Construction Stormwater General Permit

Addendum to Fact Sheet:
Appendix C - Response to Public Comments

November 16, 2005

Table of Contents

List of Commentors

Associated General Contractors of Washington (AGC)
Barclays North
Boeing
Building Industry Association of Washington (BIAW)
Centex Homes
Central Washington Home Builders Association #1 (CWHBA)
Central Washington Home Builders Association #2 (CWHBA)
Central Washington Home Builders Association #3 (CWHBA)
Centurion
City of Everett
City of Kennewick
City of Richland
City of Tacoma
City of West Richland
City of Yakima
Costco
DR Horton #1
DR Horton #2
Eastern Washington Water Alliance (EWWA)
Kennedy/Jenks Consultants
King County
Kitsap County
Mark Musser
Master Builders Association
Otak, Inc.
People of Puget Sound
Pierce County #1
Pierce County #2
Puget Sound Action Team (PSAT)
Puget Soundkeeper
RE Sources
Sound Transit
Washington Association of Realtors
Washington Department of Corrections
Washington Forest Law (Conservation Groups)
Washington State Department of Fish and Wildlife (WDFW)
Washington Trout
Weyerhaeuser
Washington State Department of Transportation (WSDOT)
Yakima County

The original public comment letters and emails can be viewed at Ecology's website:
http://www.ecy.wa.gov/programs/wq/stormwater/construction/public_comments.html

Summary of Significant Changes

This summary includes the most significant changes made to the draft permit after the close the public comment period. The legal and technical basis for changes related to each public comment is included in the attached document.

Condition S1. Permit Coverage (revised)

S1.B. – Operators Required to Seek Coverage Under this General Permit (Revised)
Forest practices related to construction activity added:
This includes forest practices that are part of a construction activity that will result in the disturbance of one or more acres, and discharges to surface waters of the state (i.e., forest practices which are preparing a site for construction activities)

S1.C.3. – Authorized Non-Stormwater Discharges (Revised)
Three more types of non-stormwater were added to list of conditionally authorized non-stormwater discharges:

- Water used to control dust;
- Routine external building wash down that does not use detergents; and
- Landscape irrigation.

The term "uncontaminated" was added to the following categories of non-stormwater:

- Potable water including uncontaminated water line flushing (de-chlorinated);
- Uncontaminated air conditioning or compressor condensate;
- Uncontaminated ground water or spring water;
- Uncontaminated excavation *de-watering* (in accordance with S9.D.10)
- Uncontaminated discharges from foundation or footing drains;

S2.D.3 - Limitations on Coverage (language deleted)
Silviculture exemption language clarified to reduce confusion:

The following stormwater discharges are not covered by this permit:

Nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff as excluded in 40 CFR Subpart 122.27. ~~This does not include construction activities such as such as road construction beyond forest practices standards, utilities being installed, and/or stumps being removed (clearing and grading), in preparation for other forest conversion. Where construction activities and forest practices are occurring simultaneously, this permit may be required for the non-forest practices activities on the site.~~ This permit is also required for forest practices that are part of a construction activity that will result in the disturbance of one or more

acres, with a discharge to surface waters of the state (i.e., forest practices which are preparing a site for construction activities) [*Last sentence incorporated into Condition S1.B* - Operators Required to Seek Coverage Under this General Permit].

S1.D. – Limitations on Coverage (Revised)
All 303(d)/TMDL requirements consolidated in Condition S8. Deleted the following language from S1.D:

The following stormwater discharges are not covered by this permit:

5. Discharges from construction activities to waters listed as impaired for sediment (turbidity and/or fine sediment), high pH, phosphorus, or other applicable parameter identified by Ecology, under Section 303(d) of the Clean Water Act, unless it can be documented through the water quality sampling requirements set forth in Special Conditions S4.G. that the discharge will not cause or contribute to a violation of water quality standards.

6. Discharges from construction activities to waters for which there is an EPA-approved total maximum daily load (TMDL) that addresses sediment (turbidity and/or fine sediment), high pH, phosphorus, and/or other applicable parameter identified by Ecology, unless the discharge is consistent with the requirements in the TMDL.

S1.E. Coverage for Significant Contributors of Pollutants (moved)
The following language was incorporated into S1.B.1 to improve clarity:

E. Coverage for Significant Contributors of Pollutants

This permit may be required for any size construction site discharging stormwater to waters of the state which Ecology:

1. Determines to be a significant contributor of pollutants to waters of the state of Washington, or
2. Reasonably expects to cause a violation of any water quality standard.

S1.F. Coverage for Discharges to Ground Water (revised/reformatted)
The following language was incorporated into S1.A and S3 to make the permit more concise and improve clarity:

F. Coverage for Discharges to Ground Water

For sites that discharge to both surface water and ground water, all ground water discharges are also subject to the terms and conditions of this permit **[***Incorporated into Condition S3.D***]**. Sites that discharge to ground water only, do not require coverage under this permit, unless Ecology determines that the site contributes a significant amount of pollutant(s) to ground water. A significant amount means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or an amount of a pollutant that has a reasonable potential to cause a violation of surface or ground water quality or sediment

management standards [*Revised/Incorporated into Condition S1.B.2; "significant amount" definition was deleted because it was repeated in Appendix A -Definitions*].

