell, City of Bremerton, Clark County, City of Everett, City of Kent, King County, City of Kirkland, City of Longview, City of Marysville, City of Newcastle, City of Port Orchard, City of Poulsbo, City of Renton, City of Sammamish, City of SeaTac, City of Sedro Woolley, Snohomish County, City of Sumner, City of Vancouver

Summary of the range of comments

- Concerns with the overall description of the IDDE program, and adding the word “prevent,” because these activities, including prevention, are not possible in all cases and at all times.
- Suggestions to reorganize the introductory sentence to better follow the language and organization of the section.
- Clarify the IDDE program applies only to MS4s owned or operated by the permittee that are covered by this permit.
- Clarify that stormwater facilities owned or operated by third parties are not required to be inspected under the IDDE program.

Response to the range of comments

- Ecology revised the overall description of the IDDE program to acknowledge this program is “designed to” accomplish the specified activities, and the specified activities now follow the order and language used in the rest of the section. Note that the Phase II requirements in S5.C.3.a (mapping) support “tracing” illicit discharges, and the requirements in S5.C.3.b (regulatory mechanism) support “preventing” and “eliminating” illicit discharges.

- All requirements in the municipal stormwater permit apply to the MS4s covered by the permits as specified in S1 of the permits. Adding the suggested clause throughout the permit is unnecessary.
- Ecology clarifies that stormwater facilities owned and operated by third parties and which do not discharge into the permitted MS4 are not subject to the MS4 permit requirements for IDDE. MS4 permittees are required to implement a program that addresses illicit discharges to the permittees' MS4 even when those illicit discharges originate on private property or within stormwater facilities owned and operated by third parties.

I-12.2 Comments on allowable discharges

Permit reference: Phase I Permit – S5.C.8.b.i
Western Washington Phase II Permit – S5.C.3.b.i

Commenters: City of Issaquah, King County, Snohomish County, City of Seattle, City of Shoreline

Summary of the range of comments

- Change or clarify the emergency fire fighting language.
- Reconsider allowing air conditioner condensation because it could contain high levels of copper as a consequence of contact with copper tubing used in the condensing heat exchanger.
- Reconsider allowing irrigation water if it is in reference to tail water as it may contain high levels of suspended solids, fertilizers and/or pesticides.
- Clarify the difference, if any, between footing drains and foundation drains
- Clarify how runoff from buildings that is tied into footing drains is handled because roofs and roof drainage systems, and erosion/leaching from siding, have the potential to pollute water collected in footing drains with zinc and building finishes.
- Suggestion to add discharges of potable water associated with a water line break or other emergency when the discharge cannot be de-chlorinated due to the volume of water and nature of the discharge.
- Clarify the allowed discharge from crawl space pumps when the 2005 SWMMWW does not allow for crawl space pumps to be directly connected to the MS4.

Response to the range of comments:

- Ecology retained the 2007 language for emergency fire fighting. Note that firefighting training is not an emergency activity and discharges associated with training activities are not allowable discharges. Fire departments across the state have already implemented programs

to prevent illicit discharges from training activities. Refer to RTC on S2 for additional information.

- Permittees may, in the municipality’s illicit discharge ordinance, address additional types of discharges (such as air conditioning condensation, and irrigation water) where the municipality identifies such discharges as sources of pollutants (refer to 40 CFR 122.26). In absence of data to make this determination statewide, Ecology did not change the language.
- Ecology agrees that “footing drains” and “foundation drains” are commonly used to refer to the same thing. Note that they are listed separately in 40 CFR 122.26. Ecology retained the original language because an edit is not necessary to implement the program.
- Roof drains are designed for conveying stormwater. Special consideration is already given for roofs as pollution-generating surfaces. Siding and other building materials may be sources of pollutants, but they are not types of non-stormwater discharges.
- Ecology did not change the language regarding potable water discharges from emergencies. Emergency situations involving potable water are handled on a case-by-case basis, for example under General Condition G3 or Special Condition S4.F.
- Ecology included a minor edit to clarify that uncontaminated water from crawl space pumps is an allowable discharge. This does not conflict with the SWMMWW, which deals with direct connections only, not discharge quality.

I-12.3 Comments on conditionally allowable discharges

Permit reference: Phase I Permit – S5.C.8.b.ii
Western Washington Phase II Permit – S5.C.3.b.ii

Commenters: City of Arlington, City of Bellevue, City of Everett, City of Issaquah, King County, Thom McConathy, City of Redmond, City of Seattle, City of Shoreline, Snohomish County, City of Tacoma, City of Vancouver, WSDOT

Summary of the range of comments

- Concern that changes to this important section are drastic and of a declining nature.
- Appreciates the change in language that eliminated the double negative and is now in a positive tone.
- Clarify whether minimizing the amount of street wash and dust control water used applies only to these activities when conducted by the permittee or to anyone conducting these activities.
- Restrictions regarding wash water could conflict with implementing fugitive dust management plans and Construction Stormwater General Permit (CGSP) requirements.
- Clarify whether the 0.1 ppm concentration is for total or free chlorine; Seattle suggests “total” because it measures any chloramines formed by the de-chlorination process and is

thus more protective of aquatic resources; most field meters can be set to read for either form.

- Add “building fire sprinkler/suppression system discharges” to the list of potable water discharges. Clarify what “including, but not limited to” means to ensure it does not conflict with permissible or emergency firefighting activities clauses.
- Add dye testing for routine maintenance and IDDE activities.
- Add Class A reclaimed water as it is becoming increasingly available and may be used for street cleaning, for example.
- Concern that because groundwater is a receiving water, discharges of potable water (without de-chlorination or pH adjustment) or car/boat wash water to the ground surface would not be allowed.
- Provide guidance about how to implement the de-chlorination, pH adjustment and thermal control, high flow/hydraulic criteria associated with conditionally allowed potable water and/or pool/hot tub/spa discharges.
- Clarify if the intent of thermal control is to prevent an increase in temperature of the receiving water to at or above the water quality standard, or provide numeric limits or ranges.
- The section on street and sidewalk wash water, water used to control dust, and routine external building washdown discharges should reference and be consistent with the related BMPs in SWMMWW.

Response to the range of comments

- Changes to this section do not reduce environmental protection. This section is consistent with 40 CFR 122.26.
- The details on allowable and conditionally allowable discharges were provided to support the municipality’s regulatory mechanism that prohibits non-stormwater discharges into the permittees MS4. The permitted jurisdiction implements the code (or other regulatory mechanism) regardless of who is responsible for the discharge and/or the activity.
- Both the CSGP and the MS4 permit require that the amount of water used for dust control be minimized. Additionally, this IDDE-related MS4 permit condition is not specifically referring to construction activities, which are subject to additional requirements under Minimum Requirements #2 and #3 of Appendix 1.
- Ecology agreed, and revised this section to clarify that the concentration is for “total residual chlorine.”
- Additions to the types of potable water sources are not necessary because the list is not comprehensive, as indicated by the “including, but not limited to” clause. This conditional allowance for potable water discharges does not conflict with other specifically described allowable discharges.
- Ecology did not add dye testing to the list of conditionally allowed discharges because “other non-stormwater discharges” are already allowed if in compliance with a pollution prevention

plan. Ecology agrees that dye testing by the permittee for routine maintenance and IDDE activities is an allowable discharge when such dye testing is conducted according to permittee procedures.

- The MS4 permit provision for street and sidewalk wash water is not limited to potable water, and thus this use of reclaimed water, where allowed by reclaimed water regulations, may be a conditionally allowed discharge to the MS4.
- The discharge of potable water or wash water to the ground surface is not regulated under the MS4 permits. The MS4 permits authorize discharges from an MS4 to waters of the state. Allowing potable water or wash water to infiltrate rather than be discharged into the MS4 is an acceptable BMP to meet the requirements of this section. For additional clarifications, refer to the *Definitions* section of the RTC regarding groundwater and receiving waters.
- Ecology added a new BMP section to Volume IV of the 2012 SWMMWW covering discharges from pools, spas, hot tubs and fountains. This section provides guidance about how to implement the de-chlorination, pH adjustment, thermal control, reoxygenation and volume/velocity control criteria associated with these conditionally allowed discharges.
- The intent of thermal control is to prevent the discharge from causing or contributing to a violation of temperature water quality standards in the receiving water. Because of the complexities of the standard and practical constraints associated with sampling the receiving water for each pool/spa discharge, Ecology chose to use the language “to prevent an increase in temperature of the receiving water” for flexibility. Ecology expects the most common BMP to be used is allowing the pool/spa to equilibrate with ambient temperatures. Refer to Volume IV of the SWMMWW (2012).
- Ecology reviewed BMPs for Urban Streets, and BMPs Washing and Steam Cleaning Vehicles/Equipment/Building Structures, and made minor changes in Volume IV of the 2012 SWMM. The BMPs for Urban Streets in Volume IV only referred to debris and did not discuss wash water, so Ecology added a discussion of the pollutant control approach for washdown water. Ecology also added wording to the BMPs for Washing and Steam Cleaning Vehicles/Equipment/Building Structures to discuss the applicability of these BMPs to facilities not regulated by the Industrial Stormwater General Permit. The SWMMWW now indicates that discharges to storm drains must meet local municipal requirements.

I-12.4 Compliance strategy “recommended” components

Permit reference: Western Washington Phase II Permit – S5.C.3.b.v

Commenters: City of Bellevue, City of Bothell, City of Bremerton, City of Everett, City of Kirkland, City of Longview, City of Renton, City of Sammamish, City of SeaTac, City of Sedro Woolley, EarthJustice, River Network/American Rivers

Summary of range of comments

- Concerns that the recommended compliance strategy component for addressing maintenance of permanent stormwater treatment, flow control facilities and catch basins duplicates requirements in S5.C.4.c.i (Controlling Runoff) of the draft Western Washington Phase II permit.
- Some permittees already use the suggested compliance strategy tools.
- Appreciate the emphasis on compliance, as that should be the primary goal, minimizing the need for enforcement.
- Concerns that the compliance strategy is undefined and not necessary to support the permit's enforcement provisions.
- Concerns that recommendations made in a permit will become requirements.
- Concerns that the compliance strategy requires the permittee to regulate to higher standards than the current permit, and would thus necessitate a high level of effort to review relevant manuals, city policies and codes.
- Clarify if Ecology is requiring or encouraging pro-active business inspections for Phase II jurisdictions.
- Phase II permits should require source control.
- Clarify if the source control provision requires a retrofit program for existing land uses.
- Concern that once "should" is written into a city ordinance, it becomes a city rule through permit guidance.
- Clarify how the suggested compliance components are relevant to the MS4 because private owners are responsible for their drainage systems and when a site is redeveloped, it comes into compliance with current building requirements.
- Concern that inclusion of the phrase "or violations of surface water, groundwater or sediment management standards" implies that water quality testing of receiving waters and sediments is required.

Response to the range of comments

- Permit condition S5.C.4.c.i of the Western Washington Phase II permit applies to long term operation and maintenance of specified facilities constructed pursuant to the permit requirements for runoff controls for new and redevelopment that permittees put in place beginning under the 2007 permit. The recommended IDDE compliance strategy provision would apply to stormwater facilities constructed at any time if those facilities are the source or potential source of an illicit discharge.
- Ecology retained the recommended compliance strategy provisions for source control BMPs and maintenance of facilities that discharge to the MS4 because these are known to decrease illicit discharges to the MS4. At this time, Ecology is not requiring that Phase II permittees adopt or implement such provisions. Ecology revised the language to better reflect Ecology's intent. Ecology provides the following additional clarifications:

- A compliance strategy includes both informal compliance and formal enforcement actions. Based on experience under the 2007 permits, Ecology does this to clarify that permittees may use informal compliance actions when they can achieve necessary IDDE program outcomes.
- Ecology is not requiring that permittees regulate to higher IDDE standards than the 2007 permit. Ecology is suggesting two additional tools for meeting the existing IDDE standards.
- Volume IV of the SWMMWW and all equivalent manuals already contain relevant source control BMPs that may be applied to existing activities in addition to projects subject to Minimum Requirement #3 of Appendix 1.
- Ecology is not requiring that Phase II permittees conduct pro-active business inspections, nor retrofit existing land uses. The recommended compliance strategy provisions for source control BMPs and private stormwater facility maintenance are suggested tools to respond to identified illicit discharges.
- Permittees are neither expected nor advised to adopt the permit’s language in its entirety into local ordinances.
- The IDDE program is focused on addressing illicit discharges to the permittee’s MS4. Thus any private drainage system that discharges to the permittee’s MS4 may be a source of any illicit discharge. Private drainage systems that do not discharge to the permittee’s MS4 are not addressed under the MS4 permits.
- Ecology did not intend to imply that water quality testing of receiving waters and sediments is required, and removed the phrase “or violations of surface water, groundwater or sediment management standards” as it is not necessary.

I-12.5 Making necessary code/ordinance updates

Permit reference: Phase I – S5.C.8.b

Western Washington Phase II – S5.C.3.b.vi

Commenters: City of Everett, City of Federal Way, King County, Thom McConathy, City of Renton, Snohomish County, City of Tacoma

Summary of the range of comments

- Suggest deleting the word “effectively” because a permittee cannot police the entire land area that discharges to the MS4 at all times; compliance should not depend on whether or not third parties knowingly or negligently discharge illicit substances.

- Suggest deleting this requirement because the ordinance(s) or other regulatory mechanisms referred to in this section should already be in place within current Phase II jurisdictions, and if not, that situation should be handled directly between Ecology and the permittee.
- Concern that updates associated with implementing the compliance strategy should not be implemented this cycle or at least until four years after the effective date.
- Concern that delaying code updates until 2018 is too long.
- Clarify if the ordinance or other regulatory mechanism updates must be adopted and effective by February 2, 2018.
- Clarify that the owner is responsible for their drainage system; not managed by the City under the NPDES permit.

Response to the range of comments

- Ecology retained the word “effectively” in this sentence. The requirement specifies that the permittee’s regulatory mechanism effectively prohibits illicit discharges to the MS4; it does not specify that local code effectively “prevents” illicit discharges as the commenter implies.
- Ecology acknowledges that permittees already have illicit discharge codes in place per the 2007 permit requirements. Because of minor changes to the list of allowable and conditionally allowable discharges, permittees may or may not need to update their illicit discharge codes. Ecology did not require code updates associated with the compliance strategy, because those are suggested provisions. Given these considerations, Ecology believes that the 2018 deadline is appropriate.
- The updated codes must also be effective by the February 2, 2018 deadline in order to meet the requirements of this section as specified by “effectively prohibits...”
- Each permittee has a different approach for designating responsibilities for private drainage systems, and thus Ecology did not make the requested clarification that all owners are responsible for their drainage systems. When private drainage systems discharge to the permittee’s MS4, the permittee has an obligation to regulate such discharges in accordance with applicable stormwater management program requirements.

I-12.6 Field screening approaches—techniques and timing

Permit reference: Phase I Permit – S5.C.8.c.i
Western Washington Phase II Permit – S5.C.3.c.i

Commenters: City of Bainbridge Island, City of Bellevue, City of Bellingham, City of Bremerton, Clark County, City of Duvall, City of Everett, City of Issaquah, City of Kelso, City of Kenmore, City of Kent, King County, City of Kirkland, Kitsap County, City of Longview, City of Marysville, Thom McConathy, City of Monroe, City of Mount Vernon, City of

Newcastle, City of Port Orchard, City of Renton, Regional Road Maintenance Forum, City of Sammamish, City of SeaTac, City of Seattle, City of Shoreline, City of Vancouver, Snohomish County, Whatcom County, City of Woodinville, WSDOT

Summary of the range of comments

- Expand this section to encompass not only detection, but also elimination activities.
- Appreciate the additional flexibility offered in IDDE screening requirements.
- The field screening methodology should be flexible, based on MS4 characteristics AND water quality concerns.
- Outfall screening is not an effective tool for identifying illicit discharges due to their intermittent nature.
- Focus screening program on outfalls. Do not try to monitor within the MS4 itself.
- Adding “conveyances” to the screening process will not make it more effective but will take time away from other more effective screening IDDE detection tools (e.g., business inspections).
- Conveyance inspections can occur as part of routine MS4 operation and maintenance.
- Recognize business inspections reporting as meeting the intent of the field screening requirement.
- Integrate field screening into routine maintenance and public education programs as a cost-effective way to locate illicit connections and discharges.
- Illicit connections are rarely identified during storm drain inspections. Rather, they are identified through dry weather outfall reconnaissance, complaint response, and detection during catch basin cleaning.
- Techniques such as dye testing, TVing pipelines, or smoke testing to identify/confirm potential illicit connections are preferable to water quality sampling due to the randomness of pollutants.
- Require the use of smoke and other testing of the MS4.
- Citizen reporting (e.g., via hotline) is an effective method for identifying potential illicit discharges.
- The proposed screening approach requires that a much larger part of the MS4 be screened. It will require significant additional resources (e.g., staff, equipment, documentation) and provide little benefit. Question whether this program expansion is necessary.
- Define conveyance/conveyance system in the context of IDDE screening.
- Clarify the difference between outfall screening and broader conveyance system screening. Clarify whether routine annual field screening should focus on MS4 outfalls, or the broader MS4 infrastructure/conveyance (both are included in one sentence).
- Participation in regional water quality testing of outfalls meets the intent of the field screening requirement.

- Including interflow in the definition of illicit discharge presents a costly workload burden associated with illicit discharge field screening. It will require inspections of the entire system, parts of which may only be accessible using a remote camera. It will require costly staff training to identify leaks and other discharges that are not easily seen.
- Prefer performance target used in 2007 permits (three high priority waterbodies within permit coverage area).
- It is neither realistic nor feasible to screen 40% of the MS4 by February 2, 2016. Reduce or roll back the screening requirement.
- Use “percentage of areas” as the unit metric, rather than percent of conveyance system. In some cases, maps may not cover the entire MS4.
- Clarify how requirement for Phase I counties to annually field screen 20% of urban/higher density rural sub-basins beginning 2017 follows the level of effort for screening in the 2007 permit.
- Reduce the annual performance target for field screening to no more than 12% of the MS4 (the 2007 level of effort for Phase I cities). It is unlikely that screening in the upcoming permit will be more expedient than in the current cycle.
- Proposed level of effort for field screening is excessive considering the ineffectiveness of dry-weather screening in development that predominates in unincorporated UGAs.
- Confirm that the field screening does not include inspection of conveyances that discharge to Class V injection rules regulated separately under the UIC rule.
- Move the deadline for the requirement to begin screening based on percent of the MS4 to January 1, 2018: the current proposed deadline (August 1, 2017) occurs in the middle of the dry weather screening season and the annual report is based on the calendar year.
- Clarify what is meant by “40% of the MS4.” Consider establishing a minimum screening standard such as 25% of catch basins to define compliance. Clarify what size conveyance (e.g., 12” diameter or greater) to prioritize for field screening. Specify pipe length, number of structures, etc. to clarify measurement targets. Clarify whether Permittees who inspect outfalls or conveyance points can claim to have covered the upstream MS4 (assuming no illicit discharge is found).
- (Phase I only) Clarify Phase I screening level of effort in the “remaining half” of its urban/higher density rural sub-basins (particularly if permittees screened more than was required in the 2007 permit) or eliminate the reference to “urban/higher density rural sub-basins.”
- (Phase I only) The Phase I term “urban/higher density rural areas” is problematic. Modify permit to focus on “Urban Growth Area boundaries and unincorporated rural areas zoned for urban land uses.”
- Clarify whether permittees should re-screen sensitive waters vs. focus future field screening on areas not addressed under the 2007 permit. Allow permittees to establish priority areas for field screening or to follow an alternative inspection program for low-risk areas. Provide information on the frequency of screening and re-screening outfalls.

- (Phase I only) Clarify whether Ecology intends for the field screening of a rural sub-basin to occur on the same schedule (or one year later) as remaining urban/higher density rural sub-basins.
- (Phase I only) Only require additional rural subwatershed screening if permittees have not already screened more than one rural area.
- (Phase I only) Allow Phase I counties to focus IDDE screening on rural areas that will be retained by the counties over the long-term or are in TMDL areas.

Response to the range of comments

- Ecology will continue to focus this subsection on activities to detect potential illicit discharges. Actions to address (via tracing, characterization, and elimination) are handled in the next section.
- Ecology agrees that permittees should have flexibility to select field screening approaches that address water quality concerns and that work in their MS4s. Ecology supports the wide use of an array of techniques and strategies, including outfall screening, business inspections, dye testing, TVing pipelines, screening during operations and maintenance inspections, etc. Ecology further recognizes that permittees may implement a variety of field screening techniques, depending on the particular characteristics of different parts of their MS4s.
- Ecology does not agree that regional water quality testing of outfalls meets the intent of field screening. Field screening must be undertaken within each jurisdiction.
- Ecology did not intend to convey that both outfalls and conveyances must be involved in field screening in all jurisdictions and acknowledges that this created confusion. Ecology's intent was to increase the flexibility of methods and encourage permittees to screen areas above the outfalls, not to expand the requirement. Ecology removed these terms from this section of the permit and did not delineate them further in this section.
- Ecology does not agree that the new screening approach necessarily requires that a much larger part of the MS4 be screened or that it will require additional resources without producing benefits. Permittees may continue to screen their MS4 using outfall reconnaissance techniques required under the 2007 permit.
- Ecology acknowledges that it will be challenging for Phase II permittees to screen 40 percent of their MS4 by February 2016 and extended the deadline to December 31, 2017. The decision to extend the deadline also considered legislative direction provided in April 2012. Ecology also recognized that screening 20 percent of an MS4 within a given year may also be challenging, even given the new flexible screening approach. Therefore, for this permit cycle, Ecology adjusted the performance target to require screening on average 12 percent of the MS4 every year (following the initial 40 percent target). This level of effort is consistent with Phase I requirements for cities during the 2007 permit cycle. Permittees are expected to screen approximately one-quarter of their system every two years following the initial deadline.

- The screening targets of 40 percent and 12 percent are based on the extent of the MS4 itself. Ecology did not believe it is necessary to establish a minimum standard or minimum size conveyance for screening. Permittees should plan accordingly, based on their chosen field screening approach.
- Ecology left to the permittees' judgment the decision on where to first undertake field screening during this permit cycle.
- Ecology did not support using the 2007 Phase II performance targets (screen waterbodies) in this permit cycle. The previous permit did not make it clear what constituted a waterbody (a question of scale) and input from permittees included a request to clarify this for purposes of compliance. The approach in the final permit provides a more straightforward and equitable determination of compliance.
- Under the municipal stormwater permits, permittees are not required to screen any part of the MS4 that drains to underground injection control wells. These systems are regulated separately under the UIC rule.
- Phase I counties were required to complete field screening in at least half of their "urban/higher density rural subbasins" and at least 1 rural subbasin under the 2007 permit. This equates to slightly more than 10 percent of the MS4 per year. Ecology agrees that the proposed 20 percent level of effort was not consistent with the 2007 level of effort for Phase I counties or cities, and changed the annual requirement to, on average, 12 percent.
- Ecology retained the term "urban/higher density rural subbasins," for the next permit cycle to be consistent with mapping requirements and with the 2007 permit. The term "urban/higher density rural areas" already means areas within or proposed to be within Urban Growth Area boundaries (refer to Definitions). Ecology expects that rural areas zoned for urban land uses will generally be encompassed by the second part of the definition (i.e., sub-basin outside the UGA with 50 percent or more area comprised of lots less than 5 acres).
- Ecology agrees that permittees have flexibility in prioritizing and selecting areas of the MS4 for screening each year and thus Ecology did not specify a rescreening frequency. As field screening methods improve, Ecology expects that areas will be rescreened and that eventually 100% of the MS4 area will have been screened. However, to provide some flexibility for Phase II Permittees, Ecology did not specify these details as minimum performance measures. For Phase I Permittees, Ecology does expect that 100% of the MS4 area will be screened over the course of the 2007-2012 and 2013-2018 permit cycles.
- The final Phase I permit clarifies the deadlines for Phase I county field screening requirements.
- Ecology does not agree that Phase I counties should focus field screening in rural areas that are unlikely to be annexed out of the county in the future. TMDL actions may be required in addition to requirements specified in S5 of the permit.

I-12.7 Municipal field staff training requirement

Permit reference: Phase I Permit -- S5.C.8.c.iii
Western Washington Phase II Permit – S5.C.3.c.iii

Commenters: Clark County, City of Kirkland, City of Renton, Snohomish County, City of Tacoma

Summary of the range of comments

- Train MS4 maintenance crews to look for evidence of illicit discharges during routine inspections as an efficient way to implement field screening.
- It is infeasible to enforce the training requirement on field staff outside of Public Works (e.g., police and fire departments). Allow permittees to determine who should receive this training according to their organizational structures and logistics.
- Limit this training to employees whose primary job involves working on or near the MS4. Other staff are unlikely to encounter an illicit discharge.
- Requirement to train all field staff is unnecessary, burdensome, intrusive, and unlikely to increase the permittee's ability to find illicit discharges. Focus training on IDDE response staff.
- Training requirements for municipal staff are vague. Compliance is difficult to document. Consider establishing some sort of certification/demonstration that staff are properly trained and educated based on standards of care for the profession.
- The permit provides unnecessary direction regarding the frequency and content of field staff training program.
- Compliance with this requirement should not depend on whether training sessions are documented in the manner preferred by Ecology, so long as the MEP and AKART standards are met.

Response to the range of comments

- Ecology agrees that training MS4 maintenance crews to look for evidence of illicit discharges is a highly effective way to implement field screening. As case in point, one small Phase II jurisdiction recently reported that more than 50 percent of the referrals to its IDDE team in 2010 came from its own maintenance crews.
- Ecology agrees that it is a challenge to train municipal field staff, given the variety of schedules and other priorities. However, many local governments report significant benefits of the reports received as the result of such a program, so Ecology believes that the training effort should continue.

- Ecology appreciates the suggestion for a certification program/demonstration but at this time is not able to develop such a process.
- Ecology edited the permit requirements and the associated annual report question to focus specifically on the establishment of the program, and not the numbers of staff trained or topic(s). Ecology expects permittees to retain such records onsite in accordance with permit recordkeeping requirements.

I-12.8 IDDE staff training requirement

Permit reference: Phase I Permit – S5.C.8.e
Western Washington Phase II Permit – S5.C.3.e

Commenters: Puget Sound Partnership, Snohomish County, City of Tacoma

Summary of the range of comments

- This training section is well-written and should be used as a model for the other trainings sections in the permit.
- The permit provides unnecessary direction regarding the frequency and content of IDDE staff training program.
- Compliance with this requirement should not depend on whether training sessions are documented in the manner preferred by Ecology, so long as the MEP and AKART standards are met.
- Clarify how IDDE staff training requirements are different from general municipal field staff training. If the two training programs are identical, eliminate one or the other permit requirement.
- Support annual training of staff for IDDE program.

Response to the range of comments

- Ecology appreciates the comments on the structure of this training requirement. Ecology reviewed other training sections within the permit and modified text, as appropriate, to mirror this section's structure. See specific sections of the RTCs for discussion.
- Ecology edited the annual report question related to IDDE training to remove reporting on the numbers of staff trained and topic(s) covered. Ecology expects permittees to retain such records onsite in accordance with permit recordkeeping requirements.
- Training requirements for IDDE staff differ from those of general municipal field staff in that they cover investigation and termination activities, in addition to the identification and internal reporting covered by the general municipal field staff training. Furthermore, permit language for IDDE staff training also clarifies Ecology's expectation that all IDDE staff are trained to conduct these activities.

I-12.9 Overlaps between IDDE and general education topics

Permit reference: Western Washington Phase II Permit – S5.C.3.c.iv

Commenters: City of Everett, City of Kirkland

Summary of the range of comments

- The requirement to conduct IDDE education seems inconsistent with the flexibility offered regarding other education topics.
- Public education and outreach called for in this section is already covered in other permit sections.

Response to the range of comments

- Ecology considered moving this permit activity to S5.C.1 Public Education and Outreach but determined that because building citizen awareness on this topic is essential and valuable, the permit should continue to require it as part of S5.C.3 IDDE rather than as an optional topic in the Phase II permit.
- The permits offer broad flexibility regarding how the permittee communicates this information (e.g., via website, utility insert, flyer, or any other means available to communicate with residents and businesses).

I-12.10 Differentiating between “spills” and other types of “illicit discharges”

Permit reference: Phase I Permit – S5.C.8, S5.C.8.d, S5.C.8.b, S5.C.8.f, S5.C.8.d.iv(1)
Western Washington Phase II Permit – no comments

Commenters: Snohomish County

Summary of the range of comments

- Clarify S5.C.8 to reflect that this provision applies only to MS4s owned and operated by the permittee that are covered by this permit and that permittees may own or operate more than one MS4.
- Illicit discharge is defined to include spills, therefore including the words spills should be deleted in S5.C.8.b.
- Illicit discharge is defined to include spills and illicit connections. Spills, illicit connections and other types of illicit discharges are qualitatively different and therefore involve different responding procedures. Spills are typically immediate threats where trained emergency personnel respond. Illicit discharges are typically not emergencies where city or county non-emergency program personnel respond. The permit should reflect these differences.

- Clarify how section S5.C.8.f and S5.8.d.iv (1) differ; the requirements conflict with and appear to be duplicative.

Response to the range of comments

- The permit describes the permittee’s geographic coverage area in S1 and in S2 clarifies that this applies to the MS4 owned and operated by the permittee.
- Ecology did not delete “spills” from the illicit discharge definition. The Phase I permit includes a requirement (S5.C.8.f) that refers to spills as a type of illicit discharge. Other Ecology regulations may include a separate definition of “spill” that should not be excluded from a permittee’s response.
- Ecology understands that different city or county personnel could be involved in different illicit discharge cases. It is the permittee’s responsibility to define the procedures and the details of which appropriate staff will respond to each case. The final permit language in S5.C.8.d includes different requirements for responding to confirmed illicit discharges that are urgent and require immediate response (these may or may not be “spills”), potential illicit discharges that require investigation, and illicit connections.
- Ecology clarifies that S5.C.8.f (Phase I) addresses the proactive coordination requirements with regional emergency responders, while S5.C.8.d.iv (1) explains the timelines required for city or county staff to respond to an illicit discharge report.

I-12.11 Characterizing the nature of the threat posed by specific illicit discharges

Permit reference: Phase I Permit -- S5.C.8.d
Western Washington Phase II Permit – S5.C.3.d (no comments)

Commenters: King County, Snohomish County, City of Seattle

Summary of the range of comments

- Clarify which party determines if an illicit discharge constitutes a threat to human health, welfare or the environment or is urgent, and the level of certainty required to make the determination.
- The phrase “are determined to constitute” conflicts with G3 language which reads “could constitute.”
- Provide guidance on developing procedures for characterizing illicit discharges. The procedures developed for characterizing the threat posed by illicit discharges should be used to determine if immediate response is required, not G3.
- Provide guidance on the meaning of threat to human health, welfare, or the environment, including specific substances and amounts that constitute threat level (G3 and S5.C.8), with

accompanying examples and actual case history citations (web links would be preferred) for illustrative purposes in the permit fact sheet.

Response to the range of comments

- It is the permittee's responsibility to determine if an illicit discharge constitutes a threat to human health, welfare, or the environment. Permittees would use the procedures for characterizing the threat developed in the 2007-2012 permit term to meet S5.C.8.d.i requirements.
- Ecology retained the language "are determined to constitute" to clarify that permittees must immediately respond when there is a determination that the illicit discharge is such a threat. General condition G3 requires reporting to Ecology within 24 hours of learning of a discharge that "could constitute" a threat, which could potentially precede the confirmation of the threat. The immediate response language in S5.C.8.d.iv includes "consistent with G3" to link to the G3 reporting requirement and to G3.A requiring action to "minimize" the threat.
- Ecology is funding a grant of Regional or Statewide Significance to King County and other partners to develop an IDDE field screening manual and guidance for permittees that will include information on characterizing the level of threat of illicit discharges. The manual and guidance project will be complete by July 1, 2013, before the effective date of this permit, and Ecology will make the product available to all permittees.

I-12.12 Responding to illicit discharges

Permit references: Phase I Permit – S5.C.8.c.i, S5.C.8.d.i, S5.C.8.d.iv (2)
Western Washington Phase II Permit – S5.C.3.c.iii

Commenters: Clark County, City of Everett, King County, City of Mount Vernon, City of Redmond, Snohomish County, City of Seattle: City of Tacoma, City of Vancouver, Whatcom County

Summary of the range of comments

- Revise S5.C.8.c.i to include language that only the structural MS4 components owned and operated by a permittee MS4 must be inspected.
- Revise S5.C.8.d.ii.2 to allow permittees to prioritize response time based on the severity of the problem or the likely reliability of the information received by the Permittee.
- Clarify that the determination of whether or not an illicit connection exists is part of the investigation the permittee must conduct. The current language assumes an illicit connection exists.

- S5.C.8.d.i (Phase II S5.C.3.d.i) The detailed instructions required in the procedures for evaluating whether a discharge must be immediately contained is prescriptive and doesn't allow for the variety of conditions and substances addressed by a spill response program.
- S5.C.8.d.iv (2) Spills - Please clarify that spills do not automatically trigger an investigation.
- Replace the word “immediately” and with “upon becoming aware, immediately evaluate and promptly” to allow permittees time to implement their illicit discharge/spill response program. Revise “immediate” response requirement to language such as “as soon as practicable or possible”. This term is opinion driven.
- Recommend deleting the specific procedures listed in S5.C.8.d.i and ii, they are mostly restated in S5.C.8.a. The details of the procedures should be determined by the permittee.
- Retain the current permit requirement to initiate an inspection of a suspected illicit discharge within 21 days. It could take more than 7 days to investigate a problem and should read “initiate an investigation.”
- The addition of responding to illicit discharges that are “otherwise judged to be urgent” isn't necessary because it is already covered in G3.
- Provide clarity on determining “urgency.” Will highly trained staff be needed around the clock to determine urgency?
- Looking into complaints within 7 days is reasonable but is made vague by adding “reports or monitoring information” and “potential discharge” because they could have broad interpretations. Adding “on average” makes this a recording/calculating challenge.

Response to the range of comments

- Ecology relies on permit language describing the permittee's coverage area in S1 and the authorized discharges as those from the MS4 owned and operated by the permittee in S2 for applicability of requirements and did not repeat this language in each section of the permit.
- Permit condition S5.C.8.d.iv (4) (Phase II S5.C.3.d.iv) does not mean that an illicit connection does exist. This language follows the language in (3) requiring investigation of a “suspected” illicit connection, and the intent is to require appropriate action upon confirmation.
- Regarding the language in Phase I S5.C.8.d.iv (2) and Phase II S5.C.3.d.iv, Ecology believes seven days to investigate allows the permittee the flexibility to prioritize its response within a reasonable timeframe. This language does not require that the investigation be resolved in seven days, in order to allow permittees the flexibility to prioritize the response according to the severity of the situation.
- Ecology intends for the procedures required in S5.C.8.d.i to include characterizing the nature of the threat in order to determine which situations require immediate containment. The language is not intended to require immediate containment.