Permittees who discharge to ground shall comply with any applicable requirements for the Underground Injection Control (UIC) regulations, Chapter 173-218 WAC [*Incorporated into Condition S3.D*].

S2. Application Requirements (revised)

S2.A. Application Form (section deleted)
Reference to Qualified Local Program in S2.A was deleted. This provision was determined to be inconsistent with state law.

S2.A. Application Form (revised)
Language amended to address state statute requires the NOI to be submitted 60 days prior to discharge.

A. Permit Application Forms

Notice of Intent Form/Timeline

b. The NOI shall be submitted on or before the date of the first public notice (see Condition S2.B below) and at least 60 days prior to the discharge of stormwater from construction activities. The 30-day public comment period required by WAC 173-226-130(5) begins on the publication date of the second public notice. Unless Ecology responds to the complete application in writing, based on public comments, or any other relevant factors, coverage under the general permit will automatically commence on the thirty-first day following receipt by Ecology of a completed NOI, or the issuance date of this permit, whichever is later; unless a later date is specified by Ecology in writing.

S2.A.2 Application Form (section added)
The following language was added to address partial transfers of permit coverage to one or more new operators:

2. Transfer of Coverage Form
   Current coverage under this permit may be transferred to one or more new operators, including operators of sites within a Common Plan of Development, by submitting a Transfer of Coverage Form in accordance with Condition G9. Transfers do not require public notice.

S2.A. Application Form (sections added/deleted)
S2.A.1-13. The list of requirements for complete permit application was deleted

- Revised Condition S2A requires a "complete and accurate application [Notice of Intent (NOI)].

- The NOI will not require the applicant to certify that an adequate SWPPP has been developed. Also, the SWPPP is not available during the public comment period but is available to the public after permit coverage is granted.

S2.E Permit Coverage Under a Qualified Local Program (entire section deleted)
All Qualified Local Program (QLP) language was deleted. This provision was determined to be inconsistent with state law.

S2.F Low Rainfall Erosivity Waiver (revised)
Erosivity waiver criteria were revised:

D. Erosivity Waiver

Operators may qualify for a waiver from the permit if the following conditions are met:

~~Project must be located east of the Cascades crest;~~

~~Waiver Window: The project must initiate earth disturbance after June 16 and final soil stabilization must be completed by October 15 of the same year, and~~

1. The site will result in the disturbance of less than 5 acres; and the site is not a portion of a common plan of development or sale that will disturb 5 acres or greater.

2. Calculation of Erosivity "R" Factor and Regional Timeframe:
   a. The project's rainfall erosivity factor ("R" Factor) must be less than 5 during the period of construction activity, as calculated using the Texas A&M University online rainfall erosivity calculator at: http://ei.tamu.edu/. The period of construction activity begins at initial earth disturbance and ends with *final stabilization*; and, in addition:
   b. The entire period of construction activity must fall within the following timeframes:
      i. For sites west of the Cascades Crest: June 15 – September 15; or
      ii. For sites east of the Cascades Crest, excluding the Central Basin: June 15 – October 15; or
      iii. For sites east of the Cascades Crest, within the Central Basin*: no additional timeframe restrictions apply.

      *Note: The Central Basin is defined as the portions of Eastern Washington with mean annual precipitation of less than 12 inches.

3. Operators must submit a complete Erosivity Waiver Certification Form at least one week prior to commencing land disturbing activities. Certification must include:
   a. A statement that the operator will comply with applicable local stormwater requirements; and
   b. A statement that the operator will implement appropriate *erosion and sediment control BMPs* to prevent violations of water quality standards.

4. This waiver is not available for facilities declared a significant contributor of *pollutants* as defined in Condition S1.B.1.b.

5. This waiver does not apply to construction activity which includes non-stormwater discharges listed in S1.C.3.

6. If construction activity extends beyond the certified waiver period for any reason, the operator shall either:
   a. Recalculate the rainfall erosivity "R" factor using the original start date and a new projected ending date and, if the "R" factor is still under 5 and the entire project falls within the applicable regional timeframe in S2.C.2.b, complete and submit an amended waiver certification form before the original waiver expires; or
   b. Submit a complete permit application to Ecology in accordance with Condition S2.A and B before the end of the certified waiver period.

   ~~This waiver applies only to the requirements of this permit. It does not supersede or preempt the authority of other agencies to prohibit, restrict, or control discharges of storm water to storm drain systems or other water courses in their jurisdiction.~~

S3. Compliance with Standards (revised)

S3.A. Revised/Moved to S8
All 303(d)/TMDL language consolidated into Condition S8.

S3.C. Deleted
Language (AKART, etc.) was covered in other permit conditions including S3, and S9.

S3.D. Revised/moved to S3.C
Underlined language was added; strikethrough language was deleted:

2. Fully implementing stormwater BMPs contained in stormwater technical manuals published or approved by Ecology, or ~~practices~~ BMPs that are "demonstrably equivalent" to ~~practices~~ BMPs contained in stormwater technical manuals published or approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs for on-site pollution control.

S3.D. (moved from S1.F)

For sites that discharge to both surface water and ground water, all ground water discharges are also subject to the terms and conditions of this permit. Permittees who discharge to groundwater through an injection well shall comply with any applicable requirements of the Underground Injection Control (UIC) regulations, Chapter 173-218 WAC.

S4. Monitoring Requirements (revised)

S4, Table 3 language revised and reformatted to improve clarity.

S4, Table 3 sampling requirements revised:

- Sites less than 1 acre not required to perform sampling (transparency or pH);
- Sites 5-20 acres (all sites 5 acres and larger) must use turbidity meter; can not use transparency tube.
- Footnote regarding 303(d)/TMDL revised: "…phosphorus, etc.) – see S4.G" replaced with "…phosphorus - see Condition S8".
- Footnote regarding pH sampling revised "Beginning October 1, 2006…"
- Footnotes regarding phased-in turbidity and transparency sampling added:
  [4] Beginning October 1, 2008, sites with one or more acre, but less than 5 acres of soil disturbance, shall conduct turbidity or transparency sampling.
  [5] Beginning October 1, 2006, sites greater than or equal to 5 acres of soil disturbance shall conduct turbidity sampling.

S4.A. Site Log Book (revised)

The following language was revised:

A. Site Log Book

1. ~~As part of the Stormwater Pollution Prevention Plan (SWPPP),~~ The Permittee shall maintain a site log book that contains a record of the implementation of the SWPPP and other permit requirements including the installation and maintenance of BMPs, site inspections and stormwater monitoring.

2. ~~The site log book shall be maintained on-site or within reasonable access to the site and be made available upon request to Ecology or the local jurisdiction.~~

B. Site Inspections (revised)

The following language was revised:

The site inspections shall be conducted at least once every *calendar week* and within 24 hours of any ~~rainfall event that causes in a~~ discharge from the site. The inspection frequency for temporarily stabilized, inactive sites may be reduced to once every calendar month.

The following language was added:

Based on the results of the inspection, the permittee shall correct the problems identified as follows:

a. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the inspection; and

b. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but no later than 10 days of the inspection; and

c. Document BMP implementation and maintenance in the site log book.

The following language was deleted:

> ~~New BMPs or design changes shall be documented in the SWPPP in accordance with Condition S9.B.3~~
>
> ~~All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance of their intended function.~~

The following language was revised:

> Name, title, and signature of person conducting site inspection; and the following statement: "I certify~~, under penalty of law,~~ that this report is true, accurate, and complete, to the best of my knowledge and belief".

The following language was deleted:

> ~~When the site inspection indicates that the site is not in compliance with any terms and conditions of this permit, the Permittee shall take immediate action(s) to: stop, contain, and clean up the unauthorized discharges, or otherwise stop the noncompliance; correct the problem(s), implement appropriate Best Management Practices (BMPs), and/or conduct maintenance of existing BMPs; and achieve compliance with all applicable standards and permit conditions. In addition, if the noncompliance causes a threat to human health or the environment, the Permittee shall comply with the Noncompliance Notification requirements in Special Condition S5.F.~~

C. Turbidity/Transparency Sampling – General Requirements (revised)

This entire section has been reformatted to improve clarity. Redundant language for turbidity and transparency sampling, and general procedures have been consolidated.

The following language was revised:

1. Sampling Methods/Effective Dates

   497. Beginning October 1, 2006, if construction activity will involve the disturbance of 5 acres or more, the Permittee shall conduct turbidity sampling per S4.D.

   498. Beginning October 1, 2008, if construction activity will involve greater than or equal to 1 acre, but less than 5 acres of soil disturbance, the Permittee shall conduct transparency sampling **or** turbidity sampling per S4.D.

The following revisions were made:

- *Turbidity and transparency combined to reduce redundancy*
- *Transparency benchmark corrected from 32 centimeters (cm) to 31cm. Data combined from 2 year stormwater survey indicates that 25 NTU turbidity = 33 cm - 2.5 cm standard deviation = 30.5 cm (rounded up to 31 cm in the final*

permit). The full report, Stormwater Quality Survey of Western Washington Construction Sites, 2003-2005, can be downloaded from: http://www.ecy.wa.gov/pubs/0503028.pdf.

- *Revised adaptive management steps if benchmarks (25 and 250 NTU) exceeded*

5. Turbidity/Transparency Benchmark Values

The benchmark value for turbidity is 25 NTU (Nephelometric Turbidity Units); and the benchmark value for transparency is 31 cm.

a. Turbidity 26 – 249 NTU, or Transparency 30 – 7 cm:

If discharge turbidity is greater than 25 NTU, but less than 250 NTU; or if discharge transparency is less than 31 cm, but greater than 6 cm, the CESCL shall:

i. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge that exceeded the benchmark; and

ii. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the benchmark; and

iii. Document BMP implementation and maintenance in the site log book.