- Permit condition S5.C.8.d.iv (2) refers to potential illicit discharges that require an investigation within seven days. Spills generally require a more immediate response, but in some cases may fall under this requirement for an investigation.
- Ecology retained the wording “which are determined to constitute a threat...” to clarify that the permittee is aware of the illicit discharge. Ecology also believes the word “immediately” is appropriate for discharges that are determined to constitute a threat to human health, welfare, and the environment. Ecology intends for the required procedures to contain enough clear direction and flexibility to respond appropriately.
- Ecology did not delete the detailed program requirements. S5.C.8.a requires permittees to continue implementing the entire program while S5.C.8.d includes specific requirement that permittees must include in the procedures and implement. The permittees establish the detailed procedures within the permit program requirements.
- Ecology did not change the language that refers to an illicit connection rather than an illicit discharge. The final permit retains the requirement to initiate an investigation within 21 days of a suspected illicit connection.
- Ecology agreed and deleted “otherwise judged to be urgent.” The language in S5.C.8.d.ii (1) (Phase II S5.3.d.iv) requires an immediate response to situations that meet this description and references G3.
- Ecology added the word “on average” to Phase I S5.C.8.d.ii (2) and Phase II S5.3.d.iv to provide flexibility for situations that may need more time to investigate due to extenuating circumstances. Ecology intends that “reports or monitoring information” that indicate a potential illicit discharge should be addressed through this program. The permittee determines which reports or monitoring information constitutes an investigation.

I-12.13 Eliminating illicit connections

Permit reference: Phase I Permit – S5.C.8.d.iv(4)
Western Washington Phase II Permit – S5.C.3.c, S5.C.3.d.iv

Commenters: City of Auburn, City of Bellingham, City of Bothell, City of Bremerton, City of Duvall, City of Everett, City of Federal Way, King County, City of Lacey, City of Longview, City of Marysville, City of Monroe, City of Newcastle, City of Port Orchard, City of Poulsbo, City of Redmond, City of Renton, City of Sammamish, City of SeaTac, City of Sedro Woolley, City of Shoreline, Snohomish County, Thurston County, City of Woodinville

Summary of the range of comments

- Clarify permit language to reflect that the enforcement strategy can include informal mechanisms to obtain property owner compliance.

- Increase the timeline for removing illicit connection to two years to take in account the length of capital construction. Add language to lengthen timeline to address “circumstances beyond the Permittee’s control” consistent with the Operation and Maintenance section.
- Clarify the specifics of a permittee’s compliance status regarding the requirement to eliminate illicit connection within six months. Provide guidance on exactly when compliance with S5.C.8.d.ii is achieved.
- Elimination of some illicit connections could take longer than six months; include good faith efforts as a compliance option.
- Add the word “known” or “confirmed” to “All illicit connections to the MS4 shall be eliminated.” The existing language exposes permittees to too much liability.

Response to the range of comments

- Ecology clarifies that the permittee’s enforcement authority includes informal mechanisms and should be included in the procedures outlined in Phase I S5.C.8.d.iv (4) and Phase II S5.C.3.d.iv.
- Ecology acknowledges that eliminating certain types of illicit connections can take longer to complete. The requirement in Phase I S5.C.8.d.ii (4) and Phase II S5.C.3.d.iv to eliminate the illicit connections requires that permittees use their enforcement authority *in a documented effort* to eliminate the connection. As long as permittees document that the effort made to eliminate the connections is occurring in that timeframe, they are in compliance with this requirement. Ecology did not make changes.
- Ecology agreed and clarified the requirement by adding the word “known” to Phase II S5.C.3.d.iv and Phase I S5.C.8.d.ii(4).

I-12.14 General comments and clarifications on IDDE

Permit reference: Phase I Permit -- S5.C.8.c.ii
Western Washington Phase II Permit – S5.C.3.c, S5.C.3.d.

Commenters: City of Auburn, City of Clyde Hill, City of Everett, King County, City of Lacey, North Sound Baykeeper Team, City of Olympia, City of Seattle, Snohomish County, City of Tacoma, Whatcom County

Summary of the range of comments

- Support the new timelines and provisions for response, investigation, and enforcement for eliminating illicit discharges. Appreciate Ecology’s efforts to reorganize the IDDE requirements to provide additional flexibility in the IDDE screening requirements and up-

front planning for dealing with spills, problem discharges and illicit connections found during the implementation of a source control/IDDE program.

- The current requirements will be a significant challenge for cities to maintain; to implement new requirements will require new investments in a declining economic time. Ecology has not provided an analysis of the expected benefits from the increase investments over the current requirements.
- S5.C.3.c. Suggest wording change: "...implement an ongoing program to identify and detect non-stormwater discharges..." Put "detect" before "identify" since that's the logical order of task occurrence.
- S5.C.3.d - Delete all of d. This is a repeat of S5.3.c above, so it makes it very confusing as to what is trying to be accomplished; we believe language between 'program' and 'procedures' are being mixed.
- Clarify Phase I S5.C.8.d.ii, as the sentence is confusing. Suggest rewriting using the active voice, e.g., "The permittee shall perform..."
- The allowable and conditionally allowable discharges sections should be moved to S2 Authorized Discharges instead of inserting it in this section.

Response to the range of comments

- Ecology does not believe the revised requirements in the IDDE program will add substantial costs to permittees. Many of the changes reorganize and clarify the purpose of the requirements and how they are related. Ecology believes that the increased flexibility will allow cities to allocate resources more efficiently. In addition to reducing the level of effort and timing for field screening in the final permit, Ecology is funding a grant to develop guidance for IDDE field screening and procedures that will help offset costs.
- Ecology agreed that the program description should maintain the task order and clarify how Permittees will implement a task. Ecology made the change.
- For each component section of S5.C.8 (Phase II S5.C.3), the permit describes the requirements in general followed by the minimum performance measures. Each minimum measure includes descriptive language of the requirements. The S5.C.3.c program element addresses identifying illicit discharges, while S5.C.3.d. requirements address investigating and responding to illicit discharges. Both of these components require specific procedures which outline the details of the program section. Ecology did not delete "d" as requested or change the wording of S5.C.8.d.ii. (See the 2011 *Fact Sheet* for more information on the rationale for reorganizing this section).
- Ecology did not agree to move the allowable or conditionally allowable discharges to Section S2. Allowable and conditionally allowable discharges are included as part of the IDDE program in the requirements for each permittee to prohibit non-stormwater discharges in the ordinance or other regulatory mechanism that applies to the coverage area within its

jurisdiction. Section S.2 of the permit authorizes discharges of stormwater from MS4s owned or operated by the permittees to waters of the State.

I-13 Runoff controls for new development, redevelopment and construction sites

Comments in this section apply to all three municipal permits, except where specified. For comments on Appendix I, LID, and watershed-based stormwater planning see Part V of the RTC.

I-13.1 Comments on general site plan review requirements

Comments apply to all three municipal stormwater permits.

Permit reference: S5.C.4.a

Commenters: Clark County, King County

Summary of the range of comments

- The industrial and construction NOI forms required for permittees to have available in S5.C.5.a.vi. are available at the Ecology Web site, so is this requirement necessary?
- Modify or remove the term “Qualified Personnel”
 - It implies the permittee’s hiring practices are ineffective.
 - It also applies to positions in local government for which there is no “professional” certification, such as plan review, site inspection or code enforcement.

Response to the range of comments

- Ecology retained the requirement to make industrial and construction NOIs available to representatives of proposed new development and redevelopment projects. The permittee may refer the applicant to Ecology’s webpage, provided the applicant has internet access.
- For “Qualified Personnel” see the Definitions section of this RTC.

I-13.2 Timing of implementation of runoff controls for new development, redevelopment and construction sites

Comments apply to all three municipal stormwater general permits.

Permit reference: Phase I Permit - S5.C.5.a.iii
Western Washington Phase II Permit – S5.C.4.a
Eastern Washington Phase II Permit – S5.B.5.a

Commenters: City of Anacortes, Association of Washington Cities, City of Bellingham, BIAW, BIAW of Clark County, City of Bainbridge Island, City of Bellevue, City of Bothell, Chelan County, Clark County, City of Clyde Hill, Douglas County, City of Duvall, EarthJustice, Eastern Washington Coordinators Group, EPA Region 10, City of Everett, City of Issaquah, City of Kenmore, City of Kent, King County, City of Kirkland, City of Longview, MBA of King and Snohomish Counties, City of Monroe, North Central Home Builders Association, Northwest Indian Fisheries Commission, City of Olympia, Pierce County, City of Port Orchard, City of Poulsbo, Puget Sound Partnership, River Network/American Rivers, City of Renton, City of Richland, City of Sammamish, City of SeaTac, City of Seattle, City of Sedro Woolley, City of Shoreline, Snohomish County, Sno-King Watershed Council, City of Spokane, City of Sumner, City of Tacoma, Thurston County, City of Vancouver, Whatcom County, City of Woodinville

Support addressing the issue

Summary of the range of comments

- It is good to define when the new development requirements apply to projects.
- Support setting limits for how long projects can remain in “application approved” status before construction begins. Support a three year timeline as a reasonable level of certainty for a transition to new requirements.
- Support goal of requiring project-related renewals or extensions to meet updated requirements, provided the projects have not begun construction.

Response to the range of comments

- Comments noted.

Concerns about proposed language

Summary of the range of comments

- Not stringent enough
- Allowing former standards until 2021 is too long a time.
- Five years is excessive if there is no construction start. Developer agreements should address expiration of vested rights so projects cannot carry vested rights for long periods of time.
- Conflicts with state and/or local law
 - Washington property law is a “vested rights doctrine.” Stormwater regulations are “land use regulations” based on court rulings.
 - “Vested right doctrine” says that most types of applications are processed and determined under zoning and land use regulations in effect the date the complete application is

submitted. Local governments determine what constitutes completeness for purposes of application. Permittees would not be able to legally implement this requirement without violating state law.

- Permits must be consistent with other vesting rights that apply to land use development regulations to ensure that long-term or phased projects remain vested. Five years is too short for projects that could take 20-30 years to complete.
- Flow control requirements are land use controls because they dictate the use of property. They are triggered by land use applications and imposed as part of the land use approval process, and are necessary to build the project. They are tied to the land use proposal and should be subject to the vesting rules.
- Under state mandated timelines, plat applications must be honored for seven years. Shoreline permits are valid for a period of time that varies based on other permit applications.
- May conflict with timing of site development and right-of-way permits for subdivisions required in state law.
- Conflicts with RCW 58.17.033 that requires that a proposal for a land division be considered under the zoning or land use controls in effect at the time that a fully completed application for preliminary plat approval is filed with the local government.
- Current vesting laws address a multitude of types of applications, some of which vest and application and some do not. For example, a building permit application vests, a site plan review may not.
- Conflicts with a city law using the timeframe for applicability of active permits for “a maximum of three years from the date of issuance.” At three years the applicant must stop work and reapply for a new permit that is consistent with current regulations and standards.
- This disregards that the state may and has changed vesting rules. How would permittees comply if they conflict?
- A long plat is valid for seven years and possibly well beyond with extensions.
- Ecology has no jurisdiction to change vesting rights guaranteed in the Washington State Constitution and allowed interpretation by jurisdictions.

Response to the range of comments

- Although the PCHB has ruled that the stormwater requirements in Ecology’s municipal stormwater permits are not subject to state vesting laws, Ecology’s permit requirements are consistent with the accepted State approach to vesting. Ecology has defined when and how the new permit requirements become effective in a way that is as consistent as possible with existing state vesting laws.
- Five years to begin construction is generally consistent with state vesting requirements.
- Under the previous permit local governments applied state vesting law(s) to the new stormwater requirements in the 2007 municipal stormwater permits. This means when a

completed application was submitted prior to the adoption of the new stormwater requirements, the project was subject to the older stormwater requirements. In August 2010 the PCHB ruled¹ that state vesting laws do not apply to the requirements in the municipal stormwater permits because:

- The municipal SW permits are not land use permits, and
- The municipal stormwater permits are not local government ordinances – they are a state/federal requirement not a local requirement.

The PCHB decision determining state vesting laws do not automatically apply to the provisions of the municipal stormwater permits means that Ecology has to determine when the new stormwater requirements apply to projects that are in the development process. Defining explicitly when and how the new stormwater requirements apply to projects in the development process is necessary for consistency, to avoid ambiguity, and limit possible liability for local governments and project applicants/developers.

- For projects that take 20-30 years to complete, the permit requires the project be started within five years. The entire project does not need to be completed with five years.
- The PCHB has ruled that state vesting laws do not apply to the requirements in the municipal stormwater permits because:
 - The municipal SW permits are not land use permits, and
 - The municipal stormwater permits are not local government ordinances – they are a state/federal requirement not a local requirement.
- By the time these permit requirements go into effect the state mandated timelines will have reverted back to five years – see RCW 58.17.170 as amended by the 2012 Legislature (Engrossed House Bill 2152).
- Ecology’s proposal does not conflict with RCW 58.17.033 that requires that a proposal for a land division be considered under the zoning or land use controls in effect at the time that a fully completed application for preliminary plat approval is filed with the local government. If a complete application is submitted prior to the deadlines for adoption of the new stormwater requirements, local governments may consider it under the older stormwater codes. If the application is submitted after the deadline for adoption of the new stormwater codes, than it must be considered and evaluated under the new stormwater codes.
- Ecology recognizes there are a number of different types of applications, some of which vest at application and some do not. Furthermore, where vesting occurs at application the definition of application is variable and under some circumstances is left up to local governments to define. Ecology has deliberately defined “complete application” very narrowly for the purposes of the permits’ stormwater requirements. Ecology expects and

¹ Rosemere Neighborhood Association v. Department of Ecology and Clark County, PCHB NO. 10-013, Order denying Summary Judgment. This decision by the PCHB has been appealed and is currently before the State Court of Appeals.

encourages local governments will expand on what constitutes a complete application, and what constitutes a complete application for the purposes of a plat will differ significantly from what constitutes a complete application for a building permit. By defining what constitutes a complete application for the purposes of stormwater requirements Ecology is setting a floor, not a ceiling and Ecology expects that most if not all local governments will expand on the definitions to meet local needs.

- Ecology understands that some permits such as building permits are valid for significantly less than five years from issuance and the start of construction must occur, and/or be completed long before five years from the submittal of a complete application. Depending on the jurisdiction building permits can be valid for as short as 18 months. Many local government codes have provisions to extend the building permits beyond the original expiration date. For applications submitted prior to the stormwater code adoption date, applicants have at most five years to begin construction. The permit does not restrict local governments from making this period shorter. Ecology expects at least for building permits, most local governments will require the start of construction to occur earlier to match their current codes. By defining the start of construction for the purposes of stormwater requirements Ecology is setting a floor, not a ceiling, and Ecology expects that most if not all local governments will reduce the time for starting construction –particularly for building permits to meet local needs.
- It is possible that the state could change vesting timelines again, but to do so would require Legislative action. Any future legislative action to change state vesting timelines would include consideration of the possible impacts on the timelines in the municipal stormwater permits.

Concerns regarding definition of “started construction”

Summary of the range of comments

- Phase I footnote 4 is not clear. It is clarified in the fact sheet, but should be further clarified in the permit itself. For example, does placement of erosion control fencing count as “starting construction?”
- Definition of “complete project description and site plan” is not currently included in the permit and makes this difficult to implement as written. Site work with this definition could include utility work, which could be minimal depending on the site. Needs to be very specific or will be open to interpretation.
- The footnote requires interpretation as written. What if there is an approved Master Site Plan and construction has begun for part of the development, but not the rest of the site?
- This language does not conform with state vesting law that applies to “completed development applications.” See RCW 58.217.033 and 19.27.095 for definition of a “fully complete application.”

- There is no definition for “start of construction” in state law and there is no legal precedent to decide marginal cases likely to arise.
- Need to re-word “applications” to be “completed applications” as defined by the jurisdiction and in accordance with state law.
- Concern regarding the definition of “approved” in “...projects approved prior to January 1, 2016.”
 - Does this refer to land use approval, or to civil construction approval?
 - What if someone bonds for, rather than constructs, the improvements for a plat?

Response to the range of comments

- Ecology has identified the *minimum* requirements for what constitutes “starting construction.” Many local governments have established more comprehensive definitions for what constitutes the start of construction which may be used in the context of this permit, provided that site work associated with, and directly related to the approved project is part of the local definition of what constitutes the state of construction. Simply placing erosion control fencing on the site does not constitute the start of construction, similarly acquiring bonds for site improvements, rather than starting site work associated with the approved project does not constitute the start of construction.
- For master planned communities the start of construction for the entire master planned project is determined when construction is first started. For multi-phase projects the start of construction for the first and all subsequent phases of the project is when construction first starts.

Comments related to Rosemere Neighborhood Association et al v. Dept of Ecology et al

Summary of the range of comments

- State vesting law does not apply to Clean Water Act requirements. See *Rosemere Neighborhood Assoc et al v. Dept of Ecology et al (January 2011)*.
- The PCHB erroneously ruled in *Rosemere* that stormwater requirements do not follow the general Washington State rule on vesting, as they are environmental rather than land use controls. Some regulations such as flow control are a hybrid. The environmental aspect of the permit does not make other legal considerations ineffective.
- The PCHB ruling is pending review at the Court of Appeals. It is inappropriate for the permit to require application of stormwater standards not yet ruled upon, rather than in conformance with vesting rules, as this would require permittees to violate state law.
- The PCHB ruled in *Rosemere* that state vesting law does not apply to stormwater permits. This language would allow a project to vest until 2021, which is too long.

Response to the range of comments

- See responses to *Concerns about proposed language* above.

- Ecology is not able to wait until the Court of Appeals rules in the *Rosemere* case. Regardless of how the State Court of Appeals rules, it is possible, and perhaps likely that the *Rosemere* case could end up before the State Supreme Court. If this happens it could be 1-2 years before this issue is completely resolved. Ecology is under direction from the Legislature to issue the new updated permits. The new updated permits need to address how the new stormwater requirements for new development and redevelopment apply to projects applications submitted prior to the required adoption date of the new ordinances but not yet approved. Ecology believes that the PCHB decision is a valid decision and will be upheld. If the PCHB decision is overturned on appeal there will be ample time to re-open the permits and modify them to reflect the Courts decisions before the permit requirements go into effect in June 2015 for Phase I, and December 2016 for most of the Western Washington Phase II permittees.

Would lead to complicated and expensive litigation

Summary of the range of comments

- Would set local governments up to challenge and raise issues of whether federal law preempts state law.
- Local governments could be faced with either not taking action against the permit applicant and facing Ecology enforcement, or taking enforcement action against the permit applicant and facing a countersuit that the provisions are not applicable as their development is vested under state law.
- Some local appeals last five years or more and prevent the applicant from building during that five-year vesting window. These situations will recur and the consequence will be multiparty lawsuits involving the applicant, resource agencies, the city and Ecology regarding abuse of administrative and regulatory process forcing the applicant to delay construction beyond the five year period.

Response to the range of comments

- Ecology disagrees that the new language regarding how the new permit requirements apply to projects in different stages in the development process will set up local governments for legal challenges. In fact given the PCHB's decision in the *Rosemere* case, Ecology believes not addressing this issue would lead to increased liability for both local governments and for project applicants.
- As stated earlier, the permit requirements track very closely with current state vesting law and as a result do not place local governments in the position of liability for enforcing the permit requirement.
- In the unusual case of extended litigation that makes it impossible to start construction within five years, the permittee may request that Ecology allow an exception to the five year deadline to start construction.

Implementation concerns

Summary of the range of comments

- Reduces certainty and predictability that permit holders must have to commence a project.
- There is no provision in the permit for how the permittee can comply with the requirement.
- Some but not all developments that are currently subject to 10-year approvals will lose their vesting. This is an administrative nightmare for local governments. One standard would be best.
- How does this language relate to longer-term vesting contained within approved developer agreements?
- It is unreasonable and burdensome on cities and applicants to require revisions to projects mid-stream. The date should refer only to the date on which a completed application was submitted.

Response to the range of comments

- Ecology disagrees. Ecology believes the current permit language provides more certainty for both the applicant and local governments than the alternative – not addressing the issue at all.
- Ecology does not understand the context of ten year approvals. If this means that a jurisdiction is granting extended ten year approvals under the current permit that are beyond the statutory minimum then Ecology would consider the local government in violation of the current (2007) municipal stormwater permit. Ecology's position has always been that local governments were to implement the permit requirements to the extent allowable under federal and state law. Where state law provides discretion, Ecology expects that local governments would exercise that discretion in a way that fully satisfies permit requirements.
- Longer term development agreements are treated no different from short term projects. The start of construction for a project subject to a long term development agreement is the beginning of the first phase of construction.
- Under some situations, revisions to projects in mid-stream are already required under current state laws. Ecology is not changing this.

Recommendations and alternatives

Summary of the range of comments

- Request that Ecology delete the language.
- Issue of legality/Conflicts with State law
 - Ecology should make consistency improvements to eliminate conflicts. Cite the supporting RCW, WAC or case law in this section to support the requirements. For example, use the definition in state law for a completed application and cite that law.
 - Do not include such language pending resolution of the appeal of *Rosemere Neighborhood Association et al v. Dept of Ecology et al* in the Court of Appeals.

- Ecology has ventured into an uncertain subject area given Washington State’s minority position (one of four states with this type of law regarding vesting). Ecology should say nothing and leave it to the courts.
- Ecology needs to clarify its ability to impose an implementation date (January 1, 2021) which is beyond the effective date of the permit.
- Ecology needs to provide a white paper that addresses how this language is in compliance with case law or federal codes.
- This should be done through revising the RCW, rather than through the permit.

Response to the range of comments

- See responses to previous comments.

Timing alternatives

Summary of the range of comments

- Applications should become subject to the requirements the date of ordinance adoption.
- Impose a standard similar to most jurisdictions in which projects are not exempt from the new permit requirements until they have taken substantial steps towards completion of the project in reliance on local permits.
- Make the new permit requirements apply to all permit applications that are not deemed complete by December 31, 2015, without adding the construction deadline.
- Only mandate compliance on all applications received after January 1, 2016.
- Clarify the language to address projects that are under review and accepted as complete prior to January 1, 2016 (ordinance effective date).

Response to the range of comments

- See also responses to previous comments.
- Ecology’s proposal is intended to track as closely as possible with current state vesting requirements. Under state vesting law projects vest to the requirements in place at the time of the submittal of a (complete) application.

Definition alternatives

Summary of the range of comments

- State that “started construction” includes:
 - Development agreements or master site plans where any grading or utility work has begun.
 - An approved development agreement where regional roads and utilities are installed, but future project sites in the development have not been started.
- Thurston County

- Define “application” as “*Application means an application as defined in local land development regulations.*”
- Define start of construction as “*Started construction means started construction as defined in local land use regulations.*”

Response to the range of comments

- See also responses to previous comments.
- Ecology has identified the minimum elements of an application in the permit. Ecology has clarified that for the purposes of the municipal stormwater permits these are minimum application requirements and that local governments may and are encouraged to expand upon them.
- Ecology has identified the minimum requirements for the start of construction in the permit. Ecology has clarified that for the purposes of the municipal stormwater permits these are minimum that local governments may and are encouraged to expand upon them.

Permit language alternatives

Summary of the range of comments

- Permit language should be as clear as possible so that local governments do not have to interpret the language.
- Add language to clarify that any “stormwater site plan” submitted after effective date of ordinance must comply with the new requirements, to distinguish from vague site plans lacking detail submitted prior to the ordinance effective date. Such vague plans should not be vested.
- In order to address project submitted for review but not approved prior to January 1, 2016, revise to add “*...and shall apply to projects approved prior to January 1, 2016, which have not started construction in accordance with adopted municipal codes, state laws, and legal precedent.*”
- Suggest: “*The local program adopted to meet the requirements of S5.C.5.a.i through iii below shall apply to all new development and redevelopment applications whose official complete application submission date is after the effective date of said ordinance or other enforceable mechanism.*”
- Amend to read and elevate substantive language to body of the permit from footnotes:
 - “*The local program adopted.....shall apply to all complete applications....*” Delete footnote 19.
 - ADD “*This provision does not apply to subdivisions approved under Chapter 58.17 RCW.*” (to address conflicts with that RCW).
 - Clarify that Ecology’s definition applies only for the purpose of the Phase II permit by adding “*For the purposes of administering this permit, ‘started construction’ means the site work.....*”

- Suggest: “No later than June 30, 2015 December 31, 2014, each Permittee shall adopt and make effective a local program that meets the requirements in S5.C.5.a.i through ii, above. *Every complete project permit application³ filed⁴ after June 30, 2015 shall be considered under the local program adopted to meet the requirements of S5.C.5.a.i through ii, above, to the same extent that the application must be considered under the zoning or other land use control ordinances in effect on the date the application is filed* The local program adopted to meet the requirements of S5.C.5.b.i through ii, above, shall apply to all applications³ submitted after January 1, 2015 and shall apply to projects approved prior January 1, 2015, which have not started construction⁴ by January 1, 2018. *Notwithstanding the foregoing sentence, if filed after June 30, 2015, every complete project permit application to renew or extend an existing project permit for a project that has not started construction⁵ shall be considered under the local program adopted to meet the requirements of S5.C.5.a.i through ii to the same extent that the application must be considered under the zoning or other land use control ordinances in effect on the date the application is filed, regardless of the date on which the original complete project permit application was filed.”*
 - In this context, “project permit application” has the meaning accorded by state law (see RCW 36.70B.020(4)), and includes but is not limited to an application to renew or extend an existing project permit ~~application means, at a minimum a complete; project description, site plan, and, if applicable, SEPA checklist.~~
 - The date on which a complete application is filed shall be determined by the Permittee consistent with applicable state law. See, e.g., RCW 36.70B.070.
 - “Started construction” means the site work associated with, and directly related to the approved project has begun. For example: grading the project site to final grade or utility installation. Simply clearing the project site does not constitute the start of construction.
- Suggest: “No later than June 30, 2015 December 31, 2014, each Permittee shall adopt and make effective a local program that meets the requirements in S5.C.5.a.i through ii, above. *Every complete project permit application³ filed⁴ after June 30, 2015 shall be considered under the local program adopted to meet the requirements of S5.C.5.a.i through ii, above* The local program adopted to meet the requirements of S5.C.5.b.i through ii, above, shall apply to all applications³ submitted after January 1, 2015 and shall apply to projects approved prior January 1, 2015, which have not started construction² by January 1, 2018.
 - *Notwithstanding the foregoing sentence, if filed after June 30, 2015, every complete project permit application to renew or extend an existing project permit for a project that has not started construction⁵ shall be considered under the local program adopted to meet the requirements of S5.C.5.a.i through ii, regardless of the date on which the original complete project permit application was filed.”*
 - In this context, “project permit application” has the meaning accorded by state law (see RCW 36.70B.020(4),

Response to the range of comments

- See responses to previous comments.

I-14 Operations and Maintenance

Comments apply to the Phase I and Western Washington Phase II permits.

I-14.1 Clarify alternatives to standard catch basin inspection requirements

Permit Reference: Western Washington Phase II Permit S5.C.5.d
Phase I Permit S5.C.9.d.i

Commenters: City of Bremerton, City of Everett, City of Kelso, City of Kenmore, King County, Kitsap County, Celeste Johanson, City of Longview, City of Marysville, City of Newcastle, City of Port Orchard, Puget Sound Partnership, Regional Road Maintenance Forum Permit Committee, City of Renton, City of Sammamish, City of SeaTac, City of Sedro Woolley, Snohomish County, Thurston County

Summary of the range of comments

Comments on the circuit basis approach (S5.C.5.d.i)

- This section addresses the cleaning of an entire MS4 “circuit”, to include all conveyances and catch basins. Some clarification is needed as to what is included in the “conveyance” category – piping, ditches, etc.
- Clear definition of “circuit” is needed in the definitions section.
- Please define “conveyances” in the Definitions and Acronyms section.
- Add “if applicable” after “outfall” to enhance operational flexibility.
- Please remove this sentence as redundant considering it’s required to inspect and clean if needed. This seems to suggest another rule, even though it says may and not shall.
- Circuit basis inspections rely on the assumption that sediment accumulation will occur beginning at the outfall and work its way upstream. Other factors dictate sediment accumulation within a circuit more than distance from the outfall.
- The term "sampling" is vague and needs clarification. Should a sample include a certain percentage of the total number of catch basins? Should any two catch basins sampled be a certain percentage upstream/downstream of each other in relation to the total run of the circuit?

- Circuit cleaning as described is not realistic. We have numerous pocket neighborhoods with older catch basins, varying sump depths, etc. Cleaning catch basins just upstream from an outfall does not represent the rest of the circuit and could cause neighborhood flooding.
- Instead of focusing on the outfall, Ecology should define how to sample catch basins within a circuit that provides a random representation of the entire circuit.
- Please change the second sentence to read “*Include in the sampling an inspection of the catch basin immediately upstream of any system outfall, if applicable.*” Catch basin inspection circuits are often based on land use or traffic areas and do not necessarily include system outfalls. This change will clearly give permittees the flexibility needed to effectively and efficiently manage these assets.

Comments on cleaning entire MS4 within a circuit once during the permit term (S5.C.5.d.ii):

- The language "within a circuit" confuses the condition. Did Ecology mean to state that the Permittee could clean the entire MS4 (not one circuit) once during the permit cycle as an alternative? Currently written, a Permittee may choose one circuit, clean all of it, and meet the condition for catch basin inspection and cleaning.
- Do not change the previous language. The City should only have to clean the catch basins that need cleaning. If conveyance (a definition was not provided) means stormwater pipes, culverts, etc., then the City does not have the staff or funds available for this huge task of cleaning all these conveyances. Delete this requirement to clean conveyances.
 - Delete “and conveyances” Including conveyances would include ditches, swales, all pipes, etc. and makes this option infeasible. This is a catch basin maintenance requirement and should only include catch basins. This is where the majority of sediment is located, and cleaning all catch basins in a circuit would meet the intent more cost effectively.
 - Recommend “Inspect all conveyance systems and clean as needed”
 - What constitutes cleaning entire MS4 since some do not have maintenance standards?
 - Clarify conveyance systems to be cleaned, like pipe diameter 12” and greater or other criteria.
- If the intention is to allow cleaning, not just inspecting of all catch basins in a jurisdiction at least once in the 5 year permit term, such language is vague and misleading. As written, it includes cleaning the entire MS4, within a circuit, effectively extending the catch basin cleaning requirement far beyond catch basins. It also excludes cleaning or inspecting the rest of the entire system and does not achieve the ultimate goal of protecting water quality.
- Is allowing a permittee to clean its entire system within a given circuit equivalent to cleaning all catch basins within the permitted area every two years? They appear to be very different activities with presumably different benefits. We question the fate of potential pollutants emanating from catch basins that are not regularly inspected and

maintained. We believe all stormwater systems should be regularly inspected and maintained, as per our region's direction on on-site sewage systems.

Recommendations and alternatives proposed in comments:

- *"The Permittee may clean the entire MS4 within all circuits, including all conveyances and catch basins, once during the permit term in lieu of inspections every two years."*
- Re-word to say "The Permittee may clean all catch basins and inlets owned or operated by the Permittee once during the permit term." There should be no reference to conveyances or the entire MS4.
- Support cleaning catch basins annually.
- Define "conveyances" in the Definitions and Acronyms section
- Remove all new language. Add "in accordance with approved maintenance plan" at the end of the last sentence.
- Suggest: *"Permittees will adapt the alternatives in sections i and ii as best suited to their systems, and may choose to employ one alternative in one area (circuit), and another in another part (circuit) of their system."*
- Change the second sentence to read, *"Include in the sampling an inspection of the catch basin immediately upstream of any system outfall, if applicable."* Catch basin inspection circuits are often based on land use or traffic areas and do not necessarily include system outfalls. This change will clearly give permittees the flexibility needed to effectively and efficiently manage these assets.
- Change to read, *"The Permittee may clean all catch basins and associated conveyance pipes within a circuit once during the permit term. Meeting this requirement within a circuit satisfies the requirement to inspect all catch basins and inlets within that circuit during the permit term."*
- Clarify apparent conflict in default frequency for inspecting CBs in Phase I draft. It is annually but item (i) also states "...the standard approach of inspecting catch basins every two years..." which conflicts with previous statement about annual requirement. Recommend - Change from "every two years" to "every year".

Response to the range of comments

- Ecology reorganized this section to clarify that three alternatives to the standard approach of catch basin inspection (annually for Phase I; once by August 1, 2017 and every two years thereafter for Phase II WWA) are available. Ecology recognizes that different approaches may be more effective in one area than another. Permittees are encouraged to apply the alternatives to all or portions of the MS4 based on local knowledge, to minimize unnecessary inspections and to maximize effectiveness in implementing the inspection program.
- Ecology recognizes that sediment accumulation may vary significantly within the MS4 and modified the definition of circuit to further address variability based on traffic volumes and

land use. Permittees selecting this alternative may incorporate these additional factors into implementation of their inspection program.

- Ecology changed the final permit to clarify that a minimum of 25% of the catch basins within a circuit must be inspected under the circuit basis alternative. Permittees may select the catch basins to inspect based on local knowledge such as the size and configuration of the catch basins within the circuit, traffic volumes, and land use. The catch basin immediately upstream of a system outfall is now only required to be inspected if applicable. That would apply if the circuit terminates at an outfall.
- Ecology also made format changes to clarify that the alternative to clean all pipes, ditches, catch basins and inlets within a circuit once during the permit term is an alternative to the standard approach. Permittees are not required to select the alternative. This alternative has been shown to be effective in addressing legacy contaminants within the MS4. Circuits selected for this alternative must drain to a single point to prevent recontamination from discharges that might otherwise be present in upstream portions of the circuit.
- Ecology edited Phase I S5.C.9.d to correctly refer to the Phase I annual inspection requirement.

I-14.2 Clarify major storm events and spot check requirements

Permit reference: Phase I Permit – S5.C.9.c.ii
Phase II WWA – S5.C.5.c

Commenters: Clark County, City of Kelso, Thom McConathy, Pierce County, City of Port Angeles, City of Port Orchard, Regional Road Maintenance Forum, City of Seattle, Snohomish County

Summary of the range of comments

- This program should be retained and specifically required by a date certain.
- The lowering of the level of effort for this activity makes it so we no longer seek baseline data that will inform us as to degradation that needs to be addressed if we are to manage watersheds.
- Retain the language “(other than catch basins)” in this section as it makes it clear that catch basins owned or operated by the Permittee are not, by definition, stormwater facilities/BMPs. The maintenance requirements for catch basins owned or operated by the Permittee is defined in S5.C.9.d.
- Keep "(greater than 24-hour, 10-year recurrence interval rainfall)" or insert a different definition. Removing the definition of the major event makes it difficult for City staff to know when to spot check as a compliance threshold.