312. Turbidity 250 NTU or greater, or Transparency 6 cm or less:

If discharge turbidity is greater than or equal to 250 NTU; or if discharge transparency is less than or equal to 6 cm, the CESCL shall:

i. Notify Ecology by phone in accordance with Condition S5.A.; and

ii. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge that exceeded the benchmark; and

iii. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the benchmark;

iv. Document BMP implementation and maintenance in the site log book; and

v. Continue to sample discharges daily until:

1. turbidity is 25 NTU (or lower); or

2. transparency is 31 cm (or greater); or

3. the CESCL has demonstrated compliance with the water quality standard for turbidity:

    a. no more than 5 NTU over background turbidity, if background is less than 50 NTU, or

    b. no more than 10% over background turbidity, if background is 50 NTU or greater; or

4. the discharge stops or is eliminated.

C. pH Monitoring: Sites with Significant Concrete Work or Engineered Soils (revised)

pH benchmark language was added:

The benchmark value for pH is 8.5 standard units.

S5. Reporting and Recordkeeping Requirements (revised)

If pH sampling conducted, results must be submitted on Discharge Monitoring Report (DMR):

Discharge Monitoring Reports

1. Permittees required to conduct water quality sampling in accordance with Special Conditions S.4.C (Turbidity/Transparency), S4.D (pH) and/or S8 [303(d)/TMDL sampling] shall submit the results to Ecology monthly on Discharge Monitoring Report (DMR) forms provided by Ecology.

S8. Discharges to 303(D) or TMDL WATERBODIES (revised)

New section – revised 303(d)/TMDL requirements consolidated.

- *"other applicable parameters" deleted from table and text – section only applies to turbidity, fine sediment, high pH, and phosphorus*
- *If discharge to phosphorus listed waterbody – turbidity used as surrogate parameter*
- *303(d) sampling locations clarified*
- *303(d) discharges not subject to limitation unless sampling demonstrates violation of water quality standard; adaptive management actions required if limit exceeded*
- *Additional TMDL related requirements revised and clarified. Additional requirements apply if waste load allocation or requirements established in an applicable TMDL.*

A. Sampling and Numeric Effluent Limitations For Discharges to 303(d)-listed Waterbodies

A. Permittees that discharge to water bodies listed as impaired by the State of Washington under Section 303(d) of the *Clean Water Act* for turbidity, fine sediment,

high pH, or phosphorus ~~and/or other applicable parameters~~, shall conduct water quality sampling according to the requirements of this section.

B. Discharges to 303(d)-Listed Waterbodies (Turbidity, Fine Sediment, or Phosphorus)

A. Permittees which discharge to waterbodies on the 303(d) list for turbidity, fine sediment, or phosphorus shall conduct turbidity sampling at the following locations to evaluate compliance with the water quality standard for turbidity:

- Background turbidity shall be measured in the 303(d)-listed *receiving water* immediately upstream (upgradient) or outside the area of influence of the discharge; and

- Discharge turbidity shall be measured at the point of discharge into the 303(d) listed receiving waterbody, inside the area of influence of the discharge; **or**

  Alternatively, discharge turbidity may be measured at the point where the discharge leaves the construction site, rather than in the receiving waterbody.

B. Based on sampling, if the discharge turbidity exceeds the water quality standard for turbidity (more than 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a 10% increase in turbidity when the background turbidity is more than 50 NTU), all future discharges shall comply with a numeric effluent limit which is equal to the water quality standard for turbidity.

C. If a future discharge exceeds the water quality standard for turbidity, the Permittee shall:

- Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge that exceeded the standard;

- Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the standard;

- Document BMP implementation and maintenance in the site log book;

- Notify the appropriate Ecology Regional Office by phone within 24 hours of analysis;

- Continue to sample daily until discharge turbidity meets the water quality standard for turbidity.

C. Discharges to waterbodies on the 303(d) list for High pH

A. Permittees which discharge to waterbodies on the 303(d) list for high pH shall conduct sampling at one of the following locations to evaluate compliance with the water quality standard for pH (in the range of 6.5 – 8.5):

- pH shall be measured at the point of discharge into the 303(d) listed waterbody, inside the area of influence of the discharge; or

- Alternatively, pH may be measured at the point where the discharge leaves the construction site, rather than in the receiving water.

B. Based on the sampling set forth above, if the pH exceeds the water quality standard for pH (in the range of 6.5 – 8.5), all future discharges shall comply with a numeric effluent limit which is equal to the water quality standard for pH.

C. If a future discharge exceeds the water quality standard for pH, the Permittee shall:

- Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge that exceeded the water quality standard;
- Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the standards;
- Document BMP implementation and maintenance in the site log book;
- Notify the appropriate Ecology Regional Office by phone within 24 hours of analysis; and
- Continue to sample daily until discharge meets the water quality standard for pH (in the range of 6.5 – 8.5) or the discharge stops or is eliminated.