- Explain how a permittee should determine which stormwater facilities “may be affected.”
- Remove this requirement as it should be left to the discretion of jurisdictions.
- Recommend revising to include a definition of the term “major storm event,” to clarify that the requirement applies only to facilities owned or operated by the permittee, and to clarify that the permittees has discretion to determine which facilities to inspect. Alternatively, revise to clarify precisely what actions the Permittee is required to perform and the circumstances under which the Permittee is to perform same.
- “Major storm event” is too vague and varies in how defined. In the Pierce County 2008 manual defines it as 1 inch in 24 hours, which can occur several times a year. This could create a financially burdensome requirement.
- Proposed alternative: *“Each Permittee shall implement a program to conduct spot checks after major storm events of permanent stormwater treatment and flow control BMPs/facilities owned or operated by the Permittee that, in the reasonable judgment of the Permittee, may potentially have been damaged during the storm event at issue. If such spot checks indicate widespread damage may have occurred, the Permittee shall conduct such additional inspections of other stormwater treatment and flow control facilities owned or operated by the Permittee that may have been negatively affected by the storm event at issue, as the Permittee deems reasonably necessary or prudent. For purposes of this subsection, the term, major storm event “means a 24 hour storm event with a recurrence interval of 10 years or greater.”*

Response to the range of comments

- Ecology intends that the level of effort for this requirement is consistent with the previous permit.
- Permittees may use local knowledge and experience to determine which permanent stormwater treatment and flow control BMPs/facilities have the potential to be damaged by a major storm.
- Ecology clarified that catch basins are not included in the definition of stormwater treatment and flow control BMPs/facilities (see Definitions section).
- This requirement only applies to facilities owned or operated by the permittee.
- Ecology did not agree that the requirement to perform spot check inspections be deleted and left to the discretion of the permittee.
- Ecology edited this requirement to clarify that a major storm event is one with greater than a 24-hour, 10-year or greater recurrence interval rainfall. 10-year or greater means greater than a 10-year recurrence interval (ex. 25-year recurrence interval).

I-14.3 Snow and ice disposal requirements

Permit Reference: Western WA Phase II Permit - S5.C.5.f

Phase I Permit – S5.C.9.e.vi

Commenters: City of Bellevue, Clark County, City of Everett, King County, Pierce County, Snohomish County

Summary of range of comments

- Delete “and disposal” Disposal is regulated by other regulations and outside of the MS4 and CWA.
- Clarify requirement to develop procedures for disposal of snow and ice.

Response to the range of comments

- Ecology agreed that requirements for implementation of practices, policies, and procedures for snow and ice control already include disposal, and deleted “and disposal” from the final permit. Materials applied to the roadway may introduce contaminants to the snow and ice. Permittee practices, policies, and procedures should include appropriate actions to reduce the risk for water quality contamination from these contaminants.

I-14.4 Clarify training requirements

Permit reference: Phase I Permit - S5.C.9.f
Western WA Phase II Permit – S5.C.5.g

Commenters: Clark County, King County, Regional Road Maintenance Forum, Snohomish County, City of Tacoma

Summary of range of comments

Oppose proposed language

- By striking “primary” on line 7, the group of employees required to be trained becomes too broad and difficult to define. Permit language should focus training on employees whose primary duties include construction or maintenance that could impact stormwater quality.
- This change applies this requirement to an increasingly large number of municipal employees. It places the onus of determining which secondary and tertiary construction, operations, or maintenance job functions "could" impact stormwater quality.
- This requirement is overbroad, unnecessary, unduly burdensome and intrusive.
- The word “could” is unbounded.

- The proposed training topics would not be relevant to the full spectrum of job functions identified. A more targeted approach to training would be more efficient and effective.
- Ecology does not need to control the content and frequency of the County's internal training procedures in order for Ecology to implement the NPDES permit program. The County is capable of determining how best to train its employees.
- There is no reason that compliance with the CWA should depend on minutiae such as whether or not training sessions are documented in the manner preferred by Ecology, so long as the County meets the substantive requirements of MEP and AKART
- The permit should only require training in the areas related to job function because employees often do not accept or retain training unrelated to their job function.

Response to the range of comments

- Ecology clarified this training requirement by retaining language that this refers to staff with "primary" construction and operations and maintenance job functions that could impact stormwater quality.
- Ecology extended this clarification to the Phase II permit by adding "primary" to S5.C.5.g.
- Ecology retained language on required content of the training. Permittees have discretion on training format and may tailor the training as appropriate for their organization.

I-14.5 Clarify practices, policies, procedures for runoff from municipal lands

Permit Reference: Western Washington Phase II - S5.C.5.f
Phase I – S5.C.9.e

Commenters: City of Bellevue, City of Everett, King County, North Sound Baykeeper Team, Puget Sound Partnership, Regional Road Maintenance Forum, Snohomish County, City of Tacoma

Summary of the range of comments

Support proposed language

- Appreciate Ecology's effort to clean up the language of this section.
- Support adding proper application of fertilizers, pesticides and herbicides to the list of activities to be addressed. Collectively, these can represent significant pollution sources.
- Support the new section requiring "appropriate application of fertilizer, pesticides, and herbicides including reducing nutrients and pesticides using environmentally friendly alternatives" for lands and parks owned or maintained by the permit holders.
- If the permit holders lead by example, we hope others will follow.
- Recommend using existing language. Functional control is too vague.

- Section S5.C.9.e - This language sets up a potential conflict with another MS4 jurisdiction because not “*all lands owned or maintained*” by the City will necessarily be located within Tacoma’s jurisdictional limits. Please make the following revision: “*...stormwater impacts associated with runoff from all lands owned or maintained by the Permittee located within the jurisdictional boundary of the Permittee, including and road maintenance activities under the functional control of the Permittee. Such lands owned or maintained by the Permittee include, but are not limited to...*”
- S5.C.9.e -This provision is overly broad and includes facilities on lands that may not be connected to an MS4. Modify as shown: “*Each Permittee shall implement practices, policies, and procedures to reduce stormwater impacts associated with runoff from real property owned or operated by the Permittee that discharges to an MS4 that is owned or operated by a Permittee and is covered by this Permit.*”
- Section S5.C.9.e.xi: The phrases “*appropriate application*” and “*environmentally friendly*” are vague. Suggest the following revision: “~~Appropriate a~~Application of fertilizers, pesticides, and herbicides according to the instructions for their use, including reducing nutrients and pesticides using environmentally friendly alternatives that minimize environmental impacts.”

Recommended changes

- “*Appropriate application of fertilizers, pesticides, and herbicides ...using environmentally friendly alternatives.*”
- This may affect procedures developed in the last permit cycle. Suggest approval timeline of one year from effective date of permit for revising procedures and another year for implementation.
- Provide phased timeline to review and update existing procedures. Suggest approval timeline of one year from effective date of permit for revising procedures and another year for implementation.
- Delete new language for application of fertilizers etc. The permit should clarify that the owner is responsible for their drainage system. The city facilities, development, property or right-of-ways are all outside of the MS4.
- Delete this new bullet. Activities listed are all regulated by other regulations and have practices associated with them and fall outside of the MS4 and CWA.
- Delete “and vegetation disposal” Disposal is outside of the MS4. Disposal is managed within WAC 173-350.
- Section S5.C.9.e.viii, xi and xiii: Please consolidate these similar vegetation maintenance activities into one activity to simplify reporting and compliance; these activities are all similar and can be grouped.

Response to the range of comments

- Ecology edited the language for application of fertilizer, pesticides, and herbicides as suggested. Ecology does not anticipate that permittees will need to significantly modify integrated pest management plans developed under the 2007 permit to continue meeting this requirement.
- Ecology did not agree that a phased timeline is needed to comply with these requirements since no significant modifications are anticipated for permittees implementing 2007 permit requirements.
- Refer to S1 for permit applicability to the geographic area served by the MS4.
- Improper application of fertilizer, pesticides, and herbicides, and improper disposal of vegetation have the potential to impact stormwater quality. Ecology retained the associated requirements in this permit and acknowledges that permittees may need to refer to additional applicable codes for this and other permit requirements.
- Permittees may consolidate practices, policies, and procedures for vegetation maintenance activities for their implementation and reporting. Ecology did not agree that consolidation of the listed activities is necessary within the permit.

I-14.6 General comments on operations and maintenance

Commenters: City of Kenmore, Thom McConathy, National Marine Fisheries Service, North Sound Baykeeper Team, Puget Sound Partnership, US Fish and Wildlife Service

Summary of the range of comments

Support for:

- Support requirements to develop and maintain individual operation and maintenance manuals for constructed stormwater facilities and BMPs. Support maintenance accountability in the form of record-keeping, a log indicating what inspection and maintenance actions were taken, by whom, when, and with what frequency.
- Support regular inspection, maintenance, and related reporting requirements for constructed stormwater facilities and BMPs.
- Support the additional requirements for inspections and enforcement for small projects, especially inspection of stormwater treatment facilities to ensure proper installation.
- It is very important to include the new provision that verifies responsibility for maintenance of new stormwater facilities.

Concerns:

- Concerned that the permit states that the performance standard for maintenance is, “whether maintenance is required at all” instead of a measure of the facility’s condition at all times between inspections.

- Inadequate maintenance is a common, even ubiquitous, cause of failure for stormwater control facilities.
- Maintenance of stormwater systems has been underfunded in the past. Acceleration of inspection and maintenance programs is needed, and legacy loads should be identified and removed from portions of systems.
- Concerned that Ecology, the permittees, and secondary permittees have a shared responsibility to communicate funding needs in support of stormwater systems maintenance, management and control. We believe that a joint effort to communicate the importance of adequate funding is more likely to succeed.
- We have observed a lack of follow-up and inspection of small projects, and we're concerned about their cumulative impacts to water quality.

Recommendations and alternatives proposed in comments

- We encourage Ecology, the permittees, and secondary permittees to further examine and refine life-cycle costs and long term performance of constructed stormwater facilities and BMPs. Better, more complete cost-effectiveness data are needed to improve decision-making by owners and operators of MS4s.
- Recommend that Ecology implement a maintenance performance standard that increases the frequency of facility inspections and catch basin cleanouts within a watershed that discharges to salmon critical habitat or ESA-listed waterbodies.
- We need stronger protection for ditches that are vernal and year-round streams in support of Salmon recovery.

Response to the range of comments

- Ecology agrees with the importance of verifying maintenance responsibilities and maintaining adequate records.
- Ecology considers it infeasible to hold permittees accountable for the condition of stormwater facilities at all times between inspections. Ecology expects permittees to respond to complaints related to facility maintenance, perform inspections at the designated frequencies, and conduct maintenance activities within the specified timeframes when maintenance is needed.
- Ecology agreed that legacy loads should be identified and removed from the MS4 when feasible. A new alternative to the standard approach to annual catch basin inspections allows permittees to address legacy loads through cleaning of all pipes, ditches, catch basins, and inlets in circuits that may contain such loads.
- Ecology agrees that more funding for maintenance activities would be beneficial.
- Ecology agrees that adverse impacts from small projects can have a cumulative impact on water quality, and eliminated the one-acre threshold in the Phase II permit during this permit term.

- Ecology is currently working with permittees and others to provide more information on life-cycle costs and long-term performance of BMPs.
- Ecology agrees that protection of salmon critical habitat and ESA-listed waterbodies is important. However, Ecology did not agree that more frequent inspections in areas discharging to these areas are warranted at this time.

I-15 S8 Monitoring and Assessment

Comments apply to Special Condition S8 requirements in the Phase I and Western Washington Phase II permits.

I-15.1 Comments on the paradigm shift from individual to regional monitoring; support for the new monitoring requirements

Commenters: City of Arlington, Association of Washington Cities, Norman Baker, City of Bothell, Earth Justice, City of Everett, Joyce Hannum, Kathy Humphrey, Lake Burien Neighborhood, Lake Forest Park StreamKeepers, League of Women Voters of Seattle/King Co., League of Women Voters of Washington, Lider Engineering, City of Longview, Judith Matchett, National Marine Fisheries Service, City of Olympia, People For Puget Sound, Pierce County, Port of Seattle, Port of Tacoma, The Precautionary Group, Puget Sound Partnership, River Network/American Rivers, Rosemere Neighborhood Association, City of Seattle, Sno-King Watershed Council, Stewardship Partners, Val Stewart, Sustainable Development Task Force of Snohomish County, Sustainable Seattle, Stormwater Work Group, City of Tacoma, Thurston County, EPA Region 10, US Fish and Wildlife Service, Washington State Department of Natural Resources

Summary of the range of comments

- We support the new monitoring requirements and the shift in the monitoring paradigm to cooperative, regional monitoring.
- A comprehensive stormwater monitoring program for the Puget Sound basin is long overdue.
- We appreciate the strong cooperation between Ecology and the SWG in formulating a coordinated regional stormwater monitoring program (RSMP) that is effective in answering important management questions.
- Continued improvements to permit implementation will occur through adaptive management that includes substantive involvement of local expertise. We are encouraged by the use of these principles in the development of a new regional approach to stormwater monitoring.
- The regional approach will provide more meaningful data than individual permittee monitoring requirements. The RSMP will result in data which fits together and is useful for adaptive management purposes.

- The permits recognize and incorporate the recommendations of the Stormwater Work Group (SWG) and its work to design a regional approach to monitoring. The SWG recommended system will result in a more coordinated, cost-effective approach for monitoring the impacts of stormwater runoff on receiving waters.
- Despite budgetary challenges, we need this information to know how we are doing and to convince people that stormwater management actions are making a difference.
- We support the option of participation in a cooperatively-funded RSMP. We agree that the RSMP should provide significant advantages, flexibility, and efficiencies for permittees and secondary permittees. We encourage the widest possible support for, and participation in, the RSMP among Phase I permittees and secondary permittees.
- The RSMP is the most cost effective way to gather data about stormwater effectiveness, status and trends and source control to impact future permits and the recovery of Puget Sound.
- We support some level of monitoring to ensure that permit requirements are effective in managing stormwater flows and pollution.
- Ecology's plan to assist jurisdictions with monitoring will make it much more likely that adequate pollution monitoring will occur.
- Monitoring programs have become ineffective for permittees, and have not been designed in a holistic fashion to broaden the base for watershed management planning. Instead, monitoring has been disconnected and arbitrary, and this needs to be corrected.
- We appreciate that the proposed monitoring includes status and trends monitoring in small streams and marine nearshore areas, studies of the effectiveness of stormwater management programs, allowing Phase I jurisdictions to conduct their own monitoring studies, sharing information regarding source identification and diagnostic monitoring, utilizing a pooled resources approach for maximizing efficiency and ensuring regional benefits, utilizing Ecology as the administrator of the pooled resources for this permit cycle, relying on the SWG for oversight of the pooled resources, and relying on the SWG for support during development and implementation of the monitoring program.
- Strengthen/expand the proposed monitoring requirements:
 - Status and trend monitoring, source identification and control, and effectiveness studies of LID and other retrofit needs must be strengthened to ensure that stormwater work is moving in the most effective and efficient direction.
 - We support expanded requirements to monitor discharges.
- We support only the effectiveness studies and source identification and diagnostic monitoring components of the RSMP.
- We support only the effectiveness studies component of the RSMP.
- The collaborative RSMP pay-in concept could be repeated for other components of the permit, such as public education.
- We appreciate Ecology providing southwestern and eastern Washington similar opportunities and time to develop their own collaborative approaches.

Response to the range of comments:

- Thank you for your support of the new monitoring requirements. Ecology believes the proposed approach will provide solid, useful information in a cost-effective manner and will allow Permittees and Ecology to adaptively manage stormwater management programs to better protect water quality.
- Ecology supports the paradigm shift from individual monitoring to collaborative monitoring and will work to ensure a successful transition during this permit term.
- Ecology believes that each RSMP component is essential to a meaningful program. Without any of the three components the RSMP would no longer be comprehensive.
- Ecology will continue to support and work with the SWG to further develop and implement the RSMP. We appreciate the involvement and dedication of the stakeholder representatives that participated throughout the process.
- The lack of regional coordination in the past is reflected in the incompatibility and inaccessibility of the majority of the data that has been collected. The new approach provides a process for agreeing on monitoring priorities, study designs, and data collection and storage methods and protocols. The SWG's scientific framework, upon which the RSMP is based, discusses adaptive management at length.
- Ecology will work with Permittees and others outside Puget Sound to develop appropriate regional status and trends monitoring approaches for stormwater.
- Permittees have the option at any time to collaboratively implement any of the SWMP requirements. For example, substantial grant money has been allocated to support regional outreach and education efforts. At this time, however, Ecology has not incorporated a coordinated approach elsewhere in the permit. If Ecology's assistance is needed to support multi-Permittee implementation for other SWMP components, we will consider Permittees' requests.

I-15.2 The RSMP should/will not produce meaningful information

Commenters: City of Arlington, City of Bothell, City of Bremerton, Clark County, Clark County Clean Water Commission, Earth Justice, City of Everett, City of Federal Way, City of Issaquah, King County, Kitsap County, City of Lacey, Lider Engineering, City of Longview, City of Mount Vernon, Muckleshoot Indian Tribe Fisheries Division, City of Newcastle, City of Olympia, Pierce County, City of Renton, City of SeaTac, City of Seattle, City of Sedro Woolley, Snohomish County, Stormwater Work Group, City of Tacoma, Thurston County, US Fish and Wildlife Service, Washington Department of Transportation, Washington State Department of Natural Resources

I-15.2.1 General Comments

Summary of the range of comments:

Support:

- We agree with the goal that permit required monitoring collect information that is useful to Permittees, Ecology, and others. It is important that RSMP funds be well spent and the work meet regional goals for monitoring.
- The RSMP will result in a more coordinated, cost-effective approach for monitoring the impacts of stormwater runoff on receiving waters. This approach will result in data which fits together and is useful for adaptive management purposes.
- Status and trend monitoring, source identification and control, and effectiveness studies of LID and other retrofit needs must be strengthened to ensure that stormwater work is moving in the most effective and efficient direction.

Clarify:

- The monitoring requirements and objectives are not, but should be, clearly defined. Provide a reference for the RSMP in the permit and an overall explanation of the RSMP in the Fact Sheet.
- Do the SWG Recommendations comprise the final RSMP? If the proposed RSMP is a draft, document timeframes and comment periods for future review.
- It is currently unclear how the information gathered from the new stormwater monitoring programs will be used. How will the monitoring provide representative results to evaluate how well the stormwater management program (SWMP) is working for each permittee? Ecology should clarify how monitoring results may affect SWMPs both in the near and long term.
- It was stated that this will be a paradigm shift to have the RSMP. Has the problem been the collection of data, or is it how effective we have been in using that data to understand pollutant sources and reduce them? We have seen many ongoing status reports since the Puget Sound Water Quality Authority. We strongly suggest there is clear paradigm shift on how we use the data to solve problems, but don't see that in the document.

Question the value:

- We appreciate the potential benefits and efficiencies of a regional monitoring program as long as the results are applicable at the local level. Most jurisdictions will not get any data on their local conditions.
- The regional program will not begin collecting actual data until near the end of the Permit term, with the results of that data not clearly assessed and relayed until after the permit cycle ends.

- The monitoring requirements will provide little resource management insight into the stormwater quality issues of our region. All three RSMP components provide very little benefit to the majority of the cities and counties other than relieving them of a specific task. Although this may be fiscally prudent in the short term, in the long term it means local funds are spent on regional monitoring our tax payers will not directly benefit from.
- The comprehensive monitoring required by RSMP is redundant. The common sources of urban stormwater pollutants are well-known and documented by a host of other studies and data sources.
- Monitoring performance against key requirements suits the permit better. However, Ecology's regional approach is the next-best path and will provide cost-effective results that are broadly applicable over the permitted areas.

Oppose:

- Delete the regional monitoring program from the Permit. This research effort is expensive (with costs increasing in the future), does little to improve our understanding of stormwater issues, and does nothing to improve or regulate local municipal operations.

Response to the range of comments:

- The RSMP is needed because current regional monitoring efforts are not designed to answer stormwater questions. The RSMP is not meant to replace local monitoring programs, but rather to complement them and provide a regional perspective on improving stormwater management approaches.
- Ecology understands Permittees' and other interested parties' concerns about getting meaningful information and we agree that the RSMP must provide meaningful information. We believe that the comprehensive RSMP will successfully produce data that are useful to Permittees and others. Ecology will continue to support the science-driven stakeholder process to set priorities and ensure the RSMP will provide useful information.
- The RSMP is not redundant, nor is it research. The overall purpose of Special Condition S8 Monitoring and Assessment is to provide adaptive management feedback for improving SWMP activities required in Special Condition S5.
- Permittees are spending large amounts of taxpayer funds to manage stormwater, and the public needs information about how well those dollars are working.
- The specific monitoring and assessment objectives for the RSMP are laid out within the SWG's scientific framework, which defines the priority questions to be answered and the basis of and approach to each component of the comprehensive program (status and trends, effectiveness, and source identification). The scientific framework is in the [2010 Monitoring and Assessment Strategy for the Puget Sound Region](#) (2010 Strategy) which has been available to the public since July 2010. The RSMP is defined as a subset of the 2010

Strategy and is documented in the SWG's [Recommendations for Municipal Stormwater Permit Monitoring](#).

- RSMP studies will begin during the second year of the permit and data collected during the first three years of RSMP implementation will be analyzed and shared with Permittees and others while the next permit is being developed and before it is issued.
- Ecology recognizes that while permittees with RSMP sites located in jurisdictions inside their boundaries may gain additional benefits or certainty, the RSMP design was selected because it will benefit jurisdictions across western Washington by collecting information from locations representing the wide variety of land uses and local conditions present. The results will not be statistically valid unless the monitoring sites are randomly selected. Ecology believes that the RSMP as a whole will provide information benefitting all permittees.
- Ecology collects performance information from permittees through annual reporting requirements. The RSMP is not intended to fulfill compliance monitoring objectives; it is for use in adaptive management to improve performance.

I-15.2.2 Comments specific to RSMP Status and Trends Monitoring

Summary of the range of comments

- We appreciate Ecology's effort to follow SWG recommendations on the scope of the status and trends monitoring. It is important that the Permit includes status and trends monitoring in receiving waters. This is part of a strong overall monitoring program and will allow for a determination that our stormwater dollars are indeed making a difference.
- It is not clear how RSMP actions will build on long-term, locally-driven sampling efforts and actions to address water quality conditions. This should be an element to assure that we are not starting from scratch on status and trends. Given limited funding, we are unable to continue to fund our successful, existing program and also pay into the new regional status and trends monitoring program.
- The status and trends monitoring is not comprehensive of all the jurisdictions. Our tax payers should not be asked to support a program which does not represent their interests or provide data on their local natural resources. How can we be assured that our investment in the RSMP helps to characterize our local situation in order to address site specific pollution sources?
- Status and trends does not give an individual permittee a determination on how to manage receiving waters. Results cannot be linked to particular activities. There is no direct means to tie the observation to a particular individual jurisdiction.
- Answering questions as to whether conditions in receiving waters are improving or deteriorating as a result of municipal storm water discharges and storm water programs would be worthy. However, the multiple stressors that exist beyond municipal

stormwater discharges makes it extremely difficult to develop a study design capable of identifying a storm water-related cause and effect signal in the receiving water.

- This section should appropriately be called 'receiving water and stormwater monitoring' to accurately reflect the required actions. One time receiving water monitoring or stormwater characterization monitoring will not measure trends.
- The data will not be available for several permit cycles and even then it would still not provide actionable information needed to direct adaptive management of our stormwater management programs.
- The status and trends program is research.
- Suggestions for improving or clarifying the RSMP status and trends monitoring:
 - The status and trends monitoring is not focused on stormwater, for which our municipal system is responsible. There are no metals, PAH, or TPH or other constituents that are typically needed to characterize stormwater impacts on streams.
 - WQI and some of the other parameters will not be useful as a primary monitoring tool.
 - Scale back so each jurisdiction performs status and trends monitoring on a scale that is manageable. Ecology writes the QAPP and establishes protocol for site selection. Jurisdictions provide all monitoring data to Ecology in a standardized format.
 - We need a different way to select sites than a purely random/probabilistic model – something that selects a range of development-impacted sites and tracks those over time. The statistical based approach works for selecting sites to sample within Puget Sound itself, but not for streams because of the variability of land-use impacts that need to be accounted for in the sample design.
 - Allow jurisdictions to select the sites. Give RSMP contributors the opportunity to submit future candidate water bodies to be monitored based on the need for additional information. The reports generated will used to target actions if local participation begins up front.
 - Wadeable stream monitoring should occur in both UGA and non-UGA locations.
 - Questions we believe the RSMP should address are:
 - What is the current status of our small lowland streams with respect to impacts from urbanization and stormwater?
 - How has stormwater impacted these resources (physical, chemical, and biological, as well as beneficial uses) with respect to CWA goals?
 - How has our current stormwater management strategy factored into this equation?
 - What trends develop under current and evolving stormwater management scenarios?

- How will testing the shoreline, sediment, mussels or bacteria in the marine near shore of the Puget Sound develop a background level?
- Is copper in the sediment from stormwater, trees, boats, industry, animals or natural sediments from the river floods?
- Specific suggestions to clarify/improve opt-out requirements:
 - As written, the opt-out sections for status and trends monitoring are ambiguous and impossible to comply with. The “Ecology-approved QAPP for the Small Streams/Marine Nearshore Status and Trends component of the RSMP” is not defined. It is therefore unclear what actions a Permittee is required to perform pursuant to this provision. Please revise for clarity. Include the Ecology-approved QAPPS for small stream and marine nearshore RSMP status and trends monitoring as an appendix.
 - The QAPP states that "Compiling/Disseminating Reports and Results Data collection is completed by the middle of October in each calendar year. Analysis of water samples and biological samples will extend by three months the period that summary reports can be written." We recommend scheduling all reporting dates to coincide with annual NPDES reporting.
 - The same paragraph specifies that "The reporting can be completed by providing information on a web site." What web site is being referenced? For benthic data, we encourage use of the Puget Sound Benthos database:
www.Pugetsoundstreambenthos.org.
 - Contractor tasks include writing a complete QAPP for marine nearshore status and trends monitoring, which will be reviewed and approved by Ecology in consultation with the SWG. Permittees opting to conduct nearshore monitoring should have an opportunity to comment on the QAPP when it becomes available.
 - Stream selection for those choosing “opt out Option 2” should be based on a scale that would allow inclusion of the more common type of smaller streams often found in urbanized watersheds.
 - Consider flexibility regarding future annexations in site selection. In the long-term, we expect that all urban areas will be annexed or incorporated.
- We recognize that the proposed status and trends monitoring is based on randomly selected sampling sites. However, municipalities should have the ability to choose the monitoring sites within their jurisdiction for a number of reasons, including the following:
 - Randomly selected sites are of less value in directing cleanup efforts. Focused stormwater monitoring can be used by municipalities for strategic planning, source detection and control. Also, randomly selected sites may not be located near MS4 outfalls, diminishing the ability to determine cause and effect.
 - Most Phase 1 Permittees have an established internal water quality monitoring program. Pierce County has multiple years of benthic and water quality data from

inside and outside the UGA. Locating NPDES monitoring on/near existing monitoring sites would build upon existing data, and could be utilized for trends analysis. This supports the objectives of Ecology's draft 2012 Status and Trends Monitoring QAPP, which include: "Incorporate existing information and monitoring data, where possible, into the status and trends assessment (p. 9, October 3, 2011 draft)."

- Establishing rights-of-way and/or rights-of-entry for new sites may cause an unreasonable delay in the implementation of monitoring and added costs for Permittees.
- New sites would incur costs for scoping, ROW, power, protection, access, and new equipment.
- We recommend additional permit language that allows Phase 1 Permittees more flexibility in site selection, but ensures a regional uniform sampling protocol.

Suggested new permit language:

- "In lieu of monitoring the RSMP sampling sites identified in the draft 2012 Status and Trends Stormwater Monitoring and Assessment Strategy for Small Streams -An Addendum to Quality Assurance Monitoring Plan (October 3, 2011) (QAPP), monitoring may occur at the existing monitoring sites of closest proximity to the RSMP sampling sites. The existing sites must be suitable for water quality, benthos, habitat and sediment chemistry monitoring according to the QAPP. Sampling and reporting shall follow the QAPP."
 - "In lieu of monitoring the RSMP sampling sites identified in the Marine Nearshore Status and Trends QAPP (QAPP), monitoring may occur at the existing monitoring sites of closest proximity to the Ecology selected sites. The existing sites must be suitable for sediment chemistry, bacteria, and mussel monitoring as described in the QAPP. Sampling and reporting shall follow the QAPP."
- Clarify permittee responsibilities for confirming final monitoring locations. The permit must specify whether Ecology or the Permittee is responsible for gaining legal access to the sites. Legal access may need to be acquired over multiple parcels.
 - Clarify under what conditions Permittees can propose alternative sites.
 - If a site is not viable, will Ecology be responsible for generating more random sites?
 - Include rural areas in the QAPP for marine shorelines, esp. in Phase I Counties, as this area is covered by permit.
 - Reduce the number of sentinel sites. EPA is monitoring 10 sentinel sites. Local jurisdictions should be able to use the information collected by EPA, not add additional sites or be expected to take over these federal costs. The NPDES monitoring program should leverage existing programs, not implement new collection sites or programs.

- The Stormwater Work Group recommended in October 2010 (page 5, recommendation 2i) “a collaborative system for stream gauge data management should be created and utilized.” This recommendation is not reflected in this scope of work for streamflow gauging data. We recommend that this task be included in the scope of work for this permit term. Include a system for collaborative stream gauge data management in the scope of work.

Response to the range of comments

- The RSMP status and trends monitoring is designed to provide information benefitting all permittees by collecting information from locations representing the wide variety of land uses and local conditions present in Puget Sound. The monitoring sites are randomly selected to ensure that the results will be statistically valid.
- Ecology recognizes that receiving waters are affected by multiple stressors, including stormwater. Though it is possible that the status and trends monitoring may identify problems that are not caused by stormwater, it will not be possible to assess stormwater impacts to receiving waters without gathering and analyzing these data. Scientific literature supports the generalization that stormwater is a major cause of pollution and habitat loss in Puget Sound lowland streams. While status and trends monitoring alone may not provide directly useful information for individual Permittees to adapt their SWMPs, this monitoring is an essential component of the comprehensive strategy to provide information for improving stormwater management.
- All Permittees in western Washington are implementing essentially the same set of permit-required stormwater management practices aimed at reducing pollution and protecting beneficial uses in receiving waters. The SWG provided Ecology with a peer-reviewed scientific framework for better understanding stormwater impacts and evaluating whether we are successfully protecting receiving waters. The monitoring design does not require that we sample every stream or even a stream inside every jurisdiction’s boundaries to provide useful information.
- Ecology recognizes that there are other reasons for, and many benefits derived from, locally targeted receiving water sampling. Local programs and the RSMP should complement each other. The SWG scaled back the original status and trends monitoring design from nearly 400 sites to 100 sites to answer the most important questions on a Puget Sound level rather than at the watershed level. This should allow most interested jurisdictions to participate in both their local monitoring programs and the RSMP.
- Quality Assurance Project Plans (QAPPs) are under development; draft QAPPs are posted at <http://www.ecy.wa.gov/programs/wq/psmonitoring/references.html>. These documents include specific analyses that will be done using the data. Interested parties are encouraged to join the technical groups that are working to finalize the QAPPs. Related information and other documents under development are posted at: <https://sites.google.com/site/pugetsoundstormwaterworkgroup/home>.

- The RSMP is a subset of a broader Stormwater Assessment and Monitoring Program for Puget Sound (SWAMPPS). The draft QAPPs for status and trends monitoring may include descriptions of some tasks that will not be conducted using pooled funds contributed by permittees but that should be considered by entities conducting RSMP monitoring. The QAPPs will clearly identify those tasks that are listed in the SWG's [*Recommendations for Municipal Stormwater Permit Monitoring*](#) and other formal RSMP recommendations endorsed by the stakeholder group. RSMP contractors can seek other funding to cover additional QAPP activities.
- Ecology will consider the suggestions for improving the RSMP in finalizing the QAPPs. All interested parties will have an opportunity to comment on draft QAPPs before they are finalized.
 - The list of parameters to be analyzed at status and trends monitoring locations that will be paid for by the Permittees will be inclusive only of those recommended by the SWG (see [*Recommendations for Municipal Stormwater Permit Monitoring*](#)). Samples for other parameters (such as marine nearshore sediment biota) may be collected and analyzed using other funding sources.
 - The SWG recommended using the Water Quality Index for small streams but gave Ecology flexibility to adjust the parameter list and/or the sampling frequency to provide a better connection between instream conditions and stormwater inputs.
 - Whether to use existing monitoring locations was a subject of much debate in developing and finalizing the scientific framework for the RSMP. The final stakeholder-defined and peer-reviewed RSMP design is dependent upon randomly selected sampling locations, and upon a similar level of monitoring both inside and outside urban growth areas (UGAs) for streams, and only inside UGAs for nearshore areas. The final permit language retains the requirement that monitoring locations be selected from the randomly generated RSMP list.
 - The final QAPPs for both stream and nearshore RSMP status and trends monitoring will indicate how nearby an existing monitoring location must be to a randomly selected site in order to qualify as a RSMP monitoring location.
 - If a Permittee chooses to conduct individual status and trends monitoring rather than participate in the RSMP, then the Permittee is responsible for gaining access to sites. The contractors selected to conduct RSMP monitoring will be responsible for gaining access to sites.
 - At this point, Ecology is not planning to depart from the SWG recommendations to limit marine nearshore sites to Urban Growth Areas in Puget Sound. However, the comment will be considered when the site selection approach is finalized.
- It is correct that trends cannot be detected during this permit term under the proposed schedule. The RSMP will collect the initial baseline data during this permit term, a trend analysis will be performed as part of the RSMP during the following permit term.

I-15.2.3 Comments specific to RSMP Effectiveness Studies

Summary of the range of comments

- Ecology, permittees, and stakeholders have outlined an appropriately focused and scaled strategy for obtaining reliable program effectiveness data. Of the permits' proposed monitoring frameworks, program effectiveness monitoring is the most valuable element as it provides a feedback loop to refine the effectiveness of a permittee's stormwater management program.
- The effectiveness monitoring requirement should be eliminated from the permit.
- Although a regional approach is beneficial for some elements of permit-required monitoring, in some instances, program effectiveness can best be accomplished at the local level, and it is a regional benefit to provide this flexibility. We support the independent study options for program effectiveness monitoring.
- The proposed Effectiveness Studies seek to answer questions and address issues that for all practicable purposes have already been thoroughly vetted. Further investigation is not justifiable.
- Monitoring performance against key permit conditions (such as pounds of debris removed, percent of applicable projects using flow control, etc.) suits the permit better than localized BMP effectiveness studies. However, Ecology's regional approach is the next-best path and will provide cost-effective results that are broadly applicable over the permitted areas.
- It is likely not possible to measure the effectiveness of SWMPs and regulatory requirements of the NPDES permit due to the variability in stormwater quality and the need for a large amount of data. The constant change of land use practices will make it difficult to tie data to the effectiveness of a SWMP.
- This is well-suited to a regional approach if conducted using a case study design.
- Specific comments on the proposed list of effectiveness study topics and questions:
 - Remove the list of effectiveness studies from the permit. The list of RSMP effectiveness studies may change as the program moves forward and should be identified as an ongoing, living list.
 - The list of studies should be public but not in the permit.
 - The SWG literature review may find that some of the studies do not need to be performed; in that case the permit should not require that they be conducted.
 - If new effectiveness study topics or questions are to be added during the permit term, they should take place in future permit cycles.
 - The appendix should contain a description of how the studies were solicited, selected, questions developed and what happens if a topic cannot be studied or if studies are completed, how the next study is implemented.

- We will be providing input on individual studies to SWG Effectiveness Subgroup outside of permit comments as we believe that the list should not be a part of the permit.
- As we understand it, the list is not actually ranked, so remove the word "Rankings." Many of the effectiveness questions are equally important.
- Given the new emphasis on LID in this draft permit, LID effectiveness studies should be elevated in the rankings. Rank LID studies for flow control and pollutant removal equivalently and answer the questions concurrently.
- Focus on regionally used BMPs specific to storm water control and treatment.
- Great research hypotheses, which should not be the responsibility of permittees. BMPs that are not yet sufficiently understood do not belong in the permit. Ecology, not the Permittees, should figure out how to vet the BMPs.
- This is a wish list of what we could do with unlimited resources. The financial burden associated with answering many of the hypotheses should be given more consideration.
- Many of the topics are overly simplistic.
- Are any Regional Effectiveness studies planned for southwestern Washington?
- Potential Questions for Request for Proposals should include an inquiry for solutions or improvements.
- Comments about specific study topics and questions:
 - The number one priority is monitoring of BMPs at construction sites to demonstrate that BMPs are effective at reducing turbidity. Any construction inspector already knows this to be the case. The issue is not a lack of understanding of the effectiveness of BMPs, but a lack of staff resources available to do adequate plan review, inspections, and enforcement. Additional staff resources are needed (and are not forthcoming in the current economic climate), not more data.
 - “Are the temporary erosion and sediment control Best Management Practices (BMPs) required during development or redevelopment adequate to control erosion and sediment from construction sites?” should include the question of what improvements need to be made.
 - Topic 18: Do humans value the unmaintained pond for the "wildness"... Are we being forced to fund fanciful research?
 - Please consider the following observations for LID effectiveness at reducing pollutant loads:
 - Compost is an overly generalized term. Its physical characteristics and chemical composition are variable, and it contains pollutants. Develop pollutant levels more stringent than and covering a wider spectrum of pollutants than are specified in Ecology's current compost standard for land application.

- What pollutants leach out when relatively clean runoff goes through compost filter media? To what degree?
- What is the required replacement cycle for compost media used for filtration?
- Biosolids as a compost feedstock may introduce elevated copper and zinc as well as pharmaceuticals and personal care products. The degree to which these are treated in composting is a needed area of study, as is the question of what are the degradation products and what risks do they pose?
- What is the risk that stormwater infiltrating to ground may meet groundwater quality standards (Cu, Zn) yet still pose a threat by subsurface travel to a stream?
- Please consider the following for fecal coliform and nutrient studies:
 - How are septic tanks contributing to problems in local streams, and how do we prevent those impacts?
 - How will we deal with the issue that in restored and protected stream systems our fecal levels continue to be measured above the standard, often due to wildlife? What is the procedure with Ecology to establish cause of WQ exceedance does not require further action beyond preventing things from getting worse?
 - Do we need to ask if reducing phosphorous in a water body will reduce algae?
 - Treatment technology materials could unintentionally contribute pollutants (e.g., nutrients, toxicity, and high pH) to stormwater. N and P are released from compost-amended swales. A long-term study of these releases would determine if there is a time where this treatment technique no longer releases N and P but instead treats them.
 - We recommend studies designed to determine availability and effectiveness of better indicators of pathogenic risk than fecal coliform testing.
- Please consider the following for education and outreach studies:
 - If the existing educational programs are not working, there should be a discussion of what changes are needed to improve them.
 - Many of the BMPs listed for additional social marketing were adopted based on literature review and previous testing. Reduce the list to the necessary social marketing questions that can change social behavior or allow a jurisdiction to focus their investments on solving WQ and habitat problems. Develop questions modeled for the non-choir members that are phrased in a way that they may find benefit in by participating in the activity.

- Does this supersede the effectiveness survey called for under S5.C.1 of the Phase II permit?

Response to the range of comments

- Ecology believes a wide variety of approaches to evaluating effectiveness of stormwater management program activities will continue to be needed, and that the RSMP and the opt-out provisions will provide the region and permittees with good adaptive management information for multiple land uses and conditions.
- The topics listed for RSMP effectiveness studies are largely derived from annual report submissions by Phase II Permittees, and so should be of wide interest to Permittees. The RFP will require that each study be designed to provide actionable information. Ecology expects that each final study report will include a “white paper” summarizing the implications of the findings, with local government staff as the intended audience.
- Regarding the value of sharing information about the effectiveness of SWMP activities: An early anticipated product of the RSMP is a synthesis of information in the scientific literature regarding questions for which many answers are known. The literature review will also be used to help refine the list of questions prior to requesting proposals for studies.
- Ecology believes that the RSMP effectiveness studies will not be redundant.
- Regarding the proposed list of effectiveness study topics and questions:
 - The list of effectiveness studies is no longer part of the permit but will continue to be available on Ecology’s webpage.
 - The list is ranked, but rankings may change as more information is considered.
 - The SWG is in the process of comparing the proposed list of studies to the findings of the recently completed literature review to better define the studies to be conducted as part of the RSMP. The specific comments provided here will be helpful in refining the list of study topics and questions.
 - Ecology expects the RSMP to produce synthesis reports summarizing what is known about the various topics of interest to the greatest number of permittees.
- RSMP effectiveness studies do not supersede the evaluation called for under S5.C.1.
- Ecology expects the suite of effectiveness studies to encompass sites throughout western Washington.

I-15.2.4 Comments specific to RSMP Source Identification and Diagnostic Monitoring

Summary of the range of comments

- We appreciate Ecology’s effort to follow SWG recommendations on the scope source identification and diagnostic monitoring information sharing.
- We are concerned about the vagueness of the objectives and scope.

- Permittees have already developed individual IDDE manuals based on EPA accepted guidance. It is inappropriate to turn around and develop new standards, when existing EPA guidance is already being met.
- We support setting aside funding to develop and share best practices for detecting common pollution sources and developing a framework to identify the pollutants of concern for local and regional source control efforts. Unfortunately, the scope of work does not meet these objectives.
- Delete this requirement because it does not represent monitoring and should be delegated out as a research project. This is information that Ecology should provide for its own toxics and stormwater pollutant reduction programs. It should come out of various permit fees and taxes associated with the creation and distribution of toxic materials and pollutants or be funded by state or federal funds. Not just municipal stormwater permittees.
- The SIDIR requirement should be eliminated. All phase II jurisdictions should have their IDDE programs in place and operational based on current permit requirements. If this is not the case, it is not the responsibility of the collective to enforce or enable this to happen; it is solely the responsibility of Ecology and the permittees. A wealth of information on IDDE program creation, implementation and operation is already available on line. There is no need to recreate/repackage this material.
- Development of an Illicit Discharge Detection and Elimination (IDDE) Manual for Western Washington is unnecessary. Guidance/information to assist in the creation of an IDDE program is already widely available, which is fortunate since the current Permit requires that all Phase II jurisdictions have an IDDE program in place. Expending limited resources to bind existing/readily available IDDE guidance and information into yet another manual is not justifiable.
- Based on our participation in the SWG subgroup and additional brainstorming, we recommend the following as a starting point for the SIDIR scope of work:
 - Create a manual of “best practices” for source control based upon local experience and other sources. This could include:
 - Summary of methods for conducting various source control activities (e.g. smoke testing, bacterial investigations, dry weather screening) including the following information for each method: description; case study(s); how to determine DQOs, including specific case applications; SOPs; example QAPPs and report templates;
 - Summary of ranges of chemical parameters found in different regions of Western Washington; and
 - Procedures for characterizing the nature of, and potential for, public or environmental threat posed by illicit discharges, including when immediate containment is appropriate.

- Develop an information repository to evaluate current source identification programs and enable Permittees to share information. This repository could be web-based or a SharePoint format to encourage interaction. Webinars could also be sponsored on topics of regional interest.
- Develop a framework to identify the pollutants of concern for local and regional source control efforts. The framework could include elements such as:
 - Identifying the key questions the region needs to answer about each pollutant or pollutant class;
 - Identifying the type of information and data that should be collected over time for each pollutant or pollutant class;
 - Recommending standard methods and formats to be used for tracking and sharing this information and data; and
 - Identifying management or treatment practices that have been used or hold promise in managing the pollutant or pollutant class.
- It is unclear that the monitoring program will result in an IDDE manual that reflects local conditions for Western Washington.

Response to the range of comments

- Thank you for these helpful comments that highlight a need to improve understanding of the purpose and scope of the Source Identification Information Repository (SIDIR).
- Ecology believes the repository will provide useful tools to local governments for reducing pollution. The repository will also provide the region with improved understanding of pollution problems to focus broad source control efforts.
- Ecology appreciates the specific comments and suggestions for focusing and improving the SIDIR and will bring these forward as RSMP work proceeds.
- A current effort to further scope SIDIR and recommend specific next steps is underway. SIDIR is envisioned to include two separate but connected types of information:
 1. Information on strategies and actions for each of the permit-required components of Illicit Discharge Detection and Elimination (IDDE) and source control. SIDIR would include case studies, methods, protocols, data quality objectives, report boilerplates, information on effectiveness of screening tools and enforcement procedures, and other information about strategies and actions for identifying and removing illicit discharges from municipal storm sewer systems.
 2. Information about the results of IDDE and source control programs. The steps to create this portion of SIDIR would specify what types of helpful information are associated with each strategy and action, reporting needs/requirements, and what analyses will be done.

A peer network or other means of sharing information is also envisioned to be supported as part of SIDIR.

- Ecology agrees that SIDIR is not a monitoring activity; it supports assessment and adaptive management of permittees' stormwater management programs. Compilation and understanding of methods used and the types of information associated with each approach is a necessary step toward regional interpretation. SIDIR's compilation of methods and assessment of permittee-gathered information will improve IDDE programs and the region's approach to source control as a whole.
- Ecology recognizes that many permittees use EPA IDDE guidance or have developed their own IDDE manuals. SIDIR is intended to build upon and improve these efforts, and to help other permittees benefit from the collective knowledge of practices to reduce pollution.

I-15.3 The proposed monitoring is too costly and burdensome

Commenters: Association of Washington Cities, City of Clyde Hill, City of Des Moines, City of Federal Way, City of Issaquah, City of Lacey, City of Newcastle, City of Oak Harbor, City of Renton, City of Sammamish, City of SeaTac, City of Seattle, City of Sedro Woolley, City of Shoreline, City of Snohomish, Art Stubbs, City of Tacoma

Summary of the range of comments

- The proposed cost of monitoring is too much for local governments to bear
 - We already pay a permit fee to Ecology for annual permit oversight. The additional monitoring costs would more than double what we pay. This increase is in addition to the extra costs we will incur to implement all of the new permit requirements and places additional pressure on already escalating utility rates.
 - We support some level of monitoring, but given the economic situation it does not seem realistic that we will be able to manage the costs assigned to us. Permit-required monitoring must be balanced with other SWMP activities and other monitoring needs.
 - This is terrible timing for another unfunded mandate to apply to local governments. Local governments are being hit with higher fees and unfunded mandates for a number of state programs, this being just one of several, where the costs have to be passed along to fee-weary residents and businesses.
 - We cannot pay for enhanced monitoring absent state financial assistance.
 - The RSMP effectiveness studies cost seems exorbitant. The cost for studies on topics that might be most relevant to our SWMP would cost much less.
 - Monitoring is already a general requirement.
 - We should be exempt from the testing at this time.
 - Our monitoring costs will increase, not decrease.
 - The money would be better spent on other SWMP activities. The required funds and staff would be far better spent actually reducing pollution through retrofits, pollution

prevention, system maintenance, facility inspections, enforcement, and public education.

- Local governments have limited ability to dedicate the necessary amount of staff time to the SWG and associated technical subgroups to assure the success of the RSMP.
- Scale back and limit the RSMP; restructure the RSMP to reduce costs
 - Reduce total RSMP costs by decreasing the funding for Effectiveness Studies since the level of effort is adjustable;
 - Reduce total RSMP costs by decreasing the funding for Source ID and Diagnostics since the program is not yet fully developed; and
 - Reduce total RSMP costs by decreasing the funding for Status and Trends monitoring and reducing scope accordingly.
 - Test the RSMP on a smaller scale to prove the proposed approach will function as conceptualized.
 - Take a phased approach to implementing the RSMP.
 - The RSMP has open-ended parameters that would allow it to expand still more in scope, again without taking into account the burden on Permittees to implement these requirements.

Response to the range of comments

- Ecology understands Permittees' concerns about costs. The overall program costs have been scaled back substantially since the earliest proposals for the RSMP. Ecology believes the SWG did a good job balancing the need for good information with the limited financial resources available to support monitoring. Ecology also recognizes that Permittees may bear additional costs depending on their level of involvement with SWG workgroups and related efforts. Ecology is committed to working with Permittees to ensure the success of these efforts.
- Ecology believes that the RSMP will provide useful resource management insight into Washington State's stormwater quality issues and that the RSMP will yield higher quality information at a lower cost than monitoring implemented separately in each jurisdiction.
- Regarding effectiveness studies: Getting meaningful information about SWMP activities that are of most concern to the Permittees should make their programs more cost-effective in the long term. The public is entitled to this adaptive management information. Although each individual study will not benefit every Permittee, the collective set of studies, if selected thoughtfully, should benefit all Permittees.
- Regarding program expansion/open-ended parameters: the RSMP will be limited to the parameters and studies included in the SWG's [*Recommendations for Municipal Stormwater Permit Monitoring*](#) and further stakeholder group recommendations. The RSMP will be conducted within the proposed budget.

- Regarding comments that RSMP funds should be spent on other SWMP and retrofit activities instead: Ecology understands that resources are limited and that the need for pollution prevention and reduction activities is great. The RSMP is designed to help Permittees to adaptively manage their SWMPs and target investments based upon what works (effectiveness) and where the need is greatest (status and trends).
- See also the response to comments “The proposed monitoring is insufficiently funded.”

I-15.4 Delay, pilot, or phase-in the proposed monitoring requirements

Commenters: City of Bremerton, Clark County, City of Federal Way, City of Issaquah, City of Renton, City of Sammamish, City of Shoreline, City of Snohomish, Thurston County

Summary of the range of comments

- The monitoring requirement should be instituted on an experimental basis and incrementally, with early checks on its effectiveness. Include a process for easy revision and also a means for it to be removed at the end of this permit term if needed.
- Postpone the monitoring until the next permit term or scale back the currently proposed scope to lower the cost to participate in the program, make sure it is manageable, and give Ecology adequate time to analyze the costs for individual “opt-out” monitoring requirements.
- Phase the monitoring in gradually, starting with status and trends monitoring during the 2013-2018 permit cycle. Verify that the monitoring is beneficial and cost effective.
- Scale back the scope and funding of the RSMP by deleting the status and trends monitoring requirement and beginning the pay-in option in Year 4 of the permit. A longer roll-out of RSMP will provide time to integrate existing local monitoring programs and establish the operational procedures and responsibilities necessary to successfully operate a multi-million dollar regional monitoring program.
- The status and trends monitoring should only be implemented during this permit cycle as a test to demonstrate that the RSMP can be established and function as intended.
- Additional monitoring can be added in subsequent permit updates, if and only if the RSMP is demonstrated to be successful during this permit cycle and the costs remain reasonable.

Response to the range of comments

- Implementation of the RSMP has been delayed. As directed by the Washington State Legislature Ecology has delayed the permit issuance, and therefore the RSMP implementation schedule therein, by one year.

- Ecology is committed to making the RSMP successful. This includes a slow start, ramping up during the first two years of permittee contributions and fully implementing the monitoring during the last two years as recommended by the SWG. Ecology is committing resources now to do preparatory work that we believe is necessary to ensure program success.
- Each component of the RSMP is essential to a comprehensive stormwater monitoring program that helps us understand stormwater impacts and the effectiveness of the management approaches prescribed in the permit. The RSMP plans include analysis and adaptively managing the monitoring program itself as we learn from the findings.

I-15.5 The monitoring goes beyond federal requirements, PCHB rulings, and Permittee responsibilities

Commenters: Clark County, City of Federal Way, City of Fife, City of Issaquah, City of Kent, City of Lacey, City of Newcastle, City of Oak Harbor, Port of Tacoma, City of Renton, City of Sedro Woolley, Thurston County, Washington Department of Transportation

Summary of the range of comments

- The proposed RSMP far exceeds, both in scope and cost, what is contemplated by the EPA for the next NPDES Phase II Permit. The EPA contemplated “limited” monitoring by a limited number of Phase II jurisdictions for the upcoming permit. The SWG recommendation is not commensurate with the EPA’s intent and should therefore be significantly scaled back or eliminated.
- The proposed status and trends monitoring will not distinguish the contribution from municipal MS4’s to receiving water pollution. With limited resources, extra monitoring requirements (i.e., not required by EPA) should be limited to only those studies which will provide data that will directly improve permittees’ stormwater management.
- While the Pollution Control Hearings Board (PCHB) has weighed in on requiring a monitoring element in the next permit round, it has not reviewed, approved or endorsed the 2010 monitoring recommendations from the SWG.
- No cost benefit analysis has been performed to justify the proposed program and it is highly unlikely that such an analysis would support such a program.
- Contrary to Ecology’s stated goals for the permit monitoring program, the RSMP Status and Trends approach fails to provide adaptive management information for stormwater utilities. If any meaningful data is derived from this program, it will not be available for “adaptive management use” for at least two permit cycles, which translates to \$6 million spent and 10-years time. This is not acceptable.
- Extensive stormwater monitoring and characterization has already been conducted throughout Western Washington and continues to be performed by various State and Federal

Agencies. Nothing compelling has come from the existing data that might be used to justify implementing an even more extensive monitoring program, especially in light of the current and projected budget cuts that many jurisdictions face.

- Neither the development of a QAPP library nor the creation of an IDDE data base should be included in the NPDES Permit as these requirements fall outside of the original intent of the Permit. Inclusion of such tasks calls into question the purpose of the permit. Is the permit now being used as a program funding mechanism in addition to a practical tool/set of guidelines to help minimize stormwater impacts?
- The RSMP shifts the burden of conducting monitoring from permittees to Ecology but does not shift the financial burden. The permit forces the permittees to contribute funds to Ecology to conduct an Ecology-mandated requirement.
- The Permit proposes a taxing mechanism to fund a program that is not consistent with what the EPA contemplated for the next NPDES Phase II Permit. We do not believe that the EPA intended the Permit to be used in this manner.
- The legality of this funding framework should be thoroughly evaluated prior to implementing it.
 - A good portion of monitoring funding will be spent on locations outside of municipalities that are paying into the RSMP. Rate payers will be funding a service that is not occurring in the rate paying area. This is a tough sell to council and taxpayers.
 - Stormwater fees are collected within jurisdictions to address the impacts that the users have on the local MS4. It is tenuous at best to make an argument that using these fees to support regional programs, which may or may not benefit the funding jurisdictions, is a prudent/legitimate use of rate payer's funds.
- The RSMP goes way beyond determining whether permit holders are in compliance with their permits.
- Under S3 Responsibilities of Permittees, each permittee is responsible for compliance with the terms of this permit for the regulated small MS4s that they own or operate. Where does it say a permittee is responsible for surface waters not within their jurisdiction, and not connected to the MS4s for which they are responsible?
- Status and trends monitoring, while the data are important, is above and beyond our mandated MS4 requirements. Status and Trends monitoring in receiving waters is the responsibility of Ecology and other state and federal agencies within their mandates. Permittees should not be required to fund this monitoring. Permit-required monitoring should be limited to strategic MS4 investigations only.

Response to the range of comments

- Ecology believes that monitoring is a shared responsibility of local, state, and federal government. In other sections of this response to comments, we have outlined the benefits the RSMP will provide to the permittees and the public.
- The SWG recommendations, and Ecology's decision to incorporate them into these permits, do not conflict with previous EPA statements regarding monitoring in municipal stormwater permits. EPA has stated that they support the SWG recommendations and Ecology's proposal.
- The SWG has carefully assessed data needs to evaluate stormwater impacts for the Puget Sound region. The SWG recommendations characterize water quality and ecosystem health in the Puget Sound watershed over time and assess both the progress of the multiple watershed management programs and the effectiveness of pollution prevention and control practices. The choice of status and trends and effectiveness studies monitoring is well within the expectations EPA hoped permitting authorities would exercise for required monitoring for Phase II communities.
- The proposed monitoring requirements are based on sound science and regional experience learned from previous permit cycles, and the transition to a different monitoring approach is precisely what EPA envisioned when it chose the flexible language of the rule.
- Ecology believes EPA guidance supports our approach to monitoring and notes that the commenters referenced the Phase II preamble, not the rule. The Phase II preamble (from 64 FR 68769) highlights EPA's stance regarding appropriate monitoring for Phase II regulated MS4s: "EPA encourages permitting authorities to carefully examine existing ambient water quality and assess data needs. Permitting authorities should consider a combination of physical, chemical, and biological monitoring or the use of other environmental indicators such as exceedance frequencies of water quality standards, impacted dry weather flows, and increased flooding frequency." ... "EPA encourages participation in group monitoring programs that can take advantage of existing monitoring programs undertaken by a variety of governmental and nongovernmental entities... Some regulated small MS4s might be required to contribute to such monitoring efforts. EPA expects, however, that their participation in monitoring activities will be relatively limited..." and "In the second and subsequent permit terms, EPA expects that some limited ambient monitoring might be appropriately required for perhaps half of the regulated small MS4s...EPA has intentionally written today's rule to provide flexibility to both MS4s and permitting authorities regarding appropriate evaluation and assessment...EPA expects that the necessity for monitoring and its extent may change from permit cycle to permit cycle..." The approach taken by Phase II permittees to mitigate the discharge of stormwater will change over time as new information is made available.
- The RSMP is consistent with both basic reasons for which EPA encourages dischargers and permitting authorities to select useful and cost-effective monitoring approaches. "For most dischargers, stormwater monitoring can be collected for two basic reasons: 1) to identify if

problems are present, either in the receiving water or in the discharge, and to characterize the cause(s) of such problems; and 2) to assess the effectiveness of stormwater controls in reducing contaminants and making improvements in water quality."

- The permit does not hold permittees responsible for MS4s or water quality conditions in receiving waters outside of their jurisdictions. Rather, it provides them with an efficient means to gather meaningful information to improve their SWMPs.
- The PCHB ruling endorsed the stakeholder process without presuming a specific outcome. Ecology did not propose the RSMP content or its funding mechanism; the stakeholder group proposed them, by consensus. After careful consideration, Ecology decided to accept the SWG's proposal.
- The final permit does not include receiving water monitoring for southwestern Washington. Ecology will work outside of the permit structure during this permit term to assess what is known about stormwater impacts to receiving waters in southwestern Washington and work with Permittees and others to design a monitoring program for future permits.

I-15.6 Clarify full compliance with permit requirements and limited fiscal liability of permittees

Commenters: City of Bellevue, City of Issaquah, City of Seattle, Snohomish County, Washington Department of Transportation

Summary of the range of comments

- The draft Phase II Permit language needs to state that payment of the fees for the RSMP constitutes compliance with Condition S8 to provide regulatory certainty. We recommend revising proposed Condition S8.B to include the following statement: "Permittees participating in the RSMP that make payments in accordance with the schedules set forth by Permit conditions S8.C 1, S8.C.1.a, S8.D 1, and S8.E 1 constitutes compliance with Condition S8."
- It is not appropriate for the Permit to require a Permittee to enter into a contract. All Permit requirements should be contained within the body of the Permit itself. Attempting to mix Permit requirements with contractual obligations will create ambiguity. For instance, if Ecology were to default on a contract obligation, would we no longer be in compliance with the Permit? Would we be required to agree to any amendments proposed by Ecology, or else be in violation of the Permit?
- The term "Regional Stormwater Monitoring Program (RSMP)" is not defined by the Permit. It is unclear what is meant by the phrase "to implement the Puget Sound marine nearshore and small streams status and trends components of a RSMP."

- Provide clarification on the legal authority that protects permittees from third party lawsuits if they choose the pay-in options, thereby having no monitoring occurring within the jurisdiction.
- We believe that revisions are required to clarify that (1) Permittee S8 obligations for regional monitoring will be limited to the payment amounts stated in S8, without the possible obligation to pay any funding exceedances, and (2) it is Ecology’s responsibility to stay within RSMP fiscal resources and allocate funding to support not only data collection but other program costs as well.
- We cannot be held responsible for performing additional, unspecified “tasks and deliverables” in addition to paying into the RSMP.

Response to the range of comments

- Ecology understands Permittees’ concerns about compliance with permit requirements. The final permit does not require a permittee to enter into a cost-sharing agreement. The final permit states clearly that the requirement of these sections of the permit is timely payment of the Permittee’s indicated cost share amount to Ecology. Permittees who meet their cost-share obligations in a timely fashion will not be vulnerable to third party lawsuits.
- Neither Ecology nor permittees will be held responsible for cost overruns. Ecology expects that if cost overruns become a problem, the RSMP scope will be reduced (with Ecology’s decisions made under advisement of the SWG) and the permit will not be modified to change permit-defined payment amounts during the permit term. Failure of the selected contractor to fully implement the RSMP program will not constitute a permit violation.
- Ecology believes that the RSMP is more appropriate than individual monitoring requirements and adequately supported by EPA guidance and PCHB rulings.
- A definition of RSMP has been added to the final permit.
- See also the response to “Comments on the cost sharing agreement appendix.”

I-15.7 The proposed monitoring is insufficiently funded and staffed

Commenters: Norman Baker, Earth Justice, Kathy Humphrey, City of Kent, League of Women Voters of Seattle/King Co, League of Women Voters of WA, Lider Engineering, People For Puget Sound, People for Puget Sound Email Campaign, People for Puget Sound Group Letter, The Precautionary Group, City of Seattle, Sierra Club Email Campaign, Stewardship Partners, Sustainable Development Task Force of Snohomish County, Sustainable Seattle, City of Tacoma

Summary of the range of comments

- Comments about volunteer-based oversight and decision-making:

- The success of the regional monitoring program relies heavily on the work of the SWG and other groups. It is important that Ecology; the SWG; the oversight committee to monitor cost expenditures; and the technical subgroups for status and trends in streams and in marine nearshore areas, effectiveness studies, and source identification each have well-defined roles and responsibilities for the successful implementation of the RSMP.
- These many groups will require a significant amount of participation from permitted jurisdictions, and therefore the jurisdictions participating in the oversight committee should be compensated. This could occur by via in-kind credit towards the monitoring buy-in costs, or some other compensatory measures
- SWG subgroups will need sufficient support to assist them in their work, including staff or consultant resources to organize and plan meetings, provide draft materials or analyses for committee review and to follow up on the actions or assignments of the committees. Ecology should provide or contract with a technical expert to coordinate each SWG technical subgroup to make the best use of volunteer SWG subgroup members' time and ensure that members will be able to manage committee and their own organizational responsibilities over the long term. It is very important that these groups have the sufficient resources while studies are being planned and the RSMP prepared for the implementation phase.
- Include technical support as a programmatic expense set aside in the allocation of available funding. Accommodate this need by reducing the level of effort associated with the RSMP or from non-permittee sources, not by increasing total RSMP costs.
- Comments about the total funding amount:
 - The RSMP is not fully funded by the cost allocations included in the draft Permit.
 - The total funding is inadequate to pay for the type of monitoring necessary to evaluate success of stormwater programs.
 - The amount of funding for status and trends monitoring in the draft Permit has been scaled back to frequency levels that are not adequate and will serve to lengthen the time to obtain statistically useful data or to ensure that seasonal or other variables are reduced so that credible data is assured.
 - Rather than funding an adequate stream gauge network, the proposed plan will only cover the development of a stream gauge plan rather than the needed installation of stream gauges
 - Mussel Watch sampling is scaled back from what was proposed by the scientists;
 - One year rather than five years of status and trends sampling of wadeable streams is included;
 - Only one round instead of every other yearly sampling of stream benthos and habitat assessment is proposed;
 - The number of sites included in the total amount of funding for sampling sediments does not match the recommended statistical threshold.

- We urge Ecology to fully fund the Stormwater Work Group and the comprehensive stormwater monitoring plan that effort produced. The budget laid out in the draft permit is not sufficient to make this monitoring effort successful and useful. It would be a waste of money to collect more data that "sits on the shelf" because it is compatible with others and not usable.

Response to the range of comments

- Ecology agrees that the committees that have been formed to support the RSMP will likely need additional technical staff support to successfully launch the RSMP during this permit cycle. Some technical assistance has been provided via state and federal funding sources and some has been built into the RSMP budget.
- Ecology accepted this voluntary participation model based on permittee recommendations following a process requested by local governments. It is in the interest of permittees with knowledgeable staff to continue to support the SWG committees to ensure the RSMP funds are used effectively and public support is maintained.
- Ecology does not agree that permittees' in-kind contributions should be reimbursed out of the RSMP pooled resources either directly or by reducing permittees' payments.
- The SWG recently adopted a Pooled Resources Oversight Charter that greatly reduces the additional layer of management originally proposed. We anticipate that this committee will only need to meet quarterly to review reports from Ecology on the status of RSMP implementation focused on funding and other contractual arrangements made and expected, deliverables received, the schedule, and the budget. Ecology is committed to transparency in conducting the RSMP and at the same time hopes to keep overhead and other transaction costs to a minimum.
- Ecology intends to fully fund the RSMP at a level that allows for successful start up and implementation. Technical assistance during the ramp-up period was incorporated into the budget estimates. Ecology and other agencies have been supplementing the voluntary efforts of the SWG subgroups with funds for technical expertise and assistance throughout this effort.
- Analyses of the data and reporting out findings during this permit term are included in the budget estimates.
- Responses to specific comments about scaling back the program:
 - EPA and Ecology are funding the stream gauging analyses necessary to define a network for the Puget Sound lowlands stormwater investigations. The SWG recommended these analyses be done by the permittees; they did not recommend the network be established this permit cycle.
 - The Mussel Watch and stream status and trends monitoring were scaled back from what the SWG recommended (annual sampling) *to* what the scientists recommended (sampling every other year).

- Sampling that was recommended be conducted every other year is anticipated to be collected every other year: in the fourth year of this permit term and in the first year of the following permit term.
- We appreciate the recommendations for clarifying roles and responsibilities and for structures to ensure sustained success of the SWG and will consider them as we implement the RSMP.

I-15.8 Increase/decrease the pool of funds for effectiveness studies

Commenters: Earth Justice, Puget Sound Partnership, City of Seattle, Stormwater Work Group, Washington Department of Transportation

Summary of the range of comments

- Options to reduce NPDES permit-required monitoring costs include reducing total RSMP costs by decreasing the funding for Effectiveness Studies since the level of effort is adjustable.
- Substantial disagreement remains among the members of the SWG regarding the appropriate size of the permittees' investment to make in effectiveness studies. The local jurisdiction caucus supports an investment no larger than that proposed in the draft. Other caucuses support larger investments, ranging up to several times higher than the proposed investment. We appreciate Ecology's difficulty in determining the effectiveness study investment level given this lack of SWG consensus.
- We continue to question whether the proposed level of effort in the permit is sufficient for the region to adequately assess practices and programs and adaptively manage. The proposed amount would only pay for about two studies each year. Given the growing understanding of the stormwater problem, the Puget Sound 2020 ecosystem recovery targets, the increased resources being focused on Puget Sound recovery, and the need to allocate these resources wisely, is it sufficient to conduct two studies per year to assess and evaluate our practices and programs? We recommend Ecology carefully consider all these factors as they make decisions on a final permit.
- The cost estimates for effectiveness studies seem low based upon our experiences in developing and implementing a stormwater monitoring program. How were these estimates derived? Do they factor start-up tasks such as QAPP, SOP, and database development? If a study requires site construction and installation of equipment, have these costs been factored in? Beyond project management and administration, have ongoing costs for labor, equipment/infrastructure repair and replacement, laboratory analytical services, vehicles and travel been considered? Details like this are difficult to evaluate since the specifics of the proposed studies and contractors have yet to be decided.

Response to the range of comments

- Ecology acknowledges and appreciates the difficulty the stakeholders faced in determining an appropriately sized pool of resources for conducting effectiveness studies during this permit term.
- Ecology believes that the level of investment by permittees during this permit term will provide a sound opportunity to launch the RSMP, put contracting procedures into place, and produce meaningful data of high importance to permittees and others.
- Ecology expects that considerably more than two studies per year will be conducted with RSMP funds. However, if the top priority studies are expensive, fewer will be conducted with the pooled funds. The recommended studies are of widely varying types, designs, and costs.
- All applicable study and data management costs need to be included.

I-15.9 Control costs, use other funding sources, and commit funds to selected RSMP components

Commenters: City of Bellevue, City of Edmonds, City of Federal Way, City of Issaquah, King County, City of Lacey, City of Newcastle, Port of Seattle, Port of Tacoma, City of Renton, City of Seattle, City of Shoreline, Snohomish County, City of Sumner, City of Tacoma

Summary of the range of comments

- Pursue additional creative ways to fund the RSMP, including grants.
 - Include other (industrial, construction, sand and gravel, publically-owned treatment works, boatyard, etc.) NPDES permittees in the RSMP to provide a broader, more equitable funding mechanism that includes stormwater dischargers in addition to MS4s.
 - Include funding elements such as those being implemented in California. The Industrial Stormwater General Permit permittees could monitor onsite for four of the five years in the permit cycle, and contribute the equivalent of the fifth years' worth of monitoring costs to the RSMP.
 - Other sources of funding should be identified to provide a more equitable funding approach for the status and trends monitoring, which is too comprehensive to warrant funding the entire program from stormwater permit fees.
 - Effectiveness studies should be funded through an alternative mechanism. Use local toxics funds to selectively fund the most promising studies, rather than distributing these funds by way of capacity grants to jurisdictions.
 - Please consider simply adding the cost of the monitoring program to the permit fee.