D. Sampling and Limitations For Sites Discharging to Applicable TMDLs

1. Discharges to a waterbodies subject to an applicable Total Maximum Daily Load (TMDL) for turbidity, fine sediment, high pH, ~~and/or other applicable parameters~~ or phosphorus, shall be consistent with the assumptions and requirements of the TMDL.

   a. Where an *applicable TMDL* sets specific *waste load allocations* or requirements for discharges covered by this permit, discharges shall be consistent with any specific waste load allocations or requirements established by the applicable TMDL.

      i. The Permittee shall sample discharges weekly, or as otherwise specified by the TMDL, to evaluate compliance with the specific waste load allocations or requirements.

      ii. Analytical methods used to meet the monitoring requirements shall conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 CFR Part 136. Turbidity and pH methods need not be accredited or registered unless conducted at a laboratory which must otherwise be accredited or registered.

   b. Where an applicable TMDL has established a general waste load allocation for construction stormwater discharges, but no specific requirements have been identified, compliance with Conditions S4 (Monitoring) and S9 (SWPPPs) will be assumed to be consistent with the approved TMDL.

c. Where an applicable TMDL has not specified a waste load allocation for construction stormwater discharges, but has not excluded these discharges, compliance with Conditions S4 (Monitoring) and S9 (SWPPPs) will be assumed to be consistent with the approved TMDL.

d. Where an applicable TMDL specifically precludes or prohibits discharges from construction activity, the operator is not eligible for coverage under this permit.

S9. Stormwater Pollution Prevention Plan (revised)

- *Site log book kept with SWPPP, but not a required part of SWPPP narrative*
- *Clarified design criteria for pipe slope drains and conveyance channels.*
- *Dewatering concrete vaults added to list of pH modifying sources.*
- *Timeframes for SWPPP revisions made within same timeframes as S4.*

The Permittee shall modify the SWPPP if, during inspections or investigations conducted by the owner/operator, or the applicable local or state regulatory authority, it is determined that the SWPPP is, or would be, ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The Permittee shall take the following actions:

a. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the inspection or investigation;

b. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but no later than 10 days from the inspection or investigation; and

c. Document BMP implementation and maintenance in the site log book.

G9. Transfer of General Permit Coverage (Revised)

Language added (<u>underlined</u>) to address partial transfers within a common plan of development or sale:

Coverage under this general permit is automatically transferred to a new discharger, <u>including operators of lots/parcels within a common plan of development or sale</u>, if:

A. A written, signed agreement (Transfer of Coverage Form) between the current discharger (Permittee) and new discharger containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to the Director; and

B. The Director does not notify the current discharger and new discharger of the Director's intent to revoke coverage under the general permit. If this notice is not given, the transfer is effective on the date specified in the written agreement.

When a current discharger (Permittee) transfers a portion of a permitted site, the current discharger shall also submit an updated application form (NOI) to the Director indicating the remaining permitted acreage after the transfer. When a current discharger (Permittee) transfers all portions of a permitted site to one or more new dischargers, the current discharger shall also submit a notice of termination (NOT) form to the Director.

G9. Bypass Prohibited (Revised)

Language added (underlined) to address discharge or sludge use or disposal:

A. Duty to Mitigate

The Permittee is required to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

Appendix A – Definitions (Revised)

The following terms were added to Appendix A - Definitions:

Applicable TMDL means a TMDL for turbidity, fine sediment, high pH, or phosphorus, which has been completed and approved by EPA prior to November 16, 2005, or prior to the date the operator's complete permit application is received by Ecology, whichever is later.

Applicant means an *operator* seeking coverage under this permit.

Certified Erosion and Sediment Control Lead (CESCL) means a person who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by Ecology (see BMP C160 in the SWMM).

Injection well means a "well" that is used for the subsurface emplacement of fluids. (see *Well*)

Representative means a stormwater or wastewater sample which represents the flow and characteristics of the discharge. Representative samples may be a grab sample, a time-proportionate *composite sample*, or a flow proportionate sample. Ecology's Construction Stormwater Monitoring Manual provides guidance on representative sampling.

Sensitive area means a waterbody, wetland, stream, aquifer recharge area, or channel migration zone.

Storm Drain means any drain which drains directly into a *storm sewer system*, usually found along roadways or in parking lots.

Storm Sewer System means a means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains designed or used for collecting or conveying stormwater. This does not include systems which are part of a *combined sewer* or Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

Well means a bored, drilled or driven shaft, or dug hole whose depth is greater than the largest surface dimension. (see *Injection Well*)

Appendix A – Definitions (Revised)

The following terms were deleted from Appendix A - Definitions:

CESCL
Ecology
Equivalent Stormwater Management Manual
Forest Practices
Illicit Discharge
Leachate
Local Government
Municipal Storm Sewer
Severe Property Damage
Small Construction Activity (sites)
Stormwater Drainage System
USEPA

General Comments

Impacts on Small Business/Home Builders/Affordable Housing

1. Thank you for the opportunity to comment on the draft Construction Stormwater General Permit. We believe that it is far too stringent and exceeds the intent of the Clean Water Acts Phase 2 National Pollutant Elimination System requirements for construction site stormwater runoff management. We urge you to consider rewriting the permit in order to minimize the impacts to small business. (City of Kennewick)

   Response: Ecology believes that the permit is consistent with the intent and legal requirements of the federal Clean Water Act and EPA's Phase II stormwater rules. In addition, Washington State's Water Pollution Control Act (RCW 90.48.555) has specific new legal requirements that were addressed in the permit. These requirements include monitoring, evaluation and reporting. Several special provisions for small (1-5 acre) construction sites have been incorporated including:
   - extended timeline to implement monitoring and reporting requirements; and
   - allowance for an inexpensive and simple stormwater sampling method (transparency tube) to meet RCW 90.48.555; and
   - erosivity waiver (permit exemption) for eligible sites.