- Deduct the monitoring costs from future grants, rather than asking Permittees to raise fees to pay for monitoring. This will save administrative costs at both ends.
- Keep overhead costs low
 - Locally-controlled programs can more efficiently conduct monitoring by avoiding the huge overhead of a state program with associated consultant costs.
 - Thank you for keeping overhead costs low. We appreciate the very low 5% overhead.
- Do not increase permittees' payments during this permit term; adjust RSMP accordingly
 - If Ecology requires Permittees to decide, at the beginning of the Permit term, whether or not to participate in the RSMP for the entire 5 years of the Permit's duration, Ecology must not later modify this section of the Permit to alter the payment schedule or increase the amount of payments required under each Option 1.
 - Permittees must be able to rely on permit-based payment amounts for defining their financial obligation and exposure.
 - Identify a well-defined process and responsibilities for how to avoid potential exceedances of available funding and manage exceedances if they occur. Permittees' obligations are limited to payment of the amounts required in the permit, and Ecology's process should include clear responsibilities to ensure that its contracts with vendors are written and managed to avoid exceedances.
 - Allow Ecology the flexibility to adjust the RSMP as needed to operate within available funds. It would be unworkable for a committee to have this responsibility.
 - Allow jurisdictions to terminate participation if the proposed approach does not function as intended and costs escalate.
 - The initial cost allocations for each permittee were developed based on 100% permittee participation and a 10% overrun contingency. What are the reduced project deliverables or increased cost-share allocations if the percentage of participants is less than 100%?
 - The *2012 Status and Trends Stormwater Monitoring and Assessment Strategy for Small Streams, An Addendum to the Quality Assurance Monitoring Plan* (October 2011) lists key parameters that should be collected as "additional" if funding becomes available. This leads to the conclusion that the RSMP cost will need to be significantly increased.
- The allowance to interchangeable shift funds between the three RSMP categories is worrisome, since some jurisdictions may participate in only one or two elements of the RSMP. Clarify that funds may not be moved between tasks to ensure that each jurisdiction's payments are applied to those elements that it has chosen to fund.
- Do not increase RSMP costs in future permits

- Even before the RSMP has begun the budget remains the same but the work plan has already begun to scale back due to costs and setup timing. The only recourse is for Ecology to request additional funding in the future.
- This program will end up being much more costly than advertised. Proposed costs are modest to get buy-in. However, costs will likely increase substantially in the next permit because the program is only ramping up and many monitoring “gaps” were left out to make the program economically attractive to permittees.

Response to the range of comments

- Ecology appreciates the helpful comments on this section.
- Ecology will not pass cost over-runs on to permittees. A 10% contingency is already included in the cost allocation. If the RSMP cannot be completed within the estimated budget, the program scope will be reduced accordingly. Should this be necessary, Ecology will consult with the stakeholder group in deciding how and which RSMP activities to scale back.
- Ecology does not agree that RSMP participation should be included in the permit fee.
- Ecology does not agree that future state grants can be presumed to cover any or all permittees’ monitoring costs. State funding allocations will be determined each budget cycle, under legislative direction.
- Ecology agrees that costs should not be shifted among RSMP tasks. Although the cost-sharing agreement is no longer part of the permit, it is Ecology’s intent that funding contributions from a permittee who opts out one or more RSMP activities will not be diverted to RSMP elements the permittee chose not to participate in.
- Sampling in addition to the RSMP-funded components may (and is in fact expected to) occur but those costs will not be passed on to Permittees.
- It is neither Ecology’s nor the stakeholder group’s intention that RSMP scope or costs will increase substantially in future permits. The RSMP scope and costs may be adjusted based on consideration of experiences launching and implementing the program, results and findings of the monitoring and studies, and future recommendations for regional stream gauging.

I-15.10 RSMP costs are/are not allocated fairly

Commenters: Kitsap County, City of Oak Harbor, Port of Seattle, Port of Tacoma, City of Seattle, Snohomish County, City of Tacoma, US Fish and Wildlife Service

Summary of the range of comments

- We support the current cost allocation estimates based on permittee populations.

- We believe that Ecology, permittees, and stakeholders have outlined an appropriately focused and scaled strategy for obtaining reliable program effectiveness data, and a reasonably equitable and fair approach to allocating costs among the permittees including the Ports of Seattle and Tacoma.
- We recognize the difficulty of estimating population levels for Port properties, but believe that the current method of calculation based upon neighboring population densities is consistent with the objectives of the proposed monitoring program.
- Although we understand the regional concept for the monitoring requirements in the Permit, we strongly believe that the cost allocations are not fairly distributed.
- Phase I costs should/should not be allocated differently:
 - Phase I monitoring costs should not be drastically reduced.
 - Phase I monitoring costs should be weighted differently than Phase IIs (not just in that first year), as Phase I permittees have had a number of permit cycles to ramp up and secure funding. Phase IIs have not had sufficient time to react to the considerable funding demands that the new requirements would impose. Phase IIs are implementing monitoring for the first time and do not currently have these activities budgeted.
 - We support an equitable cost allocation methodology and disagree with a “flat rate” contribution for all Phase I Permittees.
 - We are unclear how the ports’ populations were calculated by Ecology and feel the federal population methodology is the preferred approach.
- The cost allocation methodology is inequitable.
 - Include a base amount for each monitoring component. All Permittees should be required to contribute a minimum amount that reflects a level of effort that would be needed to conduct monitoring independently to meet permit monitoring requirements.
 - A population-only cost allocation is inappropriate. Factors besides population (e.g., land area, land use) are significant contributors to stormwater impacts and management needs. Population-only cost allocation is inconsistent with precedent established by previous Ecology cost allocations related to NPDES funding, including:
 - the distribution of FY 2011 Capacity Grant funding included a fixed base allocation to Phase I and Phase II Permittees prior to distribution by population;
 - the distribution of several rounds of Local Government Stormwater Grants Program was based on an equal amount for all Phase I jurisdictions and equal amount for all Phase II jurisdictions; and
 - NPDES permit fees are an equal amount for all Phase I Permittees.
 - Other factors that Ecology may consider for an equitable cost allocation methodology are land area, land use, and median household income.

- Permittees' costs need to be more proportional to their pollutant loads, outfall flow, number of outfalls, or a combination of these items.
- Some small municipalities may only drain to one area, not have wadeable streams and the costs are disproportionate to these municipalities, particularly when the monitoring is primarily in other locations.
- The payment amounts for the SIDIR should be determined based on the number of illicit discharges typically found during a permit cycle in each of the different jurisdictions. Cities tend to have more illicit discharges than counties. The proposed cost allocation may lead more rural Permittees to choose not to participate.
- Oak Harbor's population levels should be reduced to exclude Navy property in the amount of 5,000 people.
- There should be some way to account for annexations and incorporations in the fee.
- There needs to be a method of "crediting" jurisdictions for on-going monitoring that meets the goals of the monitoring program.
- Other types of permittees should contribute.

Response to the range of comments

- Ecology has taken advantage of and will continue to pursue other funding opportunities both to reduce the financial burden on Permittees and to expand the value of the RSMP.
- The cost allocation approach proposed by Ecology is one of many possible ways of dividing the combined monitoring costs between multiple MS4s that vary considerably in both size and population. Although there is no consensus as to how to most fairly allocate RSMP costs among permittees, Ecology believes we selected the most fair and unbiased option available.
- Ecology does not have access to the other suggested types of information in either a consistent format or level of reliability across all permittees.
- Port populations were estimated by multiplying their land areas by the adjacent population densities as suggested by the Ports of Seattle and Tacoma in their comments on the informal preliminary draft permit. The approximate average of the two was used in final cost allocations.
- Ecology encourages Permittees to consider as a factor and, where possible, address adjustments to monitoring program cost share allocations in negotiating their annexation agreements.
- Permittees selected to conduct RSMP activities will be reimbursed for those programs. Other local programs were not considered in total cost estimates and it is not appropriate for other Permittees' funds to be used to conduct those programs.
- Ecology will consider how it is most appropriate to include other types of Permittees in the RSMP when it is time to reissue those permits.

- See also responses to “Control costs, use other funding sources, and commit funds to selected RSMP components”

I-15.11 Opt-out provisions could compromise the success of the RSMP

Commenters: City of Kent, Kitsap County, City of Marysville, City of Newcastle, Port of Seattle, Port of Tacoma, City of Seattle, City of Shoreline, US Fish and Wildlife Service

Summary of the range of comments

- We do not think jurisdictions should be able to “opt-out.”
- We share Ecology's concern that if too many permittees elect not to participate in one or more RSMP components, it may become inefficient and/or burdensome to implement, and could compromise the regional stormwater monitoring effort. We encourage the widest possible support for, and participation in, the RSMP among permittees.
- The success of this program is dependent on the number of jurisdictions who participate and is subject to failure if the desired revenue is not collected.
- If significant contributors to the proposed monitoring budget opt out of RSMP, will a reassessment of fees for the remaining jurisdictions be necessary? Will fees increase annually or remain static for the permit term? And how would this be conducted with regard to permittee review and input?
- The non-RSMP options for Status and Trends and Source Identification and Diagnostic Monitoring are not meaningful options to the region or to local jurisdictions.

Response to the range of comments

- Ecology shares commenters’ concerns that if a large number of permittees opt-out of the RSMP its success could be compromised. However, we believe the majority of permittees will choose to participate.
- No matter how many permittees opt out of the RSMP, Ecology will not increase the cost share amount for permittees participating in the RSMP during this permit term. Reductions in the RSMP scope would be determined in consultation with the SWG.
- The opt-out provisions for status and trends monitoring reflect the WRIA-dense original SWG proposal for Small Streams Status and Trends, which was intended to provide a greater quantity of local information and be suitable for both local and regional analyses. Ecology believes the data will provide useful insight for resource management. However, Permittees who believe for any reason that the sites assigned within their jurisdictions will not provide information that will be useful are encouraged to participate in the RSMP. Depending upon which jurisdictions choose to conduct independent status and trends monitoring, the resulting data could make the regional findings more statistically robust.
- There is no opt-out provision for SIDIR in the final permit.

I-15.12 Make “opt-out” requirements more equitable, more flexible, and clear

Commenters: City of Arlington, Association of Washington Cities, City of Battle Ground, City of Bothell, Clark County, City of Clyde Hill, City of Federal Way, City of Fife, City of Issaquah, City of Kenmore, City of Lacey, City of Olympia, Pierce County, City of Renton, City of Seattle, City of Shoreline, City of Sumner, City of Tacoma, Thurston County

Summary of the range of comments

- General comments:
 - Modify the opt-out alternatives so that they are a feasible, but not preferable, choice for permittees.
 - The “opt out” provision is not a true local option because it is over two times more expensive than buying in.
 - The cost of opt-out requirements should be equivalent to RSMP contribution levels. Jurisdictions should perform the same amount of monitoring that they would otherwise pay for under the RSMP. No more, no less.
 - It is unclear as to why the monitoring pay-in and opt-out options should differ.
 - Option 2, is structured to be fiscally and operationally punitive if selected by jurisdictions. It seems that Ecology does not intend to truly offer jurisdictions a choice of opting out. There are indications that many jurisdictions will go along with the RSMP not because they expect their programs to benefit or that it makes sense, but rather because it is the least cost option and the permit requirement can be made to go away by cutting a check. It is extremely disconcerting that this approach was even allowed to get into the draft permit.
 - If a requirement for monitoring is retained, Opt Out must be scope and cost-equivalent to the regional program with complete local flexibility on monitoring program design and implementation. This returns the monitoring concept to that proposed in the 1st Permit term, to a level that is affordable. The cost discrepancies between the Pay In and Opt Out choices are unacceptable. Revise the Opt Out options to be equivalent to the Pay In option.
 - Ecology has not yet done a cost impact analysis of Option 2 and must do so before imposing its program on municipalities.
- Comments specific to status and trends monitoring:
 - The opt-out option that has been provided is not likely to be workable for many jurisdictions that have made investments in their own monitoring programs.
 - The opt-out choice would provide us with fewer data points that still remain of little value for the issues we know should be the focus.
 - There should be more flexibility in opting out to allow for continuing long-term local monitoring programs such as local status and trend monitoring relating to

stormwater impacts. As it is, the SWMP monitoring locations are different from the sites that have been monitored for years. We prefer funding monitoring that shows measurable outcomes at the local level, and are concerned that we will not get the same local information, and benefit, from the SWMP as we do from the local program.

- Because it appears a duplication of effort, our city is not likely to pay into both the SWMP and the long-term local monitoring program, so paying into the SWMP will be at the expense of this valuable long-term program.
- Unfortunately, the "opt-out" option provided in the draft permit is far too difficult and costly for the City to comply with individually, and we are saddened that we will lose our existing program specific data for a generalized, regional program.
- None of the RSMP sites are within our jurisdiction.
- It is unclear if the local jurisdiction will be held to the same schedule as the RSMP, if not; there would be a serious inequity. Please clarify.
- Reduce the number of sites required and or the number of parameters required.
- Neighboring Permittees sharing the same water body of interest that choose option 2 should be able to coordinate (i.e. if three Permittees share a common water body of interest they should be able to coordinate on one site instead of three different sites).
- Cost for the pay-in status and trends option does not appear equitable when compared to what the City receives from its own ambient WQ monitoring program. We suggest payment of a one-time fee equal to one year's cost under the proposed cost table.
- Opt-out Option 2 should allow flexibility for individual jurisdictions to develop status and trend monitoring. The monitoring should take into account the characteristics of the individual jurisdiction.
- Comments specific to effectiveness studies:
 - We continue to believe that although a regional approach is beneficial for some elements of permit-required monitoring, in some instances, program effectiveness can best be accomplished at the local level, and it is a regional benefit to provide this flexibility.
 - We support the inclusion of independent study options for effectiveness monitoring.
 - It is not appropriate to include the expectation stated in the draft permit fact sheet that "Permittees selecting this option are expected to invest an equivalent amount of funding into conducting the independent study." The measure of a meaningful study is best determined by its value; evaluated through the study objectives and design rather than the study budget. Please clarify that studies are not expected to meet a specific cost threshold to meet permit obligations.

- Allow Phase II jurisdictions to do their own effectiveness studies Effectiveness monitoring - All jurisdictions should be given the opportunity to perform or contribute through in-kind services to effectiveness studies in order to meet their permit requirements.
- The fact sheet includes some discussion of the level of effort expected in terms of cost. Perhaps there should be some statement of the level of effort in the permit itself. Permittees opting to conduct their own studies should not be expected to incur costs greater than Option 1. They should not be expected to pay as much as 50% of pay-in option 1. This is a strong disincentive to independent studies and inappropriate considering that the independent study option is allowed. Also, the option 3 project would not be part of the RSMP, so a permittee should not be required to pay into the program.
- The requirements for opting out should be relaxed to make it easier for others to conduct portions of this monitoring.
- It appears that the two options for effectiveness monitoring have the possibility of being vastly inequitable. Option 2 should have a clause stating that Permittees do not have to spend more than what would be required of option 1. This could be achieved by reducing the number of sites required and/or reducing the number of parameters required Neighboring Permittees doing the same effectiveness study that choose option 2 should be able to coordinate (If three Permittees do a common effectiveness study then they should be able to coordinate on one site instead of three different sites).
- How is a Permittee to know whether or not a particular effectiveness study is “expected to be undertaken as part of the RSMP”? Without such knowledge, a Permittee cannot make an informed choice regarding whether to pursue Effectiveness Studies Option#3. Please clarify. Include as an appendix a list of the effectiveness studies that are expected to be undertaken as part of the RSMP.
- If “at least four to six studies and perhaps as many as 15-20 studies will be conducted” as part of the Ecology run effectiveness monitoring, and we assume the maximum of 20 studies this works out to be 1 study for every 224,374 people in the permitted areas of Western Washington. This is clearly not comparable to the requirement for Permittees to provide monitoring at one site for populations under 10,000; two sites for populations between 10,000 and 50,000; three sites for populations between 50,000 and 100,000 and at four sites for populations over 100,000.
- The PCHB intended a monitoring consortium to reduce the economic burden on jurisdictions, but the Effectiveness Studies Option 2 does the opposite. Renton estimates that to conduct monitoring per the requirements of Option 2 would cost between \$246,000 – 366,000 over a four year period. Since the Option 1 pay-in

cost for Renton would be \$140,328 (four year total), Option 2 does not allow for an economically feasible alternative to Option 1.

- Equivalent studies to those required have been done across the country and the general information is known. Local studies conducted by Phase I permittees from 2007 to 2011 was found to be expensive and problematic. It is unfair to ask Phase II permittees to conduct the same kind of studies.
- Effectiveness Studies Option 2 Permittees are encouraged to conduct stormwater discharge monitoring at locations monitored under S8.D of the 2007- 2012 permit. However, they are required to expand monitoring to five sites. This significantly increases the cost for personnel, QAPP revision, and equipment. What is the rationale or supporting scientific research for requiring two new sites in addition to the existing three? What additional information is Ecology expecting to gain from additional outfall monitoring sites?
- The RSMP effectiveness studies may or may not be relevant to us depending on scale, demographics, and geographic criteria. The Opt Out choice (Option 2) prescriptively dictates what will be required to fulfill this choice. Rather than having the choice of conducting an effectiveness study that is relevant to the jurisdiction, the prescription is based on a Stormwater Discharge Monitoring program (Appendix 9), which is outfall monitoring at two locations. This discrepancy in requirements is unacceptable. It is recommended that the jurisdiction choosing to Opt Out conduct its own effectiveness study of their choice and relevance.
- Comments specific to source identification and diagnostic monitoring:
 - Do not change the opt-out requirements
 - The information in the quarterly reports will provide no new data suitable for the repository. This would be the type of information used as the basis for requiring source control and treatment BMPs already employed by permittees. The quarterly reporting schedule has no basis in an actual need at Ecology (who is going to read them and compile the data each quarter?) and appears to be designed as an onerous requirement intended to spur permittees on to the pay-in option.
 - The objectives and purpose of collecting SIDIR opt-out information are not clear from the draft permit or associated fact sheet. However, in working toward a common reporting format, we can provide an example format for Ecology consideration for “a format provided by Ecology.” We can provide an example of GIS-based IDDE reporting fields as well as an example of the export of the fields into an Excel workbook that could be used by jurisdictions that may not want to use GIS for source tracking data.
 - It appears that the two options for source identification and diagnostic monitoring have the possibility of being vastly inequitable. Option 2 should have a clause

stating that Permittees do not have to spend more than what would be required of Option 1. This could be achieved by reducing the number of sampling events required and/or reducing the number of parameters required.

Response to the range of comments

- General Comments:
 - Many commenters seem to be presuming that the most appropriate measure of equivalency between monitoring and assessment options is cost. Ecology believes that the most appropriate measure of equivalency to apply in comparing individual monitoring and assessment requirements with a collaborative regional monitoring and assessment program is the usefulness and relevance of the information that is produced. While a straightforward comparison as to the value of information is more difficult to make than a comparison of dollar for dollar expenditures, it should not be surprising that it will be more costly for an individual permittee who opts out of the collaborative regional program to generate information that is similarly useful for the intended adaptive management purposes of the S8 Monitoring and Assessment section of this permit.
 - Each permittee is given the option of assessing the value of the information to their particular jurisdictions and will make their own cost-benefit determination.
- Status and Trends Monitoring opt-out requirements:
 - Permittees may choose to participate in either the RSMP or to conduct individual monitoring.
 - The dates in the final permit for implementing individual permittee opt-out status and trends monitoring have been aligned with the RSMP implementation dates.
 - Final QAPPs for all opt-out status and trends monitoring activities will be published prior to the effective date of this permit. The proposed timing, frequency, and parameters listed in the SWG's *Recommendations for Municipal Stormwater Permit Monitoring* will be applied to opt-out monitoring. A few modifications to these recommendations (in particular, for streams and mussels) were included in the formal draft permit appendix to the cost-sharing agreement to reflect more current recommendations by scientists overseeing ongoing status and trends monitoring programs.
 - The final QAPPs for both stream and nearshore RSMP status and trends monitoring will indicate how nearby an existing monitoring location must be to a randomly selected site in order to qualify as a RSMP monitoring location.
- Effectiveness Studies opt-out requirements:
 - Ecology expects that several Phase I permittees will choose to conduct individual studies.

- To determine whether or not a study is “expected to be implemented by the RSMP” the permittee should reference the current version of the SWG-generated (and Ecology-approved) list of effectiveness study topics. The list is available for download at <http://www.ecy.wa.gov/programs/wq/psmonitoring/swgreports.html>.
- Ecology agrees that independent studies conducted by Phase I permittees are not expected to meet a specific cost threshold to fulfill permit obligations.
- Ecology does not agree that all permittees should be allowed to conduct independent effectiveness studies.
- Permittees may choose to participate in either the RSMP or to conduct individual monitoring.
- See the response to comments on “Remove/reduce/continue/expand stormwater discharge monitoring” below.
- SIDIR opt-out requirements:
 - The final permit does not include an opt-out provision for this RSMP activity. The optional requirement to provide additional information was somewhat duplicative of permittees’ annual reporting requirements related to illicit discharge detection and elimination (IDDE). Instead, Ecology has revised the IDDE annual reporting questions in the final permits to require information on individual illicit discharges.

I-15.13 Remove/reduce/continue/expand stormwater discharge monitoring

Commenters: City of Arlington, Clark County, City of Federal Way, Green Light Gardening, Joyce Hannum, City of Longview, Lower Columbia Fish Recovery Board, National Marine Fisheries Service, Rosemere Neighborhood Association, Shorewood-on-the-Sound Community Club, Stewardship Partners, Sustainable Development Task Force of Snohomish County, Sustainable West Seattle

Summary of the range of comments

- Remove/scale back/clarify stormwater discharge monitoring in the permits:
 - Stormwater discharge monitoring should be eliminated from the permit.
 - Stormwater discharge monitoring has been shown to be extremely expensive, difficult to perform, and the data produced has provided little to no new insight for stormwater management programs. It is clearly being used as a tool to discourage opting out.
 - The continued stormwater monitoring requirements in the permit do not reflect the goal of permit required monitoring to collect information that is useful for local governments, Ecology and others.
 - An experiment needs to be conducted in the area monitored to make management decisions on permit component effectiveness.

- Phase II permittees should not be required to implement a Phase I type program.
- Ecology should not propose an extremely costly alternative that will be abandoned after the current permit.
- Has Ecology calculated the cost of this level of sampling, and do they plan on contributing funding for the large amount of sampling required?
- How is the storm sampling integrated with the RSMP status and trends monitoring?
- Ecology does not provide a rationale for requiring Clark County to continue stormwater characterization monitoring. This monitoring is discontinued in the Puget Sound region.
- The status and trends monitoring requirement proposed for Clark County could interfere with the county's ability to participate in collecting meaningful data at the local and regional scales. Clark County's efforts and limited funding would be better put towards status and trends monitoring as part of the broader regional effort.
- Allow a jurisdiction to establish a doable monitoring plan that still provides data necessary to estimate loading contributions.
- Continue/expand discharge monitoring:
 - Strengthen the permits with continued or expanded requirements to monitor stormwater discharges.
 - Continue monitoring stormwater at the end-of-the pipe and compare to benchmarks to ensure compliance with permit conditions.
 - Require analysis of a full suite of organic pollutants.
 - We object to the discontinuation of PCB monitoring.
 - We object to the discontinuation of fecal coliform bacteria monitoring.
 - Consider adding an option similar to the language in Eastern Washington's draft permit. We do not advocate use of this option, but others may appreciate the flexibility.

Response to the range of comments

- The final permits include stormwater discharge monitoring as an option for permittees who choose to conduct this monitoring rather than participate in the RSMP effectiveness studies.
- Ecology believes that stormwater discharge monitoring information can be useful and important to local jurisdictions. Stormwater discharge monitoring is intended to characterize stormwater runoff quantity and quality at a limited number of locations in a manner that allows analysis of loadings and changes in conditions over time and generalization across the permittee's jurisdiction. Though relatively expensive to collect, when compared with other types of data, stormwater discharge monitoring data provides valuable and specific information that empowers us to make more informed decisions about stormwater management. The data improve our understanding of pollutant loads, concentrations, and

sources, and it can be used to assess how well stormwater infrastructure retrofits or other management approaches reduce stormwater pollution.

- Some of the Permittees conducting this monitoring have found the resulting information useful and helpful; others have not. Careful site selection and commitment to proper implementation of the monitoring program should ensure that the investment is worthwhile.
- The parameters selected for stormwater discharge monitoring were selected based on recent findings and to link the monitoring to RSMP status and trends. Discharge monitoring provides another set of data for understanding stormwater impacts to receiving waters.
- The cost to conduct stormwater discharge monitoring depends upon several factors including the location and type of outfall or conveyance structure selected, ease of access to sampling equipment, and approaches to accounting for staff costs. Informal cost estimates range from about \$40K to \$60K per outfall per year.
- Ecology agrees that Permittees may be able to show statistically that fewer samples would be required for storm flow sampling, and Ecology may approve a reduced sampling frequency for Permittees who submit proposals based on such analyses.
- Ecology believes it is necessary for Clark County to continue conducting stormwater discharge monitoring in the absence of a regional status and trends monitoring approach for southwest Washington. The final Phase I permit status and trends monitoring requirement for Clark County has been scaled back from three stormwater discharge monitoring locations to two. Trend analyses can be performed early in the permit cycle and again at the end of the permit cycle to provide useful adaptive management feedback to the County, Ecology, and others.
- In the final permits, the parameters included for required analysis include fecal coliform bacteria in grab samples; two herbicides (2,4-D and dichlobenil) and two insecticides (a carbamate: carbaryl, and an orthophosphate: chlorpyrifos) in water samples; and a pyrethroid insecticide (bifenthrin) and PCBs (aroclor only) in sediment samples.
- See also the response to “Comments on the stormwater discharge monitoring appendix.”
- See also the response to “Do/do not add receiving water monitoring requirements for SW WA.”

I-15.14 Do/do not add receiving water monitoring requirements for southwest WA; allow Clark County to continue current monitoring

Commenters: Clark County, Clark County Clean Water Commission, Columbia Riverkeeper, Lower Columbia Fish Recovery Board, Tom McConathy, River Network/American Rivers, Art Stubbs, City of Vancouver

Summary of the range of comments

- Expand the permit monitoring requirements for SW WA. Ecology adopts markedly different monitoring requirements for Puget Sound and southwest Washington. Ecology does nothing to make progress on monitoring in the Lower Columbia River.
- Ecology’s rationale for requiring a significantly less informative and protective monitoring scheme for SW WA is arbitrary. Permittees’ resistance to monitoring requirements is not a rational basis to impose significantly less informative monitoring in SW WA than in Puget Sound.
- The municipal stormwater permits must include effective status and trends receiving water monitoring requirements outside the Puget Sound area to improve and verify permit compliance and “to answer basic questions as to whether conditions in receiving water are improving or deteriorating.”
- Require at least annual receiving water body monitoring, summarized in annual reports, to better understand whether the quality of the waters is improving or deteriorating.
- Monitor both lakes and streams in Clark County, not just outfalls.
- Some jurisdictions are already coordinating monitoring in shared water bodies. Support, encourage and require this approach to move coordinated regional monitoring forward.
- We continue to be committed to determine whether and how a regional status and trends monitoring program can feed into a broader statewide effort to collect and provide quality data in a meaningful way.
- If the permit includes receiving water monitoring, it should include status and trends monitoring as proposed by Clark County. One of the main goals of the Clark County stream monitoring program is to answer basic questions as to whether conditions in receiving waters are improving, static or deteriorating.
- Ecology misstates Clark County’s SW WA status and trends proposal as one stream per jurisdiction, then rejects it as inadequate. The proposal represents a greater level of effort per WRIA than the SWG proposal. The fact sheet should describe the collaborative approach proposed by SW Washington permittees and explain why it was not considered.
- When Ecology and permittees develop a SW WA receiving water monitoring program during the permit term, the current Clark County program can be revised to accommodate it.
- We appreciate Ecology providing time and staff resources toward developing a monitoring program in SW WA and acknowledging that it is not appropriate to require regional status and trends monitoring because permittees do not share a common water body and a limited portion of the area included within the jurisdictional boundaries of the permittees.

Response to the range of comments

- Ecology acknowledges that we did not commit resources to developing a status and trends monitoring program in SW WA equivalent to those we committed for Puget Sound in advance of this permit cycle. The effort to develop the program for Puget Sound, with 90 plus permittees, has required substantial staff time and state money.

- The lower Columbia River is not known to be significantly affected by stormwater-related impacts. Two of the ten permittees in SW WA are not located in the Columbia River watershed.
- Ecology acknowledges the value of Clark County’s current monitoring program outside of this permit and is not suggesting that the program be discontinued. However, while the program is important to the County and stakeholders for other reasons, is not designed to answer stormwater management questions.
- The PCHB decided the issue of using existing surface water monitoring programs in Pierce and Clark Counties in lieu of permit-required stormwater discharge monitoring in 2008. The Counties lost their appeal, and the ruling reiterates that monitoring “designed to understand the pollutants discharging from the MS4s ... will provide the most useful data to establish what constitutes maximum extent practicable reduction of pollutants in discharges of MS4s in future permits.”
- Clark County has again proposed status and trends monitoring based on expanding the County’s monitoring program to additional sites, including two sites in Vancouver and a single site in each additional SW WA jurisdiction. The County proposed expanding the list of parameters analyzed to comprise a regional status and trends monitoring program.
- Ecology considered Clark County’s proposal and decided not to accept it. The other SW WA Permittees gave some degree of support of the County’s proposal; however they also indicated that the resulting information would be of little value to them in improving their SWMPs. The agency does not need receiving water monitoring in every permitted jurisdiction in order to improve the permit. The agency believes it is preferable to delay a SW WA status and trends monitoring program than to force Permittees to pay for monitoring that will not provide them or Ecology with useful information.
- While it would be ideal to have an acceptable SW WA monitoring design in place for this permit, Ecology believes that the other two RSMP components represent significant progress to provide meaningful adaptive management information in SW WA and will support SW WA permittees and stakeholders in their efforts to produce a monitoring plan.
- Ecology has awarded a Grant of Regional or Statewide Significance (GROSS) grant to the City of Longview to produce a monitoring plan for permittees in SW WA.
 - Permittees and other interested parties are encouraged to participate constructively in the GROSS grant.
 - Ecology hopes that Clark County will consider new approaches to receiving water monitoring that might leverage their current program.
 - The Lower Columbia Fish Recovery Board’s interest in further exploring stormwater issues is encouraging.
- The final permit includes an alternative for Clark County to pair stormwater discharge monitoring with receiving water monitoring in wadeable streams or lakes. The County would select sites of interest and submit them to Ecology for approval.

I-15.15 Do/do not compare monitoring results to water quality standards

Commenters: City of Issaquah, City of Longview, City of Mount Vernon, Muckleshoot Tribe of Indians Fisheries Division, National Marine Fisheries Service

Summary of the range of comments

- Please clarify how monitoring data may result in water bodies being listed as noncompliant with the federal Clean Water Act ("303(d) listed") and how collected data may trigger establishment of total maximum daily load (TMDL) allocations for specific pollutants in specific water bodies.
- Permittees have little control over their discharges, they are often not a primary source of impairment for these waters, and monitoring them could expose the jurisdiction to substantial liabilities if impairments are found (or if the MS4 is found to be contributing to any impairment).
- We are concerned that the draft permits do not include numeric effluent limitations to be applied to the end of the pipe. Other general NPDES permits in the State of Washington are required to meet water quality standards at the end of pipe. These stormwater permits should also require water quality standards to be met at the end of stormwater pipes discharging to surface waters, at least for some parameters, such as Total Suspended Solids (TSS); other parameters should then be added in the next round of reissuing these stormwater permits as more monitoring data become available. This approach would close the loop with data gathered from the Source Identification and Diagnostic Monitoring Information required under S.8.E and advance the future permits to meeting water quality standards.
- We recommend that all monitoring data from the RSMP Status and Trends section be compared to water quality benchmarks to ensure permit compliance. Failure to comply with the benchmarks should stimulate adaptive management practices to reduce the concentration of contaminants in the discharge.
- Clarify the reporting requirements for outfall monitoring conducted in accordance with the required Effectiveness Studies for monitoring that exceeds water quality standards.

Response to the range of comments

- The analyses to be conducted by the RSMP are limited to statistical comparison of findings with water quality and sediment standards. The data collection and analyses are not designed, primarily, to determine water quality standards attainment. However, the data may identify problems that Permittees will need to address, and it is also possible that the data may be used to support listing decisions associated with the State Water Quality Assessment <http://www.ecy.wa.gov/programs/wq/303d/index.html>.
- Since issuing the first municipal stormwater permits, Ecology has declined to set 'benchmarks' (generally associated with industrial discharges) or to apply water quality

standards at the end of the pipe for municipal stormwater outfalls. This is consistent with actions in other states. Water quality standards attainment is not evaluated within MS4s, including at the end-of-pipe. It is not Ecology's intent to use RSMP findings, or stormwater discharge monitoring data, as a means to enforce compliance with surface water quality standards at WAC 173-201A.

- The permit contains other appropriate measures (*i.e.*, Special Condition S4.F) for addressing problems that are identified through monitoring.

I-15.16 Make the RSMP and permit requirements meaningful and appropriate for WSDOT

Commenters: Washington Department of Transportation

Summary of the range of comments

- Of the permits' proposed monitoring frameworks, WSDOT considers program effectiveness monitoring the most valuable element as it provides a feedback loop to refine the effectiveness of a permittee's stormwater management program. WSDOT can focus our primary monitoring role on evaluating the effectiveness of programs geared to major roads and highways. This would support other regional program effectiveness and evaluative efforts and allow others to concentrate on other regional priority studies.
- The BMP and program effectiveness program should constitute WSDOT's contribution to regional effectiveness monitoring programs as it would provide benefits to city and county road departments across the state.
- WSDOT also considers source identification and diagnostic monitoring an important part of its monitoring framework. As written, the draft language fails to contain sufficient detail on the regional-scale analyses envisioned as part of this undertaking.
- Unlike other municipal permittees, WSDOT's permit allows TMDL obligations to accrue beyond Phase I and Phase II jurisdictional boundaries. As a result, WSDOT finds itself amassing an ever growing number of TMDL related permit obligations that involve source identification and/or diagnostic monitoring. Given the magnitude of these commitments relative to other permittees, meeting these large scale requirements should relieve us of any further obligation to contribute funding to regional source identification and diagnostic monitoring efforts.
- While WSDOT recognizes the value in conducting receiving water status and trends monitoring, we question the appropriateness of making this a municipal stormwater permit obligation.

Response to the range of comments

- Ecology will consider how it is most appropriate to include WSDOT in the RSMP when it is time to reissue that permit.

I-15.17 Clarify “other monitoring requirements” for which Permittees are responsible

Commenters: City of Bremerton, City of Everett, Snohomish County

Summary of the range of comments

- As written, this sentence is confusing. Draft permit section S8.A is not a list of conditions precedent. It is instead a list of required actions. Revise to clarify. As written, these provisions are ambiguous and confusing. Break down the requirements by type of monitoring activity to more clearly identify the actions Permittees must take.
- All monitoring conditions should be met by participating in regional water quality testing.

Response to the range of comments

- Thank you for these comments. The entirety of draft permit section S8.A has been removed from the final permit to reduce confusion.
- Permittees may meet all S8 monitoring requirements by participating in the RSMP. Other sections of the permit that require sampling need to be followed as indicated therein.

I-15.18 Clarify/remove reporting requirements for stormwater-related studies

Commenters: Clark County, King County, Snohomish County

Summary of the range of comments

- Delete draft permit section S8.B.
- This requirement is overbroad and inappropriate. Annual reports should be limited to actions the Permittee has taken to comply with the Permit. Activities not required by the Permit are not an appropriate subject for inclusion in an annual report. Even less appropriate are activities not required by the Permit that were performed by third parties. Permit compliance should not depend on whether an annual report accidentally omits information regarding a stormwater-related investigation conducted by a third party.
- Reporting on stormwater monitoring or stormwater-related studies that were done outside the scope of the permit should be optional. Replace "shall provide" with "are requested to provide."

- If Ecology desires information regarding stormwater monitoring activities not required by the Permit, Ecology may request those materials pursuant to Washington’s public records act.
- It would be more useful and efficient to only report on stormwater studies "completed" during the reporting period. Sticking with reporting on completed projects allows the results and any management recommendations to be reported and eliminates the need to summarize incomplete projects.

Response to the range of comments

- Ecology continues to believe it is appropriate that Permittees include in their annual reports information generated outside Permit requirements that is specifically relevant to the Permittee’s management of their MS4 and protection of receiving waters from stormwater impacts.
- Permittees need only list the source and a brief description of the information provided. If the information warranted action by the permittee, that should be indicated as well.
- Please note that section S8.B in the draft permit is section S8.A in the final permit.

I-15.19 Comments on the stormwater discharge monitoring appendix

Commenters: City of Arlington, Clark County, Rosemere Neighborhood Association, City of Seattle, Snohomish County, City of Tacoma

Summary of the range of comments

These comments apply to Appendix 9 in both the Phase I and Western Washington Phase II permits.

- General comments:
 - It is unclear whether a Permittee is required to prepare a “Quality Assurance Project Plan (QAPP)” if the Permittee elects to participate in one or more of the regional stormwater management program monitoring options. Please clarify whether a QAPP is required under those circumstances.
 - Storm flow and concentrations vary greatly and are affected by random, year to year changes in weather. If the purpose for storm-by-storm pollutant loading calculations is trend analysis, we recommend using pollutant concentrations as opposed to pollutant loading, because the large component of random variability in pollutant loads is more likely to confound the interpretation of long-term changes in stormwater quality, including the effects of a municipality’s source control actions.
- Comments on the “Monitoring Frequency” section

- Delete requirement that the Permittee shall analyze up to a maximum of three samples that are collected as a result of attempts to sample the eleven qualifying storm events and do not meet the rainfall volume storm event criterion but do meet the other storm event and sample criteria. This has been a source of confusion, and the data is not comparable to other data collected.
- If this requirement is not deleted, clarification should be provided as to whether these additional three events are to be used for loading calculations or treated separately.
- In two years of sampling, we have been unsuccessful in acquiring three additional samples in one year that do not meet 0.20 inches. When we did collect a storm event which was less than 0.20 inches, the volume of stormwater collected was minimal and only a very few of the total number of parameters could be analyzed.
- Can the 14 total be at a single site? Language doesn't reference how many sites.
- Comments on the "Qualifying Storm Event Criteria" section:
 - Remove the separate qualifying wet and dry season storm event and replace it with only one qualifying storm event for all seasons (0.20" and less than or equal to 0.02" in 24 hours) to be more realistic and reflect our experience during the current permit cycle.
 - Change the minimum rainfall criteria to 0.15" (from 0.20") and the antecedent dry period criteria to 0.06" (from 0.02") to be more realistic and to reflect our experience during the current permit cycle.
- Comments on the "Types of Sampling" section:
 - Clarify this criterion by replacing "must consist of" with "should be targeted to contain" to prevent confusion with the next sentence which allows for "7 to 9 aliquots."
 - Clarify existing criteria that requires only one year of flow data, but also requiring flow data for all sampled events: "Ongoing continuous flow monitoring is required for the entire storm events monitored as is necessary to properly operate the flow-weighted composite sampling."
 - Replace "of all storm events (not just sampled storm events) is necessary for at least one year to establish a baseline rainfall/runoff relationship. Ongoing continuous flow monitoring is necessary to properly operate the flow-weighted composite sampling" with "is required for the entire water year monitored."
- Comments on the "Types of Parameters" section:
 - Clarify what accreditation bodies (e.g., Ecology, NELAC, EPA, etc.) are acceptable for accredited laboratories.
- Comments on the "Sediment Samples" section:
 - Move grain size from first to last in priority order to get useful data for trend analyses. In ten years of sampling using sediment trap sampling methods, we have found that some years have had only a small amount of sediment in the sampler,

and with grain size first on the list, the only analytical data for that year would have been grain size.

- Comments on the “Recordkeeping & Reporting” section:
 - Add “for each successful storm event” to clarify intent.
 - Provide an additional month for data submission to more evenly distribute workload as March is the peak of annual report production. Change “March 1” to “April 1” and “April 30” to “June 15.”
 - Delete: “For storm events where water quality samples were collected, the load for each parameter for each sampled storm event, include date of storm event.” Pollutant loading calculations for each storm and each parameter for the most part will not generate useful information. Storm flow and concentrations vary greatly. We recommend using pollutant concentrations as opposed to pollutant loading for trend analyses, because the large component of random variability in pollutant loads is more likely to confound the interpretation of long-term changes in stormwater quality, including the effects of a municipality’s source control actions. If not deleted, please clarify the purpose of storm by storm pollutant loading calculations.
 - Delete: “(remember your pollutant load calculation must include flow for the entire storm event, not just the water quality sampled portion).”
 - Delete or clarify: “An explanation and discussion of the results from each sampled storm event at each monitoring site and sediments collected at each site, including:
 - A narrative analysis of the event mean concentrations for each parameter”
 - The requirement for a narrative analysis of the EMC for each parameter for each sampled storm event should be clarified or deleted. There are over 50 parameters analyzed per event so a narrative analysis would be unreasonable and challenging to write and read. Requiring statistical analysis (e.g., listing the statistics of interest) is reasonable.

“Any conclusions based on trend data that may result from this study or from previously collected data from these sites.”

- A trend analysis would be reasonable after three years of data collection, but not after each event or even one year. This requirement should be clarified or deleted.

“A description of the Stormwater Management Program activities currently taking place or planned within the monitoring station’s drainage are that may have affected or may potentially affect future monitoring results.”

- Make this a stand-alone bullet as it is not an appropriate sub-bullet to the discussion of results from each sampling event.

- Comments on Table A9-1 Analytical Procedures in Stormwater:

- Delete the word “Target” in the heading of the third column or replace it with “Required” as Ecology has indicated these are limits, not targets to aim for.
- Delete the associated footnote as labs are, as a practice, not willing to provide results below reporting limits. They do not want to be accountable to provide data below the limits that they can defend.
- Add missing reporting limit for BTEX. The BETX method should be 8260, not 602. Tacoma’s Laboratory currently uses a reporting limit of 1 ug/L.
- List Standard Method (SM) 4500 Cl- E for water analysis of chloride. This method is equivalent to Ecology required method 325.2, is accredited by Ecology’s Laboratory Accreditation Unit (LAU), is approved under 40 CFR 136 – Guidelines for Establishing Test Procedures for the Analysis of Pollutants and is able to perform at a detection limit lower than the Ecology Reporting Limit Target of 0.2 mg/L.
- Add EPA-approved City of Tacoma Alternative Methods 200.8 and 2340 B for Hardness.
- 4SM 2340B and 2340C are incorrectly listed for MBAS analyses (they are for Hardness).
- Total and Dissolved Copper EPA 200.8 MDLs for this element are often above the stated reporting limit goal of 0.1 ppb. All of our WY2011 stormwater samples resulted in total and dissolved copper detections exceeding 4.96 and 1.81 ug/L, respectively. A realistic detection limit of 0.5ppb is more appropriate given technical sampling limitations in an urban environment, and representativeness of the environmental (detection) profile.
- Total Kjeldahl Nitrogen. Include EPA-approved alternative test method, Total Nitrogen by Combustion and Chemiluminescence. It has a comparable MDL, is more automated, requires no sample preparation, and eliminates the use of mercury and sulfuric acid. This will reduce analytical and waste disposal costs while producing defensible results.
- The new lower MRL for Bis(2-ethylhexyl)phthalate of 0.250 is not routinely achievable in commercial labs and should remain at 1.0 ug/L. Set the reporting limit to an achievable level. Tacoma Laboratory’s DEHP method detection limit (MDL) is 0.41 ug/L for the current extraction method. With the new laboratory, blanks have been below 0.25 ug/L. However, two blanks over MDL at 0.48 and 0.50 ug/L were traced to maintenance on the water system. Other issues with the 0.25 ug/L reporting limit target are variability of recovery which has been a problem with the LCS also for this compound.
- Three conventional parameters included in Table A9-1 (Particle Size Distribution, Grain Size, and pH) have been dropped from required parameters in the text.

- For Percent Solids, method SM2540B cannot be correctly done on centrifuged samples so should also include method 160.3M to address pipetting issues of a mostly solid sediment sample by mass rather than volume for aliquotting.
- Accept the quant-tray sampling method rather than the cumbersome time-intensive process of membrane filtration analyses. The quant-tray is approved by EPA, reliable, and far easier to use.
- Comments on Table A9-2 Analytical Procedures in Sediment:
 - Two conventional parameters (Total Phosphorus, Total Volatile Solids) and a sediment parameter (BTEX) in Table A9-2 are not listed as required parameters in the text.
 - Delete BTEX for sediment samples. Processing sediment trap samples requires use of a centrifuge and compromises any volatiles in the sample.
 - The BETX method is mistyped as method 8320; the method is 8260.

Response to the range of comments

- Ecology appreciates the helpful comments on this appendix and has made many edits to clarify and improve the language. The final appendix:
 - Clarifies that the appendix only applies to permittees with independent monitoring requirements in S8.
 - Adjusts the antecedent and inter-event dry periods to provide permittees with more opportunities to collect qualified samples.
 - Allows permittees to provide a statistical analysis demonstrating that monitoring goals can be met with fewer samples.
 - Removes the language about analyzing additional samples for non-qualifying storms.
 - Extends the deadlines for reporting and analyses.
 - Retains the requirement to calculate pollutant loadings as a key element of analysis and interpretation of the data. Ecology does not agree that concentrations provide better trend information than loadings.
 - Corrects methods and reporting limits, and also allows permittees to use any EPA- or Ecology-approved method that achieves the required reporting limit.
 - Requires laboratories to report all data.
 - Aligns the text and the tables A9-1 and A9-2 so that each lists the same parameters.
 - Specifies units in which data must be reported. Guidance for EIM data submittals for concentration and loading data is provided in *Stormwater Monitoring Report Guidance, Phase I Municipal Stormwater Permit, Reporting Requirements for Special Condition S8*, November 2010 (Ecology Publication No. 10-10-028). Guidance for data submittals for continuous flow monitoring is expected to be published prior to the effective date of the permit.

- Includes analyses for fecal coliform bacteria; PCBs (aroclor only); and a few selected, common-use herbicides and insecticides (2,4-D, dichlobenil, carbaryl, chlorpyrifos, and bifenthrin).
- Retains BTEX. The sediment samples should not be centrifuged.

I-15.20 Comments on the cost sharing agreement appendix

Commenters: City of Arlington, City of Bellevue, Clark County, Earth Justice, City of Federal Way, King County, Port of Seattle, City of Sammamish, City of Seattle, Snohomish County, City of Tacoma, City of Vancouver, Washington Department of Transportation

Summary of the range of comments

These comments apply to Appendix 10 of the draft Phase II Western Washington permit and Appendix 12 of the draft Phase I permit. The contents of the two draft appendices were identical.

- Remove this appendix from the permit and abandon the agreement model:
 - Ecology, not the Permittees, has responsibility for implementing the RSMP.
 - It is not appropriate for the Permit to require a Permittee to enter into a contract. The funding agreement is an extension of the Permit and would not be entered into absent the existence of the Permit and the regulatory framework in which the Permit exists.
 - Attempting to mix Permit requirements with contractual obligations will create ambiguity. If Ecology were to default on the agreement, would the permittee no longer be in compliance? Would we be required to agree to any amendments proposed by Ecology, or else be in violation of the Permit?
 - We have concerns about the need to enter into an agreement separately with Ecology. This would require Council action on a yearly basis, and there could be some difficulties convincing the Council in the merits of the program. The current Council cannot bind future Councils with respect to the payment of funds specified in the agreement.
 - The funding agreement includes references to provisions that do not exist in the document, and obligations that are not clearly defined, and it omits provisions common to contracts.
 - No work should be required by the funding agreement. The only thing required should be the Permittee's making of annual payments to Ecology. Having fewer requirements will result in fewer opportunities for a breach to occur. It is in neither the Permittee's nor Ecology's interest to increase the potential for a breach to occur.
 - The scope of the RSMP cannot be determined until the number and identity of contributing Permittees is known, so it seems inadvisable to attempt to describe the likely scope the RSMP with any level of detail.

- If Ecology desires to include with the Permit a preliminary concept document describing potential components of the RSMP, perhaps that draft document could be included as an additional Appendix.
- The appendix is part of the Permit. Amendments to the funding agreement or changes to the scope of work may not be valid without a Permit modification.
- Comments on process to finalize the agreement:
 - The agreement is a positive start and we are providing ideas for further discussions.
 - Ecology and Permittees need to work together in an iterative process after the comment period to ensure that the language in the final agreement clearly defines responsibilities and the terms and the Funding Agreement is complete. To ensure transparency regarding this process, another public comment period for the agreement may be required before it is finalized.
- Comments on the purpose of the agreement:
 - Include a compliance statement. Expressly state that timely payment of the consideration constitutes compliance with appropriate S8 sections.
 - The purpose section is too narrowly defined and therefore does not reflect the breadth of the agreement. This provision should be revised to also reflect that the agreement sets forth Ecology's obligations as the administrator of the RSMP. "The purpose of this agreement is to provide a share of the funding required to conduct a RSMP and describe Ecology's obligations to administer the RSMP."
 - Overall purpose is to define authorities and responsibilities of the parties in conducting the program.
- The agreement should include the following common provisions:
 - Indemnification provision between Ecology and the Permittees because Ecology is managing the consultant's work, which the Permittees are funding.
 - Allow revision by counterparts.
 - Define the venue and jurisdiction for resolving disputes and provide for dispute resolution (other than mandatory arbitration) between parties.
 - Provide for attorney fees and costs to the prevailing if litigation ensues regarding the terms of the agreement.
 - A definition section that defines eligible jurisdictions, terms of art, and acronyms.
- Effective date and duration:
 - The termination provisions require defining and the exception should be deleted.
 - The provision should allow Permittees the option of opting out of the RSMP if the permit is renewed and not reissued.
 - Termination and withdrawal: permittees cannot withdraw until end of 5 year period; or permittees can withdraw in the first year if a sufficient number do not sign up, in which case, permittees get a pro-rated amount of money back.
- Cost over-runs and excess funds:

- The provision fails to state that the Permittees, who are paying a predetermined amount for the monitoring and have no control over how Ecology spends the funds, should also not be responsible for cost overruns.
- Allow Ecology the flexibility to adjust the RSMP as needed to operate within available funding. Potential funding exceedances will be managed by Ecology by either finding additional non-Permittee funding or reducing the scope of the RSMP.
- Contract with successful applicants and provide project management oversight to ensure that quality data and other products are produced in a timely fashion and within budgetary constraints. Ecology must ensure that contractors understand they must meet the bid amounts of their contracts.
- The provision that unspent funds will be refunded suggests Permittees may have some interest in how funds are managed and spent. Delete this language to remove potential confusion.
- All funds received from Permittees will be held in separate funds, and shall be used for no other purpose. Do not shift dollars between RSMP tasks without amending scope and getting approval.
- Insufficient funds: If exceed costs, shut down project.
- Management of excess funds: Seek, apply for, manage grants and alternative forms of funding from other organizations or Permittees.
- Access to records:
 - To be consistent with the Public Records Act, revise this provision to include a statement that records shall be provided consistent with Chapter 42.56 RCW.
 - Ecology's records maintenance and retention responsibilities: Contractors' reports shall be made available to participating permittees prior to public distribution.
 - Delete: "All records supporting every request for payment shall be maintained by Ecology in a manner which will provide an audit trail to the expenditures for which state support is provided. Original source documents shall be maintained by Ecology and made available to [Jurisdiction] or a duly authorized representative upon request." No documentation is needed to support a request for payment.
- Annual performance evaluations: this provision needs to articulate the administrative process and performance metrics for the annual review. Metrics could include budget updates and compliance with deadlines for providing deliverables.
- Comments on Ecology's administrative role and responsibilities:
 - Ecology should assume lead responsibly for fiscal oversight, field and data audits, and review of deliverables to ensure that the RSMP's expectations are met.
 - Annual cost estimates for program administration of \$150,000 is insufficient to cover all of these responsibilities.

- Technical staff should conduct field audits of the contractors to ensure the goal of using "regionally consistent methods to collect comparable and valid data" is realized.
- Ecology acting as the administrative entity to manage the pooled funds during the 2013-2018 permit term creates an awkward dynamic and the situation may cause a potential conflict in that the same entity that acts as the regulatory authority is also responsible for administering the contracts for the very work that fulfills the requirements of the Permit. We understand that many stakeholders do not think there is another option at this time. The Puget Sound Partnership or another entity might develop an alternative option for an administrative entity. More flexible permit language should be included so Ecology is not listed as the administrative entity for the full 5 years.
- Comments on contract oversight arrangements:
 - Please clarify the project management oversight process being referred to.
 - Ecology oversight needs to go well beyond "participation in an oversight committee." While we welcome Ecology's convening of a committee to support oversight functions, relinquishing these responsibilities entirely to a volunteer committee falls short of our expectations given the scope and magnitude of the program.
 - Ecology should produce an annual report for review that describes: Overall budget and schedule for next year. Evaluation of contractor performance. Any proposed changes in scope of work. Any proposed changes in contractor assignments or budgets.
 - Only those permittees who enter into funding agreements should be members of the oversight committee. Local jurisdiction responsibilities: Payment to Ecology, Appoint one representative and one alternate responsible for correspondence and providing approval/disapproval decision. Optional to attend meetings.
 - Decision-making: Opportunity provided for in-person discussion (meeting) prior to approval; approval provided via email/electronic voting.
 - Establish a mechanism to distribute materials. Set up annual meetings.
 - Responsibilities of oversight committee: Approve annual budget and scope of work; Approve QAPPs for each task; Appoint one member as chair of the group to run the meetings and act as single point of contact for Ecology. Chair shall have a two-year term.
- General comments on the scope of work:
 - Delete any task not anticipated to be conducted during 2013 – 2018 permit term.
 - New Ecology task: "9.0 Provide a technical program lead for each of the technical SWG subgroups (Status & Trends, Program Effectiveness, and Source Identification)" to increase the efficiency of the SWG subgroups by centralizing some organizational functions so these tasks do not need to be performed by

committee and decrease the anticipated heavy workload for volunteer SWG subgroup staff.

- Define the required deliverables for each specified contractor task.
- Comments on effectiveness studies:
 - Delete reference to the list of ranked effectiveness studies as it is a living list that should be outside of the permit.
 - Add “As part of the RFP process, the contractor will provide input to Ecology on the ability to implement or conduct specific studies in the permit timeframe and an estimated cost to implement.” Given the broad range of potential questions on the ranked list, it would benefit all to understand if the question can be answered in the timeframe of the permit with the available funding. If a question is too large or hard to answer, the oversight committee can move the question to a lower ranking or ask the effectiveness subgroup to develop additional questions for the topic.
- Comments on data management:
 - Employ regionally consistent methods to collect, store, and analyze comparable and valid data. Developing this foundation is critical to any monitoring program's credibility and success. These activities should be reflected in the funding agreement. The timelines should reflect the lead time necessary to develop this foundation in advance of data collection efforts.
 - Task 2.1.d will require a large database that currently does not exist and is potentially unfunded. Add new Ecology task: “8.0 Identify or develop suitable data management systems for Contractor Tasks 1, 2, and 3” to address the gap in the Scope of Work as to who is responsible for identifying or developing suitable data management systems. Ecology seems the logical entity to identify and/or develop suitable data management systems; if not, this new task needs to be added to the contractors’ scope of work.
 - Manage data in form such that it can be made available to participating permittees.
 - Change “to the data interpretation tasks listed below” to “conduct the tasks listed below” to indicate that all subtasks are not data interpretation tasks.
- Comments on training:
 - Eliminate “training” time within this scope. Jurisdictions should not be paying to train consultants to perform this work that they are presumably already qualified to perform.
 - Training should be appropriate for any participant. The Agreement specifies training volunteers but not professional staff. The program suggests volunteers can be used, as they are in current marine monitoring programs, but the training should be appropriate for anyone collecting data. Revise sentence by deleting "volunteer" so sentence reads: "conduct trainings and procure equipment."

- Comments on the competitive process for awarding RSMP contracts, and leveraging Permittees' expertise:
 - The competitive process for the status and trends monitoring should be limited to local jurisdictions and state and federal agencies to ensure maximum cost competitiveness while leveraging existing capacities at the public agencies. These projects should be contracted as interagency agreements, not as grant awards.
 - The competitive process for effectiveness studies should be limited to local jurisdictions, state and federal agencies, tribes, universities, and ports. This process should be run as a grant program that encourages partnerships and regional applicability of the study.
 - Ensure ability to leverage existing municipalities' expertise and provide an avenue for municipalities to participate in the RSMP beyond the options outlined in the Permit.
 - We are unsure the municipalities will be able to participate in a competitive process for work to be completed under RSMP. We recommend a process that allows municipalities to participate through interagency agreements prior to the competitive bid process.
 - Please consider defining the Funding Agreement as an inter-local agreement to ensure a competitive bid process is satisfied.
 - Suggested Ecology contractor selection and management responsibilities: Solicit contractors per Ecology contracting procedures and state law; Contractor can be public or private entity; Rank; Award per Ecology contracting procedures and state law; Notify RSWMWG of results; Manage performance and payment of contractors.
- Comments on sharing RSMP results:
 - Add subtask 0.7d: "Share data, results, and conclusions with Permittees and other interested parties." RSMP results should be made available through other venues than the annual review.
 - Add the following reporting task to facilitate sharing of results: "5. Contractor will provide bi-annual and final reports to Ecology on implementation status and any results and conclusions of the effectiveness studies." Ecology provide summary to Permittees.
 - The agreement must require contractors to provide Permittees with copies of monitoring results. When monitoring indicates that discharges from a MS4 may be in violation of water quality standards, this will allow Permittees to respond appropriately and as required under Condition S4.
 - Ecology should act as lead contact for communication with media and general public.
- Comments on the estimated budget:
 - For clarity, these amounts should be broken down by year, task and due date.

- The budget spreadsheet entry for stream benthos data management support is \$60,000 per year for four years; it should be \$48,000 per year for five years.
- Many other specific edits to the agreement language appendix were suggested by commenters.

Response to the range of comments

- The general concept for a contractual funding arrangement was recommended by the SWG to provide added assurance to Permittees that their funds will be spent on RSMP tasks. Ecology enters into cost-sharing agreements with numerous entities for various purposes and is willing to follow that model for the RSMP. However, Ecology understands Permittees' concerns expressed in the comments above, and has determined that requiring permittees to enter into a cost sharing arrangement is not necessary.
- Permittees can comply with the permit conditions governing participation in the RSMP solely by submitting timely RSMP cost sharing payments, without entering into a cost sharing agreement.
- The appendix is not included in the final permit. Permittees are not required to enter into a cost sharing agreement with Ecology in order to comply with the permit.
- Permittees who choose to participate in the RSMP and also wish to enter into a cost sharing agreement with Ecology will still be able to do so. Ecology will support this outside of the permit.
- The specific suggested edits outlined above will be very helpful to Ecology and interested Permittees as we revise the cost-sharing agreement for all permittees who desire to have a formalized cost sharing agreement.
- Future revisions to the cost-sharing agreement will be available for public comment prior to finalization. Ecology believes that the open public process provided by the SWG will fulfill necessary public review expectations for the final cost-sharing agreement.
- Specific comments on the scope of work will be addressed as the details of implementing the RSMP are finalized. More precise cost estimates will be compiled as part of finalizing QAPPs.
- Ecology has not made any decisions about whether to target or limit requests for proposals to specific groups of entities.
- See also the responses to “Clarify full compliance with permit requirements and limited fiscal liability of permittees”

I-15.21 Additional editorial comments and corrections

Commenters: Clark County, City of Issaquah, King County, Pierce County, Puget Sound Partnership, City of Seattle, Snohomish County, City of Tacoma

Summary of the range of comments

- Option #1, clarify that payment is to Ecology: Pay to Ecology, on or before the dates specified in this Section, the amount specified below, which Ecology shall use to implement the xx component of a RSMP.
- Specify the date when the first payment is due, not when annual payments begin being due. Perhaps something like this: "The first annual payment is due on August 15, 2014 and each August 15th until the permit expires." Specify the total amount for the permit term.
- The draft requires that a revised QAPP be submitted by February 2, 2014 and that monitoring starts no later than October 1, 2014. However, for new sites, Appendix 9 requires greater than or equal to one year continuous flow recording prior to commencement of monitoring. The permit should clarify that, at previously unmonitored sites, flow monitoring should start no later than October 1, 2014 and outfall monitoring no later than October 1, 2015.
- We recommend that Option 2 be revised to read: "any Permittee who would like to change a discharge monitoring location or is adding a new discharge monitoring location shall document in the revised QAPP (See S8.D.2 below) why the pre-existing stormwater monitoring location is not a good location for additional monitoring and why the newly selected site(s) are of interest for long term stormwater discharge monitoring and associated stormwater management and program effectiveness evaluations."
- Include definitions for land uses that can be monitored, including high density residential, commercial, industrial, and agriculture.
- Phase I permittees are required to notify Ecology which option for monitoring they choose to undertake by December 1, 2013, yet their first payment for the cooperative monitoring option is due by October 15, 2013. Move forward the date for permittees to decide if they'll participate in the cooperative monitoring to October 1, 2013, just before their first payment is due.
- Ecology uses term "permit cycle" and "duration of this permit term" interchangeably. For clarity and consistency and the issues that may result from any administrative extension of this permit it is important to have surety of what will constitute a "permit cycle." Use dates or reference to duration of this permit.
- Status and Trends Monitoring Option 2 requires monitoring to begin no later than July 1, 2014, however the RSMP does not begin to collect data until 2017; the dates should be the same.
- "Each Permittee shall either:" This clause is unnecessary and redundant. Delete for clarity.
- Make the "Background" language in the cost sharing agreement more appropriate: "In connection with the re-issuance of the NPDES general municipal stormwater permits for Phase I and Western Washington Phase II jurisdictions, Ecology is implementing a new option for monitoring. At the recommendation of the Stormwater Work Group, a formal stakeholder committee, Ecology is allowing all Phase I and Western Washington Phase II permittees the option of contributing funds to a RSMP for the Puget Sound region in lieu of

each permittee performing its own independent monitoring activities within its jurisdictional boundaries. Ecology expects that combining the economic resources of multiple permittees to implement a strategically planned RSMP will result in a more efficient monitoring program that produces better and more accurate data for use across the region.”

- The cost overrun provision in the funding agreement should be revised to read: Neither Ecology nor [Jurisdiction] shall be responsible for cost overruns. The total project cost estimate for which [Jurisdiction]'s share has been determined includes a refundable 10% contingency. Ecology will inform successful contracting applicants that no cost overruns will be allowed.
- The term “Project officer” suggests that Ecology and the Permittee are agreeing to perform a joint “project.” That is not the case. This language should be deleted to avoid confusion.
- For consistency and clarity, throughout the document provide consistent terminology by referring to “RSMP” instead of “project” and referring to “funding payments” instead of “funding shares.”

Response to the range of comments:

- Thank you for these helpful comments. Changes were made as appropriate. See the other sections of the S8 response to comments for more information.

I-16 S6 Secondary Permittees

Comments apply to all three municipal stormwater permits.

I-16.1 General Comments

Permit reference: Phase I Permit – S6. A through D
Western Washington Phase II Permit – S6
Eastern Washington Phase II Permit – S6

Commenters: City of Everett, Port of Bellingham, Port of Vancouver, Puget Sound Partnership

Summary of the range of comments

- Clarify that the permit applies only to the MS4. Owners of private drainage systems are responsible for their drainage systems.
- Remove the requirement to post annual reports on the permittees website if Ecology is already posting these on their website.

- Clarify visual inspection requirements for “all known MS4 discharge points.” Does this apply to discharges to ground? Does it apply to underground injection controls?
- Clarify if copies of the permit are required to be kept with the SWMP.
- S6.D.6.d.iv: Clarify type of inspection procedure (Construction, IDDE, spot checks).
- Support deletion of percentage requirement and timelines to reflect that permittees have been implementing these permits for five years already.
- Add a public education qualifier to reduce release of swimming pool and spa discharges.
- Clarify the differences between SWMP, SWMPR, and the annual report (Appendix 4). Is Appendix 4 the annual report or the SWMPR?
- Recommend adding a reasonable amount of time from the permit coverage date for permittees to convert from the 2005 to the 2012 manual (maintenance standards) where reasonable cost, resources and efforts are involved.
- Clarify the term major storm event.

Response to the range of comments

- Refer to S1 and S2.A for permit applicability.
- Ecology does not post annual reports on its website for those permittees who already post them on their own website.
- Ecology removed the phrase “all known MS4 discharge points” from this section. The term “outfalls” is defined in the permit and includes points at which the Permittee’s MS4 discharges to other MS4s or private stormwater systems, discharges to ground water that are not UIC wells, and discharges to surface water.
- Permittees are not required to retain copies of the permit with the SWMP. However, it may be helpful to those unfamiliar with the permit to do so.
- Ecology clarified in the final permit that training requirements for inspection procedures include only those inspections required by the permit and applicable to the permittee.
- Release of swimming pool and spa discharges are included in S6.D.1.b.vi as topics that may be appropriate for public education on the hazards associated with failure to follow the conditions placed on the discharges.
- Ecology modified language to clarify SWMP, SWMP Plan, and Appendix 4. Appendix 4 is the annual report form. SWMP is the stormwater management program that comprises actions necessary to meet S6 (for Secondary Permittees) and applicable TMDLs (see S7) and monitoring and assessment (see S8) requirements of the permit. SWMPR is replaced with SWMP Plan to clarify this plan as the written documentation of the Permittee’s stormwater management program.
- Ecology does not anticipate significant edits to the maintenance standards and did not specify a compliance date for this requirement.

- Ecology clarified the size of a major storm event by adding “(24 hour storm event with a 10 year or greater recurrence interval)” to permit language. Note that “or greater” refers to a recurrence interval greater than 10 year (ex. 50 year).
- Ecology included in requirements the timelines for implementation from the “initial date of permit coverage” to address Secondary Permittees that obtained coverage late in the previous permit term and are still developing and implementing their stormwater management programs.

I-16.2 Clarify requirements for providing training to tenants

Permit reference: All permits - S6.D.3.f

Commenters: Port of Vancouver, Washington Public Ports Association

Summary of the range of comments

- Delete the requirements to “provide for opportunities for training to tenant.” It is not the responsibility of secondary permittees to train employees of other organizations.

Response to the range of comments

- Ecology agreed and deleted the requirement to provide the opportunity for training to tenants. Permittees are encouraged to provide such opportunities as appropriate on a voluntary basis.

I-16.3 Clarify use of “functional control”

Permit reference: Phase I Permit – S6.D and E
Western Washington Phase II Permit – S6.D.6.a
Eastern Washington Phase II Permit – S6.D.6.a

Commenters: EarthJustice, Port of Seattle, Port of Tacoma, Port of Vancouver, Washington Public Ports Association

Summary of the range of comments

- Return language in the first sentence of S6.D.6.a to “conducted by” rather than the proposed “under the functional control of” or clarify the meaning of “under the functional control of”.
- Return language in S6.D.6.a.i back to “owned or operated”. Changing this to “and” will lead to gaps in accountability.

- Add “under the functional control” language to S6.E.3.c.v, (d), and S6.E.7.

Response to the range of comments

- Ecology agreed that the O&M Plan is limited to activities conducted by the permittee and edited language in S6.D.6.a. Ecology retained the second reference to functional control in this section to clarify that permittees are only responsible for implementing the Plan on properties they have functional control over.
- Ecology edited language in S6.D.6.a.i to “owned or operated” to clarify that permittee pollution prevention requirements extend to facilities that are operated but not owned by the permittee.
- Ecology did not agree to add “under the functional control” to S6.E.3.c.v, (d), or S6.E.7. Ecology acknowledges the limitations associated with tenant leases and expects permittees to seek ways to minimize these limitations to facilitate: implementation of field screening, documentation of operations and maintenance records, and assurance that SWPPP(s) are prepared and implemented as appropriate.

I-16.4 Editorial comments

Commenters: Port of Vancouver, City of Tacoma

Summary of the range of comments

- Support for overall approach to proposed edits.
- Suggest providing a spot inspection form as an appendix to the permit.
- Add “or an equivalent manual” to S6.E.6.a.(i) and (ii).

Response to the range of comments

- Ecology retained current flexibility for permittees in implementing spot check inspections and did not add a form as an appendix to this permit. Ecology will consider posting example forms as guidance on our website.
- Ecology did not add suggested language for Secondary Permittees to establish maintenance standards per an equivalent manual. The first sentence of these requirements allows flexibility in adopting maintenance standards that are as protective or more protective of facility function.

I-17 S7 Total Maximum Daily Load (TMDL) and Appendix 2 Requirements

Comments apply to all three municipal stormwater permits.