2. This permit is going to hit small builders the hardest, who are already struggling with existing regulations and the ever-increasing cost of building. A number of project sites under five acres will likely be deemed noncompliant because the developer may not understand the scope or be able to meet the demands of planning, sampling, monitoring, reporting and recordkeeping. It is unreasonable to expect builders and property owners of less than five acres to learn a new regulatory process and satisfy lengthy paperwork requirements. They are already struggling with confusing and often redundant regulations at the local level. Requiring an application for permit renewal six months prior to expiration is unreasonable for smaller projects under five acres that may not anticipate the delay or do not have the resources to take action so far in advance. Violations of this permit have serious consequences, including large fines and/or jail time. In essence, the proposed regulations set the applicants with less than five acres up for failure. (Master Builders)

   Response: Please see response to comment 1 above. Ecology plans to conduct education and outreach efforts to help permittees understand and comply with the new permit requirements. The 180 day reapplication deadline is mandated by existing state and federal requirements.

3. On behalf of the 4,000 member companies of the Master Builders Association of King and Snohomish Counties (MBA), I have several concerns regarding the draft Construction Stormwater General Permit.

   We understand that the Washington State Department of Ecology (DOE) is implementing this permit in compliance with RCW Chapter 90.48 and USC Title 33, Section 1251 and

that many of the requirements of the permit come from state and federal laws that DOE has no authority to modify.

Our comments: 1) highlight the impacts that the state and federal requirements will have on the home building industry; 2) offer suggestions to DOE for permit implementation to help reduce the impact on our industry; and 3) raise questions that we have for DOE about the draft permit. (Master Builders)

Response: Thank you for your comments.

4. On behalf of Barclays North, I'm writing to express our concerns regarding the proposed storm water construction general permit. Lowering the threshold by which this permit is required from five acres to one acre will dramatically impact small infill development, which is a key component for success of the Growth Management Act. Further, the requirement that both this permit and a storm water pollution prevention plan be submitted will have a measurable impact on both the cost and time associated with attempting to develop a project. (Barclays North)

   Response: Ecology is required to implement the Phase II Stormwater Rule, which effectively lowers the NPDES permitting threshold from five acres down to one acre of soil disturbance.

   Ecology has decided that Stormwater Pollution Prevention Plans do not need to be submitted to Ecology during the public comment period for the permit application (Notice of Intent). However, after permit coverage is granted, SWPPPs must be submitted to Ecology, local governments, or the public upon request.

   EPA conducted a cost/benefit analysis of the Phase II rule for 1-5 acre sites; some findings are listed in the response to Comment #11.

5. Our association represents over 20,000 members state wide involved in the business of buying and selling residential and commercial real estate. This new permit will have a significant effect on our state wide membership and their clients, which is why we were invited to be part of the stakeholder group that was involved with pre-draft discussions and comments.

   While we understand and appreciate the impetus for the new regulations, the regulations as currently drafted simply do not offer enough protections/exemptions for small properties with minimal stormwater concerns. The effect of a lack of adequate protections/exemptions will be to increase housing costs and/or housing availability in our state, at a time when we are already facing an affordable housing crisis.

   Clearly the move to make the permit apply to sites comprising less that five acres but more than one acre is the largest concern that we have. While the background information indicates that such small sites constitute a small percentage (roughly 13%) of the sites involved, that is not an insignificant number. Particularly when these small site

operators are facing fees of roughly $3,500 per year, based on numbers contained in your Economic Impact Analysis, to comply with the new permit requirements. This is a significant financial hit to small site owners.

If you must include such small sites within the purview of the permit, we urge you to make every effort, using all legal and feasible options per the direction in WAC 173-226-120, to reduce the economic impact of this permit on small site owners and the housing industry. (WA Assn of Realtors)

Response: Ecology is required to apply the one acre threshold in Washington State, and is required to implement monitoring, reporting and adaptive management mechanisms in accordance with RCW 90.48.555(8)(a). In meeting these requirements, Ecology has attempted to minimize the cost to small site owners to the extent possible.

- In addition to the cost reducing measures outlined in the Economic Impact Statement, the final permit also defers sampling for 1-5 acre sites until October 1, 2008, and retains the less costly stormwater sampling technique for sites which disturb less than 5 acres of soil (transparency tube).
- Ecology has decided to remove the requirements for applicant's Stormwater Pollution Prevention Plans to be made available during the application process and public comment period.
- A significant number of 1-5 acre sites will qualify for an erosivity waiver.