I-17.1 General Comments on TMDLs

Permit reference: Phase I – S7 and Appendix 2
Western Washington Phase II – S7 and Appendix 2
Eastern Washington Phase II – S7 and Appendix 2

Commenters: King County, Pierce County, Thom McConathy, River Network/American Rivers, Snohomish County

Summary of the range of comments

- Expresses appreciation for the attention Ecology has given in the MS4 permits to the relationship between TMDLs allocations and the MS4 pollutant contribution. It will take active oversight and agency prioritization for these new steps to begin to reduce the stormwater contribution to impaired and TMDL-listed waters.
- MS4 permits need to fully account for the current impaired conditions of the receiving waters.
- Applicable TMDLs under this permit are the TMDLs listed in Appendix 2, not those which have been “approved by EPA on or before the issuance date of this permit, or prior to the date that Ecology issues coverage under this permit, whichever is later.”
- The permit’s approach to assigning WLAs to MS4 permittees for the implementation of approved TMDLs makes sense. This is a reasonable approach to using different Clean Water Act tools (NPDES permits and TMDLs) to help clean up waterbodies.
- Appendix 2 directs King County to direct extensive mapping and outfall screening resources to new basins (in addition to S5 areas and actions). Please allow flexibility to focus resources in TMDL areas, rather than areas prescribed in earlier permit sections.
- MS4 permits should incorporate 202 plans and 203 programs for Vancouver Lake to support the lake cleanup to reduce nutrient loading.

Response to the range of comments

- Ecology’s MS4 permit and TMDL programs worked closely to identify those TMDLs that assign a WLA to the MS4 and that cannot rely on general permit implementation to fully meet the assigned WLA. Appendix 2 is organized to focus solely on those TMDLs.

However, all TMDLs approved by EPA as defined in S7 are “applicable” even if they are not listed in Appendix 2.

- Ecology considered how best to balance competing TMDL needs and the desire to establish a sensible and effective approach to addressing the MS4’s contribution of pollutants to impaired water bodies. MS4 permit and TMDL staff will continue to coordinate on these issues over the entire permit term. Comments on specific TMDLs are discussed in the section below.
- Ecology agrees that Phase I counties should have flexibility in the long term to prioritize MS4 subbasins for field screening, regardless of whether the subbasin is considered rural, urban or higher density rural. Refer to the section of this document related to IDDE field screening. Additional information specific to King County IDDE field screening requirements in their TMDLs is provided below:
 - Bear Evans – The field screening deadline moved six months to August 1, 2018 (permit expiration) and no longer specifies that the 50 percent must be calculated using basins that had not been screened by the permit’s effective date.
 - Issaquah Creek – Ecology did not change the field screening deadline (February 2, 2017). Per the County-provided map dated August 19, 2011, higher density rural subbasins located south of the City of Issaquah have not yet been screened and will be screened per the S5.C.8 requirement to complete screening in these subbasins. Some additional rural subbasin screening will likely be necessary for the County to reach 50 percent, however the requirement does not specify that only subbasins screened during the permit term must count toward the 50 percent.
 - Puyallup Watershed, Boise Creek – Ecology did not change the field screening deadline (February 2, 2016) because the TMDL identifies this area as a high priority. Additionally, the County has already conducted dry weather outfall screening of the MS4 throughout much of this basin and has already conducted additional bacteria water quality testing that may be used to refine the County’s field screening approach in this area.

I-17.2 Timing and process for implementing WLAs through MS4 permits

Permit reference: Phase I Permit – S7 and Appendix 2
Western Washington Phase II Permit – S7 and Appendix 2
Eastern Washington Phase II Permit – S7 and Appendix 2

Commenters: Columbia Riverkeeper, EarthJustice, Thom McConathy, Muckleshoot Indian Tribe Fisheries Division, Northwest Indian Fisheries Commission, People for Puget Sound, River Network/American Rivers, Snohomish County

Summary of the range of comments

- MS4 permits should not wait for permit reissuance to be updated to incorporate actions associated with TMDLs that assign Waste Load Allocations (WLAs) to MS4s. This delay unreasonably subjects beneficial uses to conditions beyond state and federal standards. This delay effectively grants a compliance schedule without satisfying state or federal requirements. Failing to adopt new permit conditions in a timely manner to comply with TMDLs is inconsistent with the Clean Water Act.
- MS4 permits should be reopened/modified once a specific TMDL is completed to require permittees to comply with TMDLs. MS4 permits contain reopener clauses authorizing Ecology to modify these permits. This approach is called for in 2010 EPA Guidance.
- The approach to delay incorporating new TMDL actions until reissuance is inconsistent with other, similar permits such as the Washington State Department of Transportation (WSDOT) MS4 permit which allows for more frequent updates. Suggest that a similar provision be included in the general MS4 permits as well.
- Ecology cannot automatically amend Appendix 2 to include new permits when EPA approves them. Rather, it must follow the prescribed permit modification process.
- Permits do not need to be formally modified to require compliance with TMDLs approved after permit issuance.

Response to the range of comments

- Ecology agrees that TMDL actions may be incorporated into MS4 permits mid-cycle and believes that adding such actions to Appendix 2 would require a permit modification (thereby triggering the public notice, review, comment, and appeal process). The permit language in S7.C states Ecology's position on this topic. Ecology does not agree that the Clean Water Act or its regulations compel the agency to reopen permits as individual TMDLs are approved by EPA.
- Ecology notes that the referenced WSDOT MS4 permit condition was developed as part of a settlement of an appeal and is particular to the construct and geographic coverage of the WSDOT MS4 permit. No change to permit language.

I-17.3 Incorporating TMDL Actions into Appendix 2

Permit reference: Phase I Permit – S7 and Appendix 2
Western Washington Phase II Permit – S7 and Appendix 2
Eastern Washington Phase II Permit – S7 and Appendix 2

Commenters: Columbia Riverkeeper, EarthJustice, City of Lacey, Snohomish County, Thurston County

Summary of the range of comments

- EPA recognizes (in guidance dated November 12, 2010) that where MS4 discharges have a reasonable potential to cause or contribute to water quality standards excursions, MS4 permits should contain numeric effluent limitations, where feasible. Such numeric effluent limitations are clear requirements that can be measured, monitored through time, and enforced where necessary.
- EPA Guidance (November 12, 2010) indicates that NPDES permits must specify monitoring requirements necessary to determine compliance with effluent limitations. Where such effluent limitations are expressed as BMPs, the Guidance indicates that permits must require adequate monitoring to determine if the BMPs are performing as necessary.
- Jurisdictions having multiple TMDLs need consistent programs and timelines across their boundaries to identify and prioritize sources and address problem areas. Request to standardize requirements across all similar TMDLs in a given jurisdiction.
- Limit Appendix 2 actions to those called for within Water Quality Implementation Plans.
- Concerns that if TMDLs are not approved by permit issuance they will not be included in Appendix 2.

Response to the range of comments

- The 2010 EPA guidance cited above was distributed for public comment in March 2011. At that time EPA indicated its plan to decide by August 15, 2011 whether to retain the memorandum without change, reissue with revisions, or withdraw. As of the date of this RTC document, EPA has not announced its intention. EPA's March 17, 2011 notice clarifies that the November 12, 2010 memorandum is "...not a regulation itself, nor does it change or substitute for those provisions and regulations." The March 17, 2011 notice also clarifies that "EPA does not anticipate that end-of-pipe effluent limitations on each MS4 outfall will be used frequently" but rather recognizes that there has been an "incremental evolution" of stormwater permit and TMDL programs across the United States that facilitates the broader use of numeric effluent limitations in MS4 permits. The option to express WLAs for MS4s as numeric effluent limitations has always been supported by the Clean Water Act and associated regulations; the 2010 memorandum reasserts that it is appropriate to establish numeric effluent limitations where data are available to do so (i.e., where feasible). Ecology does not believe that it is feasible to establish numeric effluent limitations for the TMDLs listed in Appendix 2 using the current available data. Until such time as those additional data become available, Ecology will continue to exercise its discretion and express the WLAs as narrative effluent limitations (BMPs) that are measurable where appropriate (such as percent of stormwater system to be screened). No change to permit language.
- Ecology agrees that MS4 permits should promote greater consistency among TMDLs in a given jurisdiction to help align water cleanup priorities, and maximize limited permittee

resources. See specific TMDLs, below, for a description of changes being made in response to this comment.

- Appendix 2 actions are based primarily on the actions described in the TMDL document, as this (not the Implementation Plan) is the document which must undergo a public process and be approved by EPA. Ecology reviewed all available TMDL documents, including implementation plans and effectiveness studies, when assigning actions to the MS4 through Appendix 2. As stated elsewhere, the actions included in Appendix 2 must directly address the MS4's contribution of a pollutant associated with a Water Quality Standards violation.
- The federal rule (40 CFR Section 122.43) requires that the permits include actions as narrative effluent limitations to address impaired waters. EPA approval of the TMDL is necessary to include such actions in Appendix 2.

I-17.4 Comments related to other Water Quality Programs

Permit reference: Phase I Permit – S7 and Appendix 2
Western Washington Phase II Permit – S7 and Appendix 2
Eastern Washington Phase II Permit – S7 and Appendix 2

Commenters: King County, Snohomish County

Summary of the range of comments

- Ecology must clarify procedures in Water Quality Policy 1-11 to support a change of water quality assessment category when data support such a change.
- Permittees need assurance that Ecology will review water quality data in a timely fashion to support water quality assessment category reassignment. Doing so allows for adaptive management of scarce resources in impaired waterbodies.
- Ecology MS4 permit coordinators should review the 2012 freshwater assessment with Ecology's Environmental Assessment Program and modify these permits accordingly.
- The Clarks Creek TMDL approach of using a surrogate flow metric to address the dissolved oxygen impairment is problematic. Concerned about the relationship and level of confidence between flow and the pollutant of concern, modeling approach, and sampling dataset. Recommend an evaluation that includes studies of the effectiveness of capital and non-capital approaches to restoring beneficial uses.

Response to the range of comments

- Ecology MS4 and TMDL staff are working with the Water Quality Assessment staff to review and update Water Quality Policy 1-11. These comments, and the request that water quality data are reviewed in a timely fashion, will be shared with each of those programs. No change to permit language.

- Ecology removed the Clarks Creek TMDL from Appendix 2 because development of the TMDL is in process and the TMDL is not yet approved by EPA. These comments will be shared with the TMDL staff leading that effort.

I-17.5 Comments on Specific TMDLs in Phase I and Western Washington Phase II Appendix 2

For comments and response on the Eastern Washington Phase II Permit Appendix 2, see Part II of the RTC document.

Permit reference: Phase I Permit – Appendix 2
Western Washington Phase II Permit – Appendix 2

Commenters: City of Bothell, City of Issaquah, King County, City of Lacey, City of Marysville, Snohomish County, and Thurston County

Stillaguamish, North Creek and Snohomish River Tributaries TMDLs

Summary of the range of comments

- Snohomish County is subject to fecal coliform TMDLs through most of the County's MS4 area and should have consistent programs and timelines.
- Permittees should be assured that surface water quality data collected may be used to support either continued resource allocation in impaired areas or reduction of requirements in areas that meet water quality standards.
- A positive test for fecal coliform does not necessarily equate to an illicit connection. Provide for a separate process with thresholds, timelines, and additional guidance for bacteria screening in the North Creek TMDL.
- Modify the IDDE field screening language to reference "outfalls and associated conveyances" instead of "MS4 basins" and place this language in all Snohomish County TMDLs.
- Required timelines for business inspections need to be clarified in the Snohomish River Tributaries TMDL. Clarify expectations from the effective date of the permit.
- IDDE requirements associated with the Snohomish River Tributaries TMDL are unclear. Please remove.
- Clarify what is meant by "source identification and elimination efforts" in the Snohomish River Tributaries TMDL.

Response to the range of comments

- Ecology agrees that Snohomish County's TMDL requirements should be consistent and endeavored to provide this consistency, or options for consistency, where feasible. Ecology

was unable to prevent some differences because some TMDL areas had requirements in the 2007 permit that are built upon in this permit cycle.

- Ecology agrees that surface water quality monitoring data may be used to support water quality assessment decision-making, and modified the minimum monitoring requirement of monthly samples to a calendar year level of effort so that permittee QAPPs can be developed to focus on critical periods if applicable. Additionally, permittees may propose QAPP revisions over the permit cycle to reflect changes in priority areas. Refer also to the RTC section for comments associated with other water quality programs, above, including Policy 1-11 related to the Water Quality Assessment.
- Ecology changed “MS4 basins” to “MS4 sub-basin” for consistency. It is not necessary to reference “outfalls and associated conveyances” as this language is no longer used in the IDDE section of S5.C. Ecology does not agree that the IDDE field screening language used in the Stillaguamish TMDL should replace the Targeted Source Identification and Elimination language in the other Snohomish County TMDLs. Snohomish County still has the option to combine the Stillaguamish IDDE field screening requirement with the surface water monitoring requirement and use the MWQA program to prioritize and conduct IDDE field screening in the Stillaguamish watershed.
- Ecology revised the language to specify the deadline date and deleted the sentence referring to activities conducted prior to the permit’s effective date.
- Ecology agrees that a positive test for bacteria does not necessarily equate to an illicit connection; not all bacteria sources are from illicit connections.
- Ecology did not delete the IDDE requirements for the Snohomish River Tributaries. If the permittee conducts IDDE field screening per S5.C.8 (Phase I) or S5.C.3 (Phase II WWA) of MS4 subbasins that discharge to surface waters in the TMDL area, the permittee will include screening for bacteria sources. Results of bacteria screening during IDDE field screening will provide information regarding relative contribution of bacteria from the screened MS4 subbasins, and will assist permittees in prioritizing bacteria source tracing activities. An IDDE guidance manual is under development.
- The “targeted source identification and elimination” requirements in Snohomish River Tributaries, North Creek and Swamp Creek TMDLs are intended to build upon the surface water monitoring that permittees conducted under the 2007 permits. Activities conducted under this requirement may also be used to meet IDDE field screening requirements. Ecology expects that permittees will utilize their IDDE procedures for identifying, characterizing, tracing and eliminating bacteria sources in the selected high priority area.

Bear-Evans TMDL

Summary of the range of comments

- Replace the term “MS4 basin” in the Bear-Evans TMDL with a term that is already defined or well-understood, such as sub-basin or MS4 service area.

Response to the range of comments

- Ecology changed the term to “sub-basin” throughout Appendix 2.

Cottage Lake

Summary of the range of comments

- King County: Cottage Lake is designated as a Sensitive Lake. Therefore, the downstream distance clause is not invoked and all core requirements in the SWDM are invoked during full drainage review.

Response to the range of comments

- No change necessary. King County appears to currently be meeting this requirement.

Little Bear Creek TMDL

Summary of the range of comments

- Request that Ecology add standardized public education, operations and maintenance, and monitoring requirements to the Little Bear Creek TMDL. Snohomish County has been implementing their monitoring program in Little Bear Creek since 2010.

Response to the range of comments

- Ecology added the public education, operations and maintenance program requirements to Little Bear Creek TMDL and clarifies that source identification and elimination activities are prioritized based on surface water data collected as part of the County’s MWQA program. Ecology agrees that the schedule for addressing Little Bear Creek in the MWQA QAPP should be consistent with the other Snohomish County TMDLs.

Issaquah Creek TMDL

Summary of the range of comments

- Focus Issaquah Creek TMDL outfall monitoring in Lewis Lane, not Mountain Park. Lewis Lane needs further assessment.

Response to the range of comments

- Ecology made the requested change to the Issaquah Creek TMDL.

Nisqually River

Summary of the range of comments

- Remove requirement to install and maintain pet waste dispenser units as this action does not appear in the approved Nisqually River Basin Water Quality Implementation Plan.

Response to the range of comments

- Ecology made the requested change in language.

Henderson Inlet Watershed

Summary of the range of comments

- The creek reach referenced in the Henderson Inlet Basin TMDL is incorrectly named (it is Woodland) and lies outside the MS4 regulated area.
- Unable to locate a table referenced from the Henderson Inlet Basin TMDL technical study. Please check citation.
- The Henderson Inlet Basin TMDL writeup references septic operations and maintenance efforts that are already underway. Delete the annual mailing requirement.
- Remove requirement in the Henderson Inlet TMDL to map septic systems, and conduct an operations and maintenance program. This work has already been undertaken by Thurston County in Henderson Inlet. Septic systems are regulated and addressed under separate authorities.
- Clarify vegetation management requirements in Henderson Inlet TMDL.
- Standardize requirements in the Henderson Inlet TMDL re: wet-weather discharges from Taylor Wetland between Lacey and Olympia.
- Reference the Henderson Inlet TMDL, not the permit language for the illicit discharge program, in the section for since that is the origin of the requirement.
- Modify the Henderson Inlet sampling plan and program requirements to acknowledge challenges with monitoring unpredictable storm events.
- Remove the requirement for the permittee to eliminate discharges at a stormwater treatment facility that was not constructed at the time of TMDL approval. Appendix 2 must track with the approved TMDL language.

Response to the range of comments

- Ecology changed the name of the creek to Woodland.
- Ecology changed the language to clarify the local of the table. The reference is to p36 of the Henderson Inlet Basin TMDL technical study.
- The final permit retained the draft permit language. Ecology understands the septic program is underway and supports the continuation of those efforts. The current requirement is for one annual publication or mailing that provides technical assistance to septic system landowners.
- Ecology changed the language with the understanding that this task will be complete regardless of whether the action is included in the permit. Ecology believes that mapping septic systems is an important management tool that cities should complete. The cities of Olympia and Tumwater have completed or started mapping septic systems as part of the regional septic summit group, of which Lacey is a member. Tasks of the regional program include mapping Lacey's septic systems. Ecology agrees that septic systems are regulated under many authorities however, septic system discharge from failing systems that reach MS4's must be controlled by the owner or operator of the MS4.
- Ecology clarified the language for vegetation management requirements.

- Ecology standardized and modified the language regarding wet-weather discharges from Taylor Wetland, and included the language for Olympia to partner with Lacey.
- Ecology referenced the permit language because the permittee will be following investigation procedures outlined in S5.C.3, the permit program component for detecting and eliminating illicit discharges.
- Ecology acknowledges the challenges associated with sampling and expects the plan to include factors that may influence the collection of samples. Ecology believes the current language allows adequate flexibility for sampling but makes other changes as suggested to clarify plan requirements.
- Ecology retained the requirement. The Taylor wetland stormwater treatment facility is included in Water Quality Implementation Plan (page 29) for Henderson Inlet and includes an action to monitoring discharges.

I-18 S9 Reporting Requirements and Annual Report Appendices

Comments apply to all three municipal stormwater permits and to the following appendices: Phase I Appendix 12, Western Washington Phase II Appendices 3 and 4, and Eastern Washington Phase II Appendices 3 and 4.

I-18.1 Reduce reporting requirements to streamline process.

Permit reference: Phase I – S9
WWA Phase II – S9 and Appendix 3
EWA – S9 and Appendix 3 and Appendix 4

Commenters: City of Bothell, Chelan County, Clark County, Douglas County, Eastern Washington Coordinators Group, City of East Wenatchee, City of Kennewick, Pierce County, City of Richland, City of Spokane, City of Tacoma, Walla Walla County, WSU Pullman, Yakima Area Stormwater Co-permittees

Summary of the range of comments

- Modified S9 language provides a helpful simplification of reporting requirements.
- Annual reporting is in excess of EPA's minimum requirement for the second Phase II permit term.
- Simplify the reporting requirements.
- Reduce reporting to twice per permit term.
- Limit building inspection reporting to projects triggering Minimum Requirements 1-9.
- Eliminate reporting requirements related to complying with ongoing permit conditions.

- Annual Stormwater Management Program Update appears to duplicate annual report information. Better to incorporate parts of the Update into the Annual Report form.
- It should not matter whether permit requirements (e.g., training sessions) are documented in a manner preferred by Ecology, so long as the permittee meets the AKART and MEP standards.
- Provide guidance for the IDDE action report to clarify level of detail and ensure that report will be concise, informative, and able to be completed in a reasonable amount of time.

Response to the range of comments

- Ecology retained the annual reporting frequency for this permit term. Ecology recognizes that the federal rule provides the discretion to reduce the reporting requirement in the second permit term. Annual reporting has value to track implementation of new requirements during this permit term. Ecology reviews the annual reports to determine the need for regional resources and to identify permittees that may need technical assistance. Ecology prefers not to let two years pass before a permittee report might bring to light the need for assistance or other compliance follow-up.
- Ecology revised the annual report questions to streamline and focus reporting. The final permit annual reports contain significantly fewer questions than the 2007 permits, and fewer than the draft permits.
- Training requirements are part of the MEP standard and an important component of implementation. Ecology reduced the information requested in annual reports on training, but expects the detailed information to be available for review in program audits. \
- The annual report questions focus on actions and activities undertaken in the previous calendar year to comply with permit requirements and to meet the AKART and MEP standards established under the Clean Water Act and state law. In contrast, the annual SWMP Plan describes permittee activities and actions planned for the upcoming calendar year (and in some cases, beyond). (For additional discussion of the purpose of the SWMP Plan, see also, for example, *Draft Western Washington Phase II Municipal Stormwater Permit Fact Sheet*, November 4, 2011.)
- Ecology also modified the language in S9 to remove reporting for calendar year 2013 (Western Washington Phase II and Phase I) and calendar year 2014 (Eastern Washington Phase II). Because the permit becomes effective in August of that year, the annual report would only cover five months. Therefore, the first annual report permittees are required to submit covers calendar year 2014 (Western Washington) and 2015 (Eastern Washington).
- Where appropriate, Ecology will prepare specific guidance to ensure that annual report attachments/reports (such as those required under IDDE) are concise, informative, and able to be completed in a reasonable amount of time.

I-18.2 Require enhanced reporting

Permit reference: Phase I: Various
Western Washington Phase II: Various
Eastern Washington: Various

Commenters: EarthJustice, Rosemere Neighborhood Association

Summary of the range of comments

- Require more specific tracking of public complaints, investigations, and findings related to construction site activities.
- Reinsert reporting requirements related to S4.F (Compliance with Standards) and TMDL Implementation actions.
- Require tracking of both enforcement actions and remedies to allow for better assessment of the effectiveness of enforcement approaches used.
- Require permittees to report any missed deadlines or other failures to comply with permit conditions. Also require permittees to include information justifying steps taken to comply, why the violation occurred, and steps to be taken to come into compliance and prevent future non-compliance situations.
- Improve transparency and accountability of annual report. Simplify the reporting regime.
- Ecology should post all annual reports (including previous years' annual reports) on its website or require permittees to post annual reports, along with other NPDES compliance information.

Response to the range of comments

- Ecology revised the annual reports to include fewer questions, and more meaningful and useful questions. Reporting under some permit components has been expanded; elsewhere it has been reduced.
- Ecology removed some detail from S9, but the annual report questions continue to require submittal of information related to the number of construction inspections and enforcement actions.
- Additional detail can be most appropriately collected and reviewed via program audits or specific public information requests and is not appropriate for submittal as part of an annual report.
- Questions related to TMDL and S4.F implementation actions were reorganized but are still included in all annual reports (question numbers vary by report). Permittees are required to report to Ecology any missed deadlines or failures to comply with permit requirements in accordance with Permit Condition G20. Annual reports require permittees to affirm that they

submitted all necessary G20 notifications in the previous calendar year and to describe the subject of those notifications.

- Permittees are required to post annual reports and SWMP Plans by May 31 of each year. Ecology did not require permittees to post all compliance/enforcement information. Such records are to be retained and made publicly available for at least five years in accordance with S9.C.

I-18.3 Clarify how WebDMR reporting will work.

Permit reference: Phase I Permit - S9.B
Western Washington Phase II Permit - S9.B
Eastern Washington Phase II Permit - S9.B

Commenters: Douglas County, Port of Bellingham, Yakima Area Stormwater Co-Permittees

Summary of the range of comments

- Clarify how reporting via WA WebDMR will work. Clarify whether WA WebDMR will allow for uploading supporting documentation.
- Requirements in section E seem to contradict requirements to use electronic annual report. Please clarify.

Response to the range of comments

- Ecology is still working out the details of submitting annual report information, including the SWMP Plan and other documents, via a web-based application, and will establish protocols and systems to allow for uploading of all relevant documentation requested as part of the annual report. Ecology will prepare instructions and plans to schedule trainings in advance of the first annual report submittal (covering 2014 for western Washington and 2015 for eastern Washington) to help permittees comply with any electronic submittal requirements.
- Ecology will work to prepare the WebDMR annual reporting prior to the first annual report due no later than March 31, 2016. If there is a problem or for some reason the electronic submittal is not feasible, S9.A states "...unless otherwise directed by Ecology" for a situation in which Ecology would provide another method for submitting annual reports.

I-18.4 General comments on annual reporting

Permit reference: Phase I Permit - S9.D and Appendix 12
Western Washington Phase II Permit - S9.D

Commenter: King County, Snohomish County

Summary of the range of comments

- The Phase I permit should include an annual report Appendix for cities and counties.
- Public entities are already subject to public disclosure laws. The statement requiring permittees to make records available to the public subjects permittees to additional potential liability under the Clean Water Act.

Response to the range of comments

- Ecology included an Appendix for Phase I cities and counties annual reports.
- Ecology does not agree that this statement subjects Permittees to additional potential liability under the Clean Water Act. No permit change.

I-18.5 Comments on specific annual report questions

Permit reference: Phase I Permit - Appendix 12
Western Washington Phase II Permit - Appendix 3, Appendix 4
Eastern Washington Phase II Permit - Appendix 3, Appendix 4

Commenters: Cities of Arlington, City of SeaTac, City of Tacoma, WSU Pullman, Yakima Area Stormwater Co-Permittees

Summary of the range of comments

- Western Washington permits only: Modify question relating to reporting on low impact development code-related updates to a Y-N format. Current reporting requirements are already extensive.
- Clarify that questions related to construction site inspection only pertain to those projects that “meet the permit thresholds.”
- Focus staff training questions on the establishment of a program and not the number of staff trained.
- Clarify that the Stormwater Pollution Prevention Plan is only needed on all identified yards and facilities (that meet the permit designation requirements).
- Modify Secondary Annual Report question related to storm drain labeling to allow for reporting percent drains labeled (vs. simple Y or N) to allow for better progress tracking.
- In S9.E.2, for clarity, suggest replacing “status of implementation of the requirements” with “status of compliance with the requirements.”

- S9 does not require attaching a summary of illicit discharges, but the Annual Report questions in Appendix 4 (Secondary Permittees) include attaching a summary of illicit discharges.

Response to the range of comments

- Ecology believes the requested information provides a meaningful response. Furthermore, because the defined permit performance measure is the report itself (Phase I: S5.C5.b.ii; Western Washington Phase II: S5.C.4.g.ii), Ecology retained it as a required attachment to the annual report. No permit change.
- The permit refers qualifying projects (i.e., projects that “meet the permit thresholds.”) Ecology does not believe it is necessary to restate this as part of the annual report question. No permit change.
- Ecology reviewed all training language, per commenter request, and modified appropriate annual report questions. Note that, for example, permit language makes a careful distinction between where a training program is to be established (e.g., municipal field staff training to identify and refer illicit discharges) and where all relevant staff are expected to be trained (IDDE field staff characterization, tracing and elimination training). The annual report questions reflect this distinction. Ecology agrees that the number of staff trained may not be a meaningful metric and eliminated all such questions in each of the annual reports.
- No change is necessary. The permit already specifies which kinds of facilities require Stormwater Pollution Prevention Plans.
- No change is necessary to specify the percent of storm drains marked. Such detail would be available during an audit.
- In S9.E.2, Ecology retained the original language to clarify that the obligation of permittees is to report on implementation. Ecology evaluates the report to determine compliance.
- The requirement for Secondary Permittees to track illicit discharge inspections and follow up activities is found in permit condition S6.D.3.d. Ecology streamlined the reporting requirements in S9 and included S9.F.2 to cover multiple attachments and summaries. Ecology relies on the annual report questions to request specific information that the permittee is required to track in the permit. The annual report questions refer to the relevant permit requirements.

I-19 General Conditions

Comments apply to all three municipal stormwater permits.

I-19.1 G3 Notification of Discharge, including Spills

Commenters: City of Everett , King County, Thom McConathy, Snohomish County, City of Vancouver, WSDOT, Yakima Co-Permittees

Summary of the range of comments

- Clarify reporting, since Ecology expects notification of all discharges and spills.
- Define what constitutes a “threat to human health, welfare, or the environment.”
- Delete “human health, welfare, or...” Humans are part of the environment. The permit could define “environment” to include humans.
- Clarify whether G3 applies to a single event versus an ongoing situation.
- Prefer one reporting method to Ecology. For example, a hazardous material spill should require only one phone call.
- G3.A – revise to “...correct or minimize the impact of the discharge.”
- Delete the phrase “including spills” as it is not necessary since “discharge” is defined to include “spills.”
- G3.B – Conflicts with S4.F which is a compliance pathway for reporting, and this section requires a 24-hour reporting timeline to Ecology. Confirming the threat might take a water quality sample analysis (to avoid a third party lawsuit for a water quality violation). Recommend revising “could constitute” to refer to a “confirmed” threat.
- G3.C - This section is too Puget Sound centric and needs to include the needs of South West Washington, where there are fisheries at risk.
- G3.D – Does Ecology mean to have all spills of gas or oil reported to the Washington Emergency Management Division no matter what the size? This would result in a large volume of calls. Clarify the size of spill for reporting.
- G3.D – Is hazardous substances definition consistent with Chapter 173-303 WAC? Add citation in the permit language: “...hazardous substances as defined in Chapter 173-303 WAC.”
- G3.D - Delete “substances” and keep old wordage “ materials.”

Response to the range of comments

- Ecology did not define what constitutes a “threat to human health, welfare, or the environment” because the range of potentially applicable situations is too variable. Local governments and other public entities have responsibilities in a variety of programs to protect public safety and welfare, and to protect the environment. SWMP procedures and

training programs should rely on local emergency services, health department, public works, and other programs to assist in such decisions.

- The final permit retains “human health” to clarify that G3 includes such situations.
- Although G3 notification often applies to a discharge that is a single event, it may also apply to the discovery of an ongoing discharge.
- Reporting to Ecology’s 24-hour number listed in the permit satisfies reporting requirements to Ecology in both G3.B and G3.D, but does not satisfy the G3.D requirement to also report discharges or spills of hazardous substances or oil to the Washington Emergency Management Division. This section aligns reporting of some discharges with other state requirements when additional notification is necessary to initiate a rapid and appropriate response. Citizens who are in doubt may call 911, and local emergency services should have procedures for notifying appropriate authorities.
- Ecology did not delete “including spills,” add “impact of the discharge” or change “could constitute” to “confirmed.” Such discharges may or may not be spills. Additionally, G3.A applies to minimizing the threat rather than the impact of the discharge. A G3 notification must occur for a possible threat, prior to confirmation. Waiting for confirmation would delay the notification and response.
- A notification under S4.F of a violation of water quality standards in the receiving water may or may not trigger G3. A G3 situation may also be an S4.F situation, but differs in the timing and urgency of the notification and response. The G3 report is within 24 hours, while the S4.F report is up to 30 days. See the discussion of the IDDE section of this RTC and Ecology’s guidance on S4.F at <https://fortress.wa.gov/ecy/publications/summarypages/0910068.html> and on reporting various discharges at <https://fortress.wa.gov/ecy/publications/summarypages/0710089.html>
- General condition G3.D applies outside of Puget Sound to shellfish growing areas in Southwest Washington regulated by the Washington Department of Health in Willapa Bay, Grays Harbor, and along the Pacific Coast marine shoreline.
- Washington State law requires that all spills be reported to Washington Emergency Management Division, and does not specify a minimum size.
- Ecology did not add the WAC citation because it is included in the Definitions section for “hazardous substance,” and retains “substance” for consistency with the WAC.

I-19.2 G4 Bypass Prohibited

Commenters: Yakima County Stormwater Co-Permittees

Summary of the range of comments

- Clarify the terms “unavoidable” and “necessary” as they are subjective terms. Who decides when these conditions are met? Suggest an addition to this section to require

consultation and concurrence with Ecology to ensure Permittees do not violate their permit if Ecology disagrees after the event.

Response to the range of comments

- Ecology did not clarify these terms further as they may apply differently in various situations, and they are qualified using common terms in G4.A. Ecology did not add the requested language, and expects permittees to rely on procedures and professional judgment for such decisions. Refer to the federal rule discussion of Bypass in 40 CFR Section 122.41(m) for more information on this condition.

I-19.3 G6 Duty to Mitigate

Commenters: Yakima County Stormwater Co-Permittees

Summary of the range of comments

- The subjective statement “reasonable likelihood of adversely affecting ...” should be revised to read: “The Permittee shall take steps to minimize or prevent any discharge in violation of this permit.”

Response to the range of comments

- Ecology did not make the suggested change, because requirement would then apply to all discharges that violate this permit, rather than limiting it to those with the potential to adversely affect human health or the environment.

I-19.4 G9 Monitoring

Commenters: City of Everett

Summary of the range of comments

- Add to G9.F Lab Accreditation: “...Ammonia, surfactants, salinity and other quick field methods of detection.” This needs to be changed to add additional parameters done in the field, if Ecology chooses to include IDDE sampling in this same category.

Response to the range of comments

- Ecology agreed with the comment and modified the permit language so that, in cases where the purpose of sampling is to identify and remove a suspected illicit discharge, quick methods of field detection of pollutants are exempt from G9 Lab Accreditation.

I-19.5 G10 Removed Substances

Commenters: City of Bellingham, King County, Snohomish County, Washington Public Ports Association

Summary of the range of comments

- Clarify the conflicting language between G10 which states that solids resulting from cleaning stormwater facilities may be reused or delivered to a qualified solid waste disposal site, and Appendix 6 which indicates that street waste solids must be managed appropriately as a solid waste.
- This language implies that solids resulting from the cleaning of stormwater facilities are presumed contaminated unless proven otherwise. Solids resulting from cleaning activities may not be contaminated and may be freely re-used unless there is reason to believe the solids are contaminated.
- Suggest: “Soils generated from maintenance of the MS4 may be reclaimed, recycled or reused when in alignment with local codes and ordinances. Soils that are identified as contaminated, per WAC 173-350, shall be disposed at a qualified solid waste disposal facility.”
- Clarify what is a “street waste vehicle” to preclude confusion with garbage and dump trucks.

Response to the range of comments

- Ecology revised the Appendix 6 draft language to clarify that not all solids from cleaning stormwater facilities are contaminated, and that such substances may be reclaimed, recycled or reused, as suggested. Disposal should be in accordance with local solid waste and/or Health Department codes. See discussion under Appendix 6.
- A “street waste vehicle” is an eductor or vactor truck or similar vehicle that is constructed for this purpose.

I-19.6 G17 Penalties

Commenters: City of Tacoma

Summary of the range of comments

- This section incorporates by reference the penalty authority in 40 CFR 122.41(a)(2) and (3), 40 CFR 122.41(j)(5), and 40 CFR 122.41(k)(2). The City does not believe that Ecology is authorized to increase its statutory civil penalty authority by incorporating by reference higher federal limits through a permit condition.