EPA conducted a cost-benefit analysis for the Phase II Stormwater Rule, including the compliance costs for 1-5 acre sites:

- EPA estimated that the average reduction in soil loss from Phase II (1-5 acre) construction sites implementing BMPs would be 89.6 tons per site.
- EPA modeled per home compliance cost estimates for single family detached to the median and mean cost of a new home. Compliance costs of approximately $400 to $650 per home equaled 0.22% to 0.43% of the price of a new home.
- EPA concluded that it was unlikely that per home compliance costs would have a significant impact on a substantial number of small construction companies.
- EPA added similar analyses of costs for multi-family residential developments and commercial developments to evaluate the potential impacts of indirect costs such as those estimated for the post-construction runoff control element of the municipal program provision.
- For multi-family developments, the per-site compliance costs was compared with the estimated revenues from constructing condominiums or apartments on the site. The revenue estimates were determined by multiplying the estimated number of units per site by the median condominium price and mean apartment price, respectively. Compliance costs equaled 0.17% to 0.91% of anticipated sales revenues.
- For commercial sites, the per-site compliance costs were compared to the estimated revenue from a commercial office development. Compliance costs

ranged from 0.38% to 0.47% of sales. Based on the results from these three screening analyses, EPA concluded that typical construction firms, which build and sell residential or commercial sites, are unlikely to incur compliance costs which exceed 1% of expected sales.

6. Has Ecology determined the cost of permit compliance, including CESCL training or hiring engineers, SWPPP development, inspections, log books, recordkeeping, and monitoring requirements? (BIAW)

   Response: Ecology has estimated the cost of permit compliance in the Economic Impact Analysis in accordance with WAC 173-226-120: http://www.ecy.wa.gov/pubs/0510063.pdf. Stormwater management costs, including SWPPP development and BMP implementation are analyzed in "Cost Analysis - Washington Department of Ecology, Year 2001 Minimum Requirements for Stormwater Management in Western Washington, prepared by Herrera Environmental Consultants, Inc.: http://www.ecy.wa.gov/programs/wq/stormwater/cost _rpt.pdf This report provides information on costs of stormwater control measures required for new single-family residential and commercial developments in western Washington based on the minimum requirements set forth by Ecology in the 2001 Stormwater Management Manual for Western Washington (manual). The manual describes the stormwater management requirements applicable to various development and redevelopment scenarios, including many types of development other than single-family residential and commercial land use. There are a multitude of development scenarios that could potentially be evaluated for stormwater management implementation costs but doing so would require extensive amounts of time and effort. This report discusses the range of stormwater management costs that could be expected for some representative examples, and the reader must necessarily use the information as a general guide to understand the cost implications for a specific project of interest.

7. The draft permit imposes significant compliance requirements for construction sites less than five acres in size. This will be the first CSGP in Washington to cover small construction sites. While AGC appreciates the reduced and phased-in sampling requirements for turbidity monitoring and use of a Certified Erosion and Sediment Lead for inspections, there is a remaining concern that the proposed permit goes too far and too fast for small construction sites.

   For small construction sites, the focus of this permit should be on implementation and inspection of best management practices. The level of reporting, record keeping and monitoring imposed on small sites will be financially overwhelming to some contractors operating on sites less than five acres. We urge Ecology to use this permit cycle to phase in regulation of small sites. This will allow the industry to adapt while focusing on BMP selection and implementation. This will also allow the Department to assess problems with compliance and the level of regulation necessary for smaller construction sites under the permit. (AGC)

Response: Ecology has decided to phase in sampling requirements for 1-5 acre sites until October 1, 2008. This will allow small builders approximately 3 years to focus on BMP selection and implementation before sampling and reporting requirements begin.

8. BIAW is the largest trade association in the state representing over 11,490 members involved in various aspects of the homebuilding industry. The typical BIAW member builds five to 15 homes per year. Unlike large, out of state conglomerate developers or commercial developers, such builders operate on much smaller budgets and have much fewer resources to navigate the costly and onerous maze of land use and environmental regulations. Ultimately, more overlapping regulations lead to higher operating costs for builders that exacerbate the housing affordability crisis in Washington. BIAW is very concerned with the provisions in the proposed Permit and the severe implications this will have, particularly on small builders. (BIAW)

   Response: See Responses to Comments 4, 5, 6, 7 and 11.

9. CWHBA is a trade association in Central Washington representing 680 members who have an interest in the housing industry. The average CWHBA home builder constructs five homes a year. CWHBA has concerns with provisions of the proposed Construction Stormwater General Permit that increase the cost of home construction for the small builder and are unreasonable for our arid climate in the Central Basin. Further, there is little, if any, provisions in the Construction Stormwater General Permit to allow flexibility in meeting extenuating circumstances. (CWHBA1)

   Response: Ecology recognizes there are practical and climatic differences between Eastern and Western Washington in terms of stormwater management. The permit makes distinctions between Eastern and Western Washington. For example the permit:
   - References the Stormwater Management Manual for Eastern Washington as the source of relevant stormwater management practices and design criteria in Eastern Washington.
   - Allows for broader use of the 'erosivity waiver' in Eastern Washington, with areas in the Central Basin (<12" annual precipitation) being allowed to use the EPA calculator to determine eligibility, with no seasonal restrictions.
   - Bases the sampling frequency in the permit only on those rainfall or snowmelt runoff events which result in a discharge to surface waters. Eastern Washington generally has considerably fewer rainfall events which result in discharges to surface waters than Western Washington, resulting in a reduced sampling requirement for Eastern Washington.
   - Adopts the same, longer timelines for stabilizing disturbed soils as those contained in the Eastern Washington Stormwater Manual.

10. Is public notice and a 30 day comment period proposed to be required for sites smaller than 5 acres? I certainly hope not as this seem an onerous burden on small project development. (Centurion Development Services)

Response: Yes, the public notice and public comment period are required by state law (RCW 90.48.170) and rules (WAC 176-226-130).

11. Our association advocates for affordable housing, and any additional permitting costs and delays such as those mentioned above push lot prices higher. We are concerned that this will drive the cost of purchasing a house out of the affordable range for the average working family. We request that DOE show detailed evidence that the additional costs and regulations proposed are necessary to protect the potential risks to the environment. (Master Builders)

    Response: Ecology has considered the cost of implementing the new requirements in the permit (sampling, reporting, etc.), and have concluded that these new costs are nominal, especially compared to the other forces which are driving up the cost of affordable housing in the region. The evidence that the additional costs of the permit are necessary to protect the potential risks to the environment was provided in the Cost Benefit Analysis in EPA's Phase I and II Stormwater Rules

    - EPA estimated that the average reduction in soil loss from Phase II (1-5 acre) construction sites implementing BMPs would be 89.6 tons per site.
    - EPA modeled per home compliance cost estimates for single family detached to the median and mean cost of a new home. Compliance costs of approximately $400 to $650 per home equaled 0.22% to 0.43% of the price of a new home.
    - EPA concluded that it was unlikely that per home compliance costs would have a significant impact on a substantial number of small construction companies.
    - EPA added similar analyses of costs for multi-family residential developments and commercial developments to evaluate the potential impacts of indirect costs such as those estimated for the post-construction runoff control element of the municipal program provision.
    - For multi-family developments, the per-site compliance costs was compared with the estimated revenues from constructing condominiums or apartments on the site. The revenue estimates were determined by multiplying the estimated number of units per site by the median condominium price and mean apartment price, respectively. Compliance costs equaled 0.17% to 0.91% of anticipated sales revenues.
    - For commercial sites, the per-site compliance costs were compared to the estimated revenue from a commercial office development. Compliance costs ranged from 0.38% to 0.47% of sales. Based on the results from these three screening analyses, EPA concluded that typical construction firms, which build and sell residential or commercial sites, are unlikely to incur compliance costs which exceed 1% of expected sales.

General Water Quality Issues

12. Although the draft permit is far from what we would like to see for regulation of construction stormwater discharges, and includes provisions that do not comport with applicable law as discussed below, Soundkeeper is pleased that this draft permit represents a significant improvement over the manifestly inadequate and blatantly illegal permit that has been in effect since 2000. Unlike the 2000 permit, this draft at least purports to require compliance with standards and includes monitoring. It is about time that regulation of construction stormwater discharges started to catch up with that for other discharges and the intent of the Clean Water Act. (Puget Soundkeeper)

    Response: Comment noted.

13. Thank you for accepting my comments on the draft construction stormwater general permit. While this permit is an improvement over the last permit, I believe that substantial issues of water quality remain that need to be addressed.

    In my role as North Sound Baykeeper, I am the lead for the Stormwater Team of volunteer and intern stormwater watchers for Whatcom County. Stormwater Team members have taken part in a training given by stormwater inspectors from the Department of Ecology, Whatcom County, and the City of Bellingham. My comments are based, in part, on my experience in the field and with the Stormwater Team. (RE Sources)

    Response: Comment noted.

14. What requirements apply to projects less than 1 acre? We suggest that at the minimum, a SWPP, BMP installation and maintenance, and a logbook be required. Because these sites are smaller, their record-keeping will be a very small burden. Taken together, small sites can discharge considerable amounts of pollution. As an example, consider the build-out in Sudden Valley, where discharges end up in Lake Whatcom, a 303 d listed water body. (RE Sources)

    Response: With the exception of routine water quality sampling, all permit requirements apply to sites under 1 acre that are part of a larger common plan of development or sale which is 1 acre or larger. However, additional sampling applies to all sites, regardless of size, which discharge to waterbodies which are 303d listed for turbidity, fine sediment, high pH, or phosphorus.

15. Generally, the DCSGP will [help] protect the state's waters and those fish and wildlife that are dependent on water quality and quantity for their existence. (WDFW)

    Response: Comment noted.

16. The WDFW supports the significant change in this draft that implements the U.S. Environmental Protection Agency's Phase II stormwater rule, which drops the permitting

threshold from five to one acre of soil disturbance. Our field staff have experienced numerous construction projects that were less than five acres but that caused unmitigated sedimentation to receiving streams and stress to aquatic life. (WDFW)

Response: Comment noted.

17. The DCSGP does not directly address fish and aquatic habitat issues or concerns in receiving waters