Response to the range of comments

- Ecology retained the language. NPDES permits frequently refer to and rely on the federal rule for definitions and other permit conditions.

I-19.7 G19 Certification and Signature

Commenters: City of Spokane, WSDOT

Summary of the range of comments

- Define the term "formal submittals" or identify the specific documents that must be signed and certified under the Permit.

Response to the range of comments

- Ecology intended the addition of “formal submittals” to clarify that not all submittals to Ecology require certification and signature by a duly authorized representative of the permittees. Ecology considers formal submittals to be annual reports and associated documents, other specific reports required in the permit such as reports required under TMDL actions in Appendix 2, formal QAPPs and monitoring reports, Phase I ordinances or other regulatory mechanism documents for review and approval under S5.C.4.a.iii, and Phase I watershed plans (S5.C.5.c). Formal submittals also include documents such as the *Duty to Reapply – NOI*, S4.F notifications and adaptive management plans, and G20 notifications of non-compliance. The Notice of Intent for application of permit coverage (Appendix 5) must be signed by the ranking elected official or executive of the entity. Permit conditions related to documenting a change the inspection frequency based on maintenance records also require a G19 signature. Formal submittals do not include G3 notifications to Ecology, preliminary drafts for Ecology informal review, informal requests to Ecology for assistance/information, or responses to requests for information from Ecology.

I-19.8 G20 Non-Compliance Notification

Commenters: Kitsap County

Summary of the range of comments

- Clarify the difference between S4.F notification and G20 notification and when each applies.

Response to the range of comments

- A G20 notification reports a permit violation, while a S4.F notification reports a known or likely violation of water quality standards in the receiving waters, which may or may not be a permit violation. G20 covers all permit requirements, such as a failure to train staff, or a delay in meeting a deadline.
- Notifications under S4.F may or may not address discharges that also constitute a violation of a permit condition. However, the failure to report such a discharge within 30 days would be a permit violation and would require a G20 notification. Ecology guidance on reporting such discharges is available at <https://fortress.wa.gov/ecy/publications/summarypages/0710089.html> and <https://fortress.wa.gov/ecy/publications/summarypages/0910068.html>

I-19.9 G 21 Upsets

Commenters: Yakima Co-Permittees

Summary of the range of comments

- Since “upset” is not used anywhere else in the permit, recommend this section be deleted. Upsets section appears to be a relic from “technology based effluent limitations” that do not apply to this permit.

Response to the range of comments

- Ecology agreed that this condition is not specific to MS4 permits, but included it as requirement for all NPDES permits under the EPA federal rule (40 CFR Section 122.41).

I-20 Definitions

Comments in this section apply to all three municipal stormwater permits, although not all the terms are in all three permits.

I-20.1 Best Management Practices

Commenters: King County

Summary of the range of comments

- BMPs can be related to controlling flow; add "*controlling flow*" to the definition.

Response to the range of comments

- No change necessary because the definition already refers to preventing or reducing “...other adverse impacts to waters” including those impacts caused by uncontrolled flow.

I-20.2 Circuit

Commenters: City of Kenmore, King County, City of Longview, City of Renton, City of Sammamish, City of SeaTac, City of Sedro Woolley, Regional Road Maintenance Forum, City of Vancouver

Summary of the range of comments

- Revise as “... ~~and~~ *or* serving a discrete area determined by ~~both~~ *traffic volumes, land use type, topography and or* the configuration of the MS4...”
- Clarify “or a junction within the MS4”. A junction that discharges but isn’t an outfall would not be part of the MS4. Interconnection point language is Ok.
- Circuit should be based on land use type and activity. Revise as “... discharging to a single point ~~and~~ *or* serving a discrete area...”

Response to the range of comments

- Ecology revised the definition of circuit to include discrete areas determined by traffic volumes or land use. Sediment accumulation in catch basins can be intensified by high traffic volumes and certain land uses. Permittees may designate discrete areas for circuit based cleaning based on these factors. Circuits may have a single discharge point or multiple discharge points. If a circuit is selected for the S5.C.9.d.i (3) alternative, it must drain to a single point.

I-20.3 Connection

Commenters: City of Kenmore, King County

Summary of range of comments

- Define term as used in mapping.

Response to the range of comments

- Ecology agreed that clarification of “connection” is needed. Connection means all discrete piped, ditched, or channelized connections to the MS4, except for individual driveways and

roof drain connections. Ecology did not define the term. Permittees are encouraged to coordinate on the designation of this and other features where mapping is required.

I-20.4 Conveyance

Commenters: City of Kenmore, King County

Summary of the range of comments

- Define conveyance.
- Define connections to tributary conveyances as used in the mapping section.

Response to the range of comments

- Ecology added a definition of tributary conveyance to clarify features within the MS4 that require mapping. These features include pipes, ditches, catch basins, and inlets owned or operated by the permittee and designed or used for collecting and conveying stormwater.

I-20.5 Co-Permittee

Commenters: BIAW, City of Seattle

Summary of range of comments

- Bring the definition closer to the federal regulations. Deleting the sentence clarifies that not every owner or operator of an MS3 “in proximity” to another is a Co-Permittee, and that no permittee becomes a Co-permittee without being party to a “cooperative agreement” with another applicant for coverage under the permit. Seattle’s revisions also illustrate the difference between MS3 and MS4: Co-permittees applying together may be owners or operators of different MS3s in the same regulated Phase I system (MS4) but they do not own or operate the same Phase I MS4, which the federal regulations define as all the MS3s located in the geographical area of a Phase I city or county.”
- The phrase “in proximity” is vague and should be replaced with a phrase that can be somehow measured. Proximity could mean next door to some and within the same county to others.

Response to the range of comments

- Ecology did not revise the definition of Co-Permittee to remove “in proximity.” Several Co-Permittees have interconnected or adjacent MS4s, but not all. The Yakima Area Stormwater Co-Permittees under the Eastern Washington Phase II Permit, comprised of Yakima County and the cities of Yakima, Union Gap, and Sunnyside, work together efficiently and

successfully although they are not all adjacent to each other. The distances in Yakima County might not work for some permitted areas, but they are appropriate to this group of permittees. The revised language was intended to cover such situations, and Ecology does not anticipate that entities will form Co-Permittee relationships if distance is a problem.

- Municipal Stormwater Permits in Washington State are general permits, issued to cities and counties and non-traditional municipal separate storm sewer systems (called Secondary Permittees), such as universities, park districts, drainage districts and ports. Coverage under the general permits is granted following an application process. Co-permittees may be any combination of cities, counties and non-traditional MS4s, provided the entities apply for coverage as co-permittees. Most city or county permittees have non-traditional MS4s within their jurisdiction; these non-traditional MS4s may or may not be physically interconnected with the city/county MS4. Permit coverage is not extended to those non-traditional MS4s unless they apply for coverage as a secondary permittee under the applicable permit. Ecology does not intend that Phase I city and county MS4s are responsible for non-traditional MS4s within their jurisdiction.

I-20.6 Discharge

Commenters: City of Everett, WSDOT

Summary of range of comments

- Add definition of discharge back into the permit.

Response to the range of comments

- Discharge is a common word with multiple uses. Different uses of the term within the permit may have descriptors such as; non-stormwater or illicit, where appropriate. No change to permit.

I-20.7 Functional Control

Commenters: Port of Bellingham, Regional Road Maintenance Forum

Summary of range of comments

- Define “functional control.”

Response to the range of comments

- The phrase “functional control” in the permit refers to those activities that may be performed by permittee staff or that are directed by the permittee through agreements, contracts, or other means in such a way that allows the permittee to stipulate the manner in which the activity is performed.

I-20.8 General Conditions

Commenters: Snohomish County

Summary of the range of comments

- Delete “general conditions” as this definition is not needed.

Response to the range of comments

- This term is not defined in the permit. No change.

I-20.9 Ground water

Commenters: City of Vancouver

Summary of the range of comments

- The term “ground water” should not be defined as simply saturated zones but as zones of year-round water saturation, or a more continuous and measurable body of underground water, to prevent any surface saturated by rain or runoff from becoming ground water. Refer to WAC 173-218. Suggestion to use different term based on RCW 90.48: “Underground waters, for the purposes of this NPDES permit, means a continuous water body residing year-round in the stratum beneath the surface of the land or below a surface water body.”

Response to the range of comments

- Chapter 173-200 WAC defines ground water as “water in a saturated zone or stratum beneath the surface of land or below a surface water body.” Chapter 173-200 WAC also defines a saturated zone as “the zone below the water table in which all interstices are filled with water.” Ecology revised the definition of ground water used in the Permits to clarify “saturated zone” accordingly. Ecology did not agree that only year-round water saturation is considered ground water for the purpose of these permits, nor did Ecology agree that any surface saturated by rain is ground water.

I-20.10 Heavy equipment maintenance or storage yard

Commenters: Eastern Washington Coordinators Group, King County, City of Richland, City of Seattle, WSU Pullman

Summary of range of comments

- Rather than deleting “on a long term basis”, retain and clarify that a short term project or vehicle storage site is not included in this definition.

Response to the range of comments:

- Ecology agreed and added “on a long term basis” back into the definition.

I-20.11 Illicit connection

Commenters: City of Bellevue, Clark County, Eastern Washington Coordinators Group, King County, Regional Road Maintenance Forum, City of Richland, City of Vancouver

Summary of the range of comments

- Clarify that “designed” doesn’t mean engineered, it means intended. Simplify definition as “anything that conveys an illicit discharge.”
- Use a CWA definition if possible.
- Concern that definition could result in legally-established connections to the MS4 being subject to enforcement action (i.e., roof drains were not designed for stormwater before the Phase II permit).
- Specify permit section referenced in this definition.
- Concern that if the MS4 definition includes discharges to groundwater, anything discharging to ground (such as a water sprinkler) would be an illicit discharge.
- Retain the word “channel” to avoid giving the false impression that a channelized illicit discharge to an MS4 is a legal connection

Response to the range of comments

- Ecology changed the word “designed” to “intended.”
- There is no 40 CFR 122 definition for “illicit connection.”
- Roof drains are designed for stormwater conveyance. Legally-established connections were permitted (i.e., allowed), even if not subject to the Phase II permit.
- Ecology specified the sections in the revised definition.

- Illicit discharges, for the purposes of this permit, do not include conditionally allowed discharges. Refer to the RTC associated with the terms “illicit discharge” and “outfall.”
- Ecology reinstated the word “channel.”

I-20.12 Illicit discharge

Commenters: City of Bainbridge Island, City of Bellevue, City of Bremerton, Chelan County, Clark County, Eastern Washington Coordinators Group, City of East Wenatchee, City of Everett, City of Issaquah, City of Kenmore, King County, Kitsap County, City of Lacey, City of Longview, City of Marysville, City of Mount Vernon, City of Newcastle, City of Olympia, City of Port Angeles, Regional Road Maintenance Forum, City of Renton, City of Richland, City of Sammamish, City of SeaTac, City of Seattle, City of Sedro-Woolley, City of Snohomish, Thurston County, City of Vancouver, WSDOT, City of Wenatchee, Whatcom County, Yakima Area Stormwater Co-Permittees

Summary of the range of comments

- Delete the clause “infiltration and exfiltration of non-stormwater that takes place in pipe bedding” due to a range of concerns: I&I regulated by wastewater utility NPDES permits; it relates to onsite sewage systems and Dept. of Health regulations; in some cases it is intended for infiltration/interflow (rain garden) or collection (French drain); it cannot be controlled nor definitively located; it does not constitute a discharge as typically used in the permit; it relates to contaminated groundwater and MTCA; could refer to leakage from underground pipes of any kind.
- Clarify if “pipe bedding” refers only to stormwater conveyance pipe bedding (e.g., “in conveyance structures such as pipes or ditches”).
- Restore the original language, delete “or from” because non-point sources and resulting cumulative effects cannot be controlled and the existing IDDE program does not address illicit discharges from the MS4.
- Delete “into or.”
- Add “for the purposes of this permit” to the definition; replace “municipal separate storm sewer” with MS4.

Response to the range of comments

- Ecology clarified the definition to refer to any discharge from an MS4 that is not composed entirely of stormwater or of non-stormwater discharges allowed per the IDDE requirements. Ecology removed the sentence of examples of illicit discharges as it is not necessary. If non-stormwater is entering the MS4 through an infiltration/exfiltration

pathway and that non-stormwater is not expressly allowed or conditionally allowed, it is an illicit discharge and must be addressed accordingly.

- Ecology removed “or from” because G3 does not use the term “illicit discharge.” G3 appropriately refers to a discharge to or from an MS4 that could constitute a threat to human health, welfare or the environment.
- All definitions used in the permit are for the purposes of this permit and the suggested addition is not necessary. Ecology agrees that “MS4” is appropriate.

I-20.13 Integrated Pest Management (IPM)

Commenters: King County

Summary of range of comments

- Why was this definition removed?

Response to the range of comments

- This term is no longer used in the permit.

I-20.14 Interflow

Commenters: City of Auburn, City of Bremerton, BIAW, King County, City of Longview, Regional Road Maintenance Forum, City of Renton, City of SeaTac, City of Sedro-Woolley

Summary of the range of comments

- Request a definition for “interflow” as used in the definition for “stormwater.” Suggestions include: “near-surface groundwater that moves laterally through the soil horizon following the hydraulic gradient of underlying relatively impermeable soils. When interflow is expressed on the surface, it is called a spring or seepage.”

Response to the range of comments

- The term “interflow” was included in the definition of “stormwater” in the 2007 version of both the Phase I and the Eastern Washington Phase II permits. Adding “interflow” to the Western Washington Phase II permit is not a substantive change. “Interflow” is a common hydrological term and is used in the SWMMWW in part to be consistent with the Western Washington Hydrologic Model (WVHM) and its parent model EPA’s Hydrologic Simulation Program FORTRAN (HSPF). “Interflow” is defined in the Glossary of Volume I

of the SWMMWW as: “That portion of rainfall that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface for example, in a roadside ditch, wetland, spring or seep. Interflow is a function of the soil system depth, permeability, and water-holding capacity.”

I-20.15 Low Density Residential Land Use

Commenters: Snohomish County

Summary of the range of comments

- Delete “Low Density Residential Land Use” as the term is not used in S8.

Response to the range of comments

- Ecology deleted this term. Refer to Appendix 9 of the permit for a description.

I-20.16 Maximum Extent Practicable

Commenters: City of Bellevue

Summary of the range of comments

- Define “maximum extent practicable.”

Response to the range of comments

- No change. Ecology defers to the federal Clean Water Act for information clarifying “maximum extent practicable.”

I-20.17 MS4/MS3/Medium MS4

Commenters: Eastern Washington Coordinators Group, City of Everett, King County, Regional Road Maintenance Forum, City of Richland, City of Seattle, Snohomish County, City of Vancouver, WSDOT

Summary of the range of comments

- Retain reference to “waters of the United States” and delete reference to “waters of the State.”

- With the clarification that the term MS4 encompasses discharges to waters of the State, provide detailed guidelines for distinguishing discharges to ground vs. ground water. Clarify UICs are not included.
- Retain MS3 because: For Phase I, MS4 includes all MS3s in a geographic area whether or not they are owned or operated by the Permittee; do not put the definition of MS3 into the definition of MS4; restore original MS4 definition; used in federal definition of Outfall (the exclusion for open conveyances connecting two MS3s); used more appropriately in definition of “co-permittee” as not every owner of an MS3 is a co-permittee; co-permittees may be owner/operators of different MS3s in the same Phase I MS4.
- Clarify why “Medium MS4” has been struck from Phase II but not in Phase I permit.
- Clarify whether detention and treatment facilities that convey stormwater are part of the MS4; is there overlap between the new term “stormwater treatment and flow control BMPs/facilities?” Also revise for readability and clarity.
- Delete the words referring to an Indian Tribe or authorized Indian Tribal organization, because Ecology has no authority to implement the NPDES program on these lands.

Response to the range of comments

- Ecology did not remove references to “waters of the state.” Refer to the S2 Authorized Discharges section of this RTC. This permit is not only an NPDES permit, it is also a state waste discharge permit that authorizes discharges to waters of the state. For the purposes of this permit, “waters of the state” is appropriate in the definition of MS4.
- Refer to the RTC for “outfall” and S2 for discussions regarding UIC and distinctions between discharges to the ground surface vs. below the ground surface.
- Ecology did not agree that MS3 must be retained because the permits, as written, do not apply to MS3s. The difference between the definition of MS3 and MS4 at 40.CFR.122.26(b) is that MS4s are required to have permit coverage. Thus, Ecology revised the definition of MS4 to refer to regulated MS4s (i.e., large, medium and small). Non-traditional MS4s, such as universities, park districts, drainage districts and ports, generally are considered small MS4s [40.CFR.122.26 (b) (16) (iii)] and both the Phase I and the Phase II municipal stormwater permits are designed to accommodate coverage for these non-traditional MS4s as Secondary Permittees. The definitions of “Co-permittee” are now the same in both Phase I and II permits, as there is no practical reason for them to differ.
- Per the definition, the MS4 includes the system of conveyances designed or used for collecting or conveying stormwater. All stormwater detention, treatment and LID BMPs/facilities, provided the other conditions specified in the definition are met, are part of the MS4. Throughout the permit, many specific terms are used to reflect different components of the MS4.
- Ecology retained the reference to an Indian Tribe or authorized Indian Tribal organization in the definition of MS4 for consistency with 40 CFR 122. The definition for MS4 does not imply that Ecology is responsible for issuing applicable NPDES permits. An Indian Tribe or

authorized Indian Tribal organization subject to an EPA-issued NPDES permit for their municipal stormwater discharges would still be considered as having an MS4.

I-20.18 Outfall

Commenters: City of Bellevue, Clark County, Cowlitz County, City of Kenmore, King County, City of Lacey, City of Longview, Pierce County, Regional Road Maintenance Forum, City of Seattle, Snohomish County, City of Vancouver, WSDOT

Summary of the range of comments

- This term should follow the federal definition and be specific to discharges to waters of U.S. (e.g., surface waters only; do not include groundwater; do not eliminate the exclusion for open conveyances connecting two MS3s).
- The referenced federal definition of “point source” (in the term “outfall”) includes ditch, channel, tunnel and conduit; it does not refer to diffuse infiltration (non-point) which is an unreasonable inclusion as a point of compliance. Once coupled with the addition of “ground water” to the definition of “outfall” it now suggests that miles of roadside conveyance ditches could be considered outfalls. Existing UIC regulations regulate point source discharges to ground water.
- If necessary, a different term should be used to define discharges to ground that are not UIC, such as “state permitted ground water discharge points” or Ecology should specify the characteristics of ground water discharges to be considered.
- Make sure the definition will still work as intended in common situations where an MS4 ceases to be publicly owned or operated at a private property line and the discharge point to surface waters occurs on private property.
- Include the words “discharges from” as follows: “Outfall does not include discharges from pipes... which connect segments of the same stream...”

Response to the range of comments

- Ecology agrees that the definition of outfall at 40 CFR 122.2 refers only to waters of the US. Because Washington State’s permits are both NPDES and State Waste Discharge permits, the definition of outfall must appropriately refer to waters of the State. Ecology attempted to revise the definition in the draft permits to limit outfalls to point sources discharging to only surface or ground waters, and at the same time acknowledge that an outfall may also be the point at which the MS4 discharge leaves one municipality’s jurisdiction and enters another’s MS4. Because of the widespread confusion regarding the permits’ applicability to discharges to ground water, Ecology removed the surface or ground water distinction, and relies on

waters of the State unmodified. Refer to the definition of waters of the State; because this term encompasses all “other surface waters and water courses,” stormwater itself is a water of the State. Thus, an outfall includes any point source at which a discharge occurs from an MS4 to another MS4, to an unregulated public stormwater system, to a private stormwater system, and to a receiving water body. Ecology modified the definition of “outfall” to clarify what it means relative to the reference to waters of the State.

- The definition of outfall includes by reference the definition of point source from 40 CFR 122.2: “Point source means any discernable, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.” Ecology agrees that this term does not refer to diffuse infiltration, as may occur along the length of a conveyance ditch.
- Chapter 173-218 WAC, Underground Injection Control Program, regulates discharge of fluids to underground injection control (UIC) wells. UIC wells are defined as follows: “a well that is used to discharge fluids into the subsurface. A UIC well is one of the following: (1) a bored, drilled or driven shaft, or dug hole whose depth is greater than the largest surface dimension; (2) an improved sinkhole; or (3) a subsurface fluid distribution system (i.e., an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.” Ecology relies on the distinction that UIC regulations deal with discharges that occur below the ground surface via UIC wells, and the MS4 permits deal with stormwater management techniques that discharge water onto the ground surface (or into a facility designed to infiltrate that is not a UIC well) for percolation through native or specified soil media.
- Ecology did not agree that open conveyances connecting two publicly owned or operated stormwater systems should be excluded from the definition of outfall. Given the broad meaning of waters of the State and thus the broad application of the term “outfall” Ecology expects that the point at which one MS4 discharges to another MS4, regardless of whether that point occurs in a pipe or in an open conveyance, will be considered an outfall for the purposes of implementing these permits.
- The definition will work in these common situations where an MS4 ceases to be publicly owned or operated at a private property line and the discharge point to surface waters occurs on private property. The MS4 outfall is the point at which the discharge enters the private property’s system.
- Ecology did not agree that “discharges from” should be included in the definition of outfall because outfall refers to a point or structure, not the material passing through it.

I-20.19 Permanent stormwater control plans

Commenters: King County

Summary of range of comments

- Define term as: “Permanent stormwater control plans are stormwater site plans as detailed in Volume 1, section 3.1.5 of the 2012 Stormwater Management Manual for Western Washington. These plans or final corrected plans are commonly referred to as “as-builts.”

Response to the range of comments

- Ecology deleted the term permanent stormwater control plans from the permit. Permit requirements for mapping format do not preclude the use of permanent stormwater control plans, final plans, as-builts, or record drawings to map the MS4.

I-20.20 Permittee

Commenters: Cowlitz County, WSU Pullman

Summary of range of comments

- Add the definition of ‘Permittee’ into the wording. “Permittee is a city, town, county owning or operating a regulated small MS4 applying and receiving a permit a single entity. Unless otherwise noted, the term ‘Permittee’ includes Co-permittee, New Permittee, Secondary Permittee, and New Secondary Permittee.”
- Clarify that a permittee includes cities and counties.

Response to the range of comments

- Ecology clarified that the term Permittee includes cities, towns and counties. Refer to the definition and S1 of the permit.

I-20.21 Physically Interconnected

Commenters: King County

Summary of range of comments

- Clarify that this definition is defining a connection between two MS4s.

Response to the range of comments

- The term “physically interconnected” does not necessarily refer to two MS4s. An MS4 may be physically interconnected with a private system. Where used in the permit, the term is followed by language that clarifies what connections are being referenced.

I-20.22 QAPP

Commenters: City of Spokane, City of Vancouver

Summary of range of comments

- Define the acronym.

Response to the range of comments

- Ecology added Quality Assurance Project Plan and QAPP to the Definitions & Acronyms section.

I-20.23 Qualified personnel or consultant

Commenters: Clark County, King County, Regional Road Maintenance Forum, WSDOT

Summary of the range of comments

- Term is too vague.
- Requirement implies that permittees’ own internal processes for hiring and training do not ensure that the staff occupying these roles are qualified to do them
- The requirement that these personnel have professional training, as per the definition, suggests a line of work that is regulated and requires certificates, degrees, or passed examinations for membership. We are not aware of professional training for plan review, site inspection, or code enforcement jobs, unless Ecology is suggesting that staff in these positions be engineers and/or lawyers.
- Remove the word “training” as all professionals are trained.
- The only time the word “consultant” appears in the permit or appendices is in the “Qualified Personnel and Consultant” definition; “or consultant” should be removed.
- Delete the term “qualified personnel”

Response to the range of comments

- Ecology deleted “...or consultant.”
- Ecology did not intend to imply that the training must be of any particular type (i.e., classroom, certificate program, on-the-job) except that the trained person is qualified to conduct the stormwater management program activity.

I-20.24 Receiving waters

Commenters: North Sound Baykeeper Team, City of SeaTac, City of Sedro-Woolley

Summary of the range of comments

- Suggest that the added sentence be removed due to a range of concerns: conflicts with the intent and benefits of LID; sediment ponds that infiltrate would be receiving waters.
- Support the inclusion of saturated soils under infiltration BMPs.

Response to the range of comments

- Ecology retained the reference to ground water in the definition of receiving waters because these permits apply to discharges to waters of the State, which includes underground waters.

I-20.25 RSMP

Commenters: Port of Vancouver

Summary of range of comments

- Include a definition for RSMP.

Response to the range of comments

- Ecology added a definition for Regional Stormwater Monitoring Program (RSMP).

I-20.26 Shared water bodies

Commenters: Yakima Area Stormwater Co-permittees

Summary of range of comments

- Term “shared water bodies” is not used in the EWA Phase II permit.

Response to the range of comments

- The term “shared water bodies” is in permit condition S5.A.5.a (ii) of the Eastern Washington Phase II Permit. This condition addresses coordination for shared water bodies with other Permittees to avoid conflicting plans, policies and regulations.

I-20.27 Stormwater

Commenters: City of Bellevue, City of Everett, King County, City of Marysville, Regional Road Maintenance Forum, Snohomish County,

Summary of the range of comments

- Delete “interflow.” LID guidance states that interflow is a shallow ground water flow; interflow is not part of the MS4. Increases responsibility for compliance to shallow ground waters. Interflow may be present regardless of precipitation.
- Questions whether interflow should be regulated under the MS4 permits.
- Confusing to include “interflow” here but delete “or laterally through the soil near the land surface” from the Phase I definition of “runoff.”
- Consider using the federal definition.

Response to the range of comments

- Refer to RTC on “interflow.”
- The definition of “stormwater” relies on the definition of “runoff.” When read together, stormwater refers to “water that travels across the land surface and discharges to water bodies directly or through a collection and conveyance system during and following precipitation and snowmelt events, including surface runoff, drainage, and interflow.” Any surface runoff, drainage or interflow encompassed in this definition must “travel across the land surface” and occur “during and following precipitation and snowmelt events.”
- The definition of stormwater used in the permits is consistent with and more complete than the federal definition.

I-20.28 Stormwater facilities

Commenters: City of Renton, Thurston County

Summary of the range of comments

- This term should be replaced with the new term “Stormwater Treatment and Flow Control BMPs/Facilities” in several areas of the permit, ex. pg.30 (Phase II) references “private stormwater facilities” - or define.

Response to the range of comments

- The term “stormwater facilities” is retained in the permit where appropriate to accommodate differences among permittees and requirements. Stormwater facilities may include catch basins and other stormwater features not expressly identified in the term “stormwater treatment and flow control BMPs/facilities.”

I-20.29 Stormwater facilities regulated by the Permittee

Commenters: City of Seattle, Snohomish County

Summary of range of comments

- Delete term.
- Delete “and catch basins”. It is not included with other references to facilities and maintenance of private catch basins should not be a priority since these are usually in low traffic areas.

Response to the range of comments

- Ecology retained the definition of stormwater facilities regulated by the permittee and removed catch basins. Permit condition S5.C.9.b.vi retains requirements for catch basins associated with facilities subject to inspection requirements, which are retained in this permit.

I-20.30 Stormwater Treatment and Flow Control BMPs/Facilities

Commenters: City of Bellevue, King County, Regional Road Maintenance Forum, City of Tacoma, WSDOT

Summary of the range of comments

- The definition is not inclusive of all types of BMPs/facilities, for example infiltration and dispersion BMPs.
- Modify to: “means detention facilities, *infiltration facilities*, treatment BMPs/facilities, ~~and bioretention, vegetated roofs, and permeable~~ low impact development BMPs designed in accordance with the Stormwater Management Manual for Western Washington or equivalent

manual that help meet minimum requirement (treatment) *and/or* minimum requirement (flow control), ~~or both.~~”

- Add “permanent structural” before detention facilities. King County defines retention of forested conditions as a flow control facility. Also, TESC should be excluded from definition. Add “and does not include BMPs/facilities that help meet minimum requirement 5”. It creates a significant tracking burden to distinguish which facilities help meet MR 6 and/or 7. Add “2005” before SWMMWW. Add “enforceable document found in Appendix 10” after equivalent”
- Provide separate definitions for treatment control BMPs/facilities (MR6) and stormwater flow control BMPs/Facilities (MR7), rather than one definition.

Response to the range of comments

- Infiltration BMPs are included within treatment BMPs/facilities in the manual. Dispersion BMPs are included within detention facilities. Ecology clarifies that the definition applies to permanent structural BMPs. Temporary erosion and sediment control BMPs, and BMPs/facilities built exclusively to meet minimum requirement #5, are not included in this definition. The County may choose to include retention of forested conditions within the term if they are used to help meet minimum requirements #6 or #7. Ecology did not provide separate definitions for facilities meeting each minimum requirement.

I-20.31 SWMP

Commenters: City of Seattle, Snohomish County

Summary of the range of comments

- The definition of SWMP is vague, ambiguous and circular. Clarify what are the required elements of a SWMP.
- Delete “additional actions necessary to meet the requirements of the Permit” and instead use “any applicable actions required by S7 (TMDL) and Appendix 2, activities required by S8 (monitoring) and activities required to meet S4.F obligations.”

Response to the range of comments

- Ecology revised the definition of SWMP in the final permit. The SWMP includes the requirements of S5 (for cities, towns and counties) or S6 (for Secondary Permittees) of the permit, and any additional actions necessary to meet applicable TMDLs pursuant to S7 *Compliance with TMDL Requirements*, and S8 *Monitoring and Assessment*. Although actions related to other permit requirements of S4.F or General Conditions, for example, may be

linked to or associated with meeting S5 requirements, Ecology does not define these permit requirements as part of the SWMP.

I-20.32 UGA

Commenters: City of Olympia, Port of Vancouver

Summary of range of comments

- Define UGA.

Response to the range of comments

- Ecology added Urban Growth Area and UGA to the Definitions & Acronyms section. Ecology relies on the definition in the Washington State Growth Management Act (RCW 36.70A.030) which refers to areas designated by a county under RCW 36.70A.110.

I-20.33 Urban/higher density rural sub-basins

Commenters: King County

Summary of the range of comments

- Edit term to: “Urban and higher density rural sub-basins” to avoid confusion.

Response to the range of comments

- Ecology chose to retain the current designation for consistency.

I-20.34 Waters of the State

Commenters: Regional Road Maintenance Forum

Summary of the range of comments

- Definition of “waters of the State” should not include “waters of the US” because these are distinct definitions that should not be used interchangeably.

Response to the range of comments

- Ecology does not use “waters of the State” and “waters of the US” interchangeably. This permit is not only an NPDES permit authorizing discharges to waters of the US, it is also a

state waste discharge permit that authorizes discharges to waters of the state. For the purposes of this permit, including “waters of the US” in the definition of “waters of the State” is appropriate.

I-21 Appendix 6 – Street Waste Disposal

Comments apply to the Phase I and Western Washington Phase II permits. For the Eastern Washington Phase II comments on Appendix 6, see Part II of the RTC.

Commenters: City of Bellevue, City of Bellingham, Clark County, City of Everett, City of Kelso, City of Kenmore, King County, City of Marysville, Port of Vancouver, City of Renton, City of Sammamish, , City of Seattle, City of Sedro Woolley, Snohomish County

Summary of the range of comments

- This statement on street waste solids is confusing, and it is not clear why Ecology included this statement in the Appendix. Requests that the statement be removed because if retained in the permit it implies that street waste solids are always considered to be contaminated soils, which is not the case. Materials removed from roadside ditches, swale surfaces, detention ponds, and the like as considered solid waste.
- Appendix 6 and G10: Solids resulting from cleaning activities are not contaminated and may be freely re-used unless there is reason to believe the solids are contaminated.

Recommendations and alternatives proposed in comments

- End of appendix statement: “*Contaminated soils are considered solid waste and are regulated by local health departments/ districts and laws/regulations governing the disposal of solid waste and hazardous waste.*” Delete all of the soil references as they are not regulated by the NPDES permit but by the WAC 173-350 or other regulations outside of the MS4.
- Since the local health districts and Ecology are initiating permits for compliance with these activities, it would be appropriate to reference the permits. Add statement that if a permittee is permitted and following the procedures outlined in the permit, they would be in compliance with these requirements.
- The draft permit General Condition G10 states that solids resulting from cleaning storm water facilities may be reused or delivered to a solid waste disposal site qualified to receive the material (see Appendix 6). The language proposed in Appendix 6 indicates that street waste solids must be managed appropriately as a solid waste. These two references to street waste solids may be interpreted to be in conflict. The ability (and any limitation) on how the solids can be reused should be provided.

- Regulating solids generating by MS4 maintenance activities should be regulated by appropriate state regulations. Propose either deleting or restating to *"Soils generated from maintenance of the MS4 may be reclaimed, recycled or reused when in alignment with local codes and ordinances. Soils that are identified as contaminated, per WAC 173-350, shall be disposed at a qualified solid waste disposal facility."*
- *"Solids generated by maintenance of the MS4 may be reclaimed, reused, recycled, or used in accordance with local codes and permits. Contaminated soils as designated by Chapter 173-350 shall be disposed of at a permitted solid waste disposal facility."*
- Recommend revising both the language in G10 and in Appendix 6 to clarify this issue. *"Solids resulting from or accumulated during the maintenance or cleaning of stormwater facilities may be reclaimed, recycled or reused. However, solids that are identified as contaminated pursuant to chapter 173-350 of the Washington Administrative Code shall be disposed of at a qualified solid waste disposal facility."*
- Replace "Street Waste Solids" with "Solids Generated from Stormwater Maintenance Activities"
- The term municipal sanitary sewer should not be replaced with MS4.

Response to the range of comments

- This permit regulates discharges from the permittee's MS4 and proper management of waste materials generated by actions required under this permit is fully within the purview of the permit. Ecology modifies language in Appendix 6 and G10 to clarify proper management of Street Waste Solids.
- Ecology did not agree that editing the term "Street Waste Solids" to "Solids Generated from Stormwater Maintenance Activities" is necessary.
- Ecology agreed that municipal sanitary sewer is the appropriate term under Option 1 and made the correction.
- Ecology retained the edit to Option 2 replacing storm sewer system with MS4 for clarity.

I-22 Appendix 7 - Inspection of High Sediment Transport Potential

Comment applies to the Phase I and the Western Washington Phase II permits.

Commenter: King County

Summary of the range of comments

- Revise first sentence of Appendix 7 to apply to sites with "potential to negatively impact nearby features that are sensitive to sediment discharge" rather than the existing language for sites with "potential to discharge sediment."

Response to the range of comments

- Ecology did not revise Appendix 7 as proposed because the revision would limit the number of sites to those with potentially effects on sites with sensitive features, rather than all sites with the potential to discharge sediment, which is the intent of this requirement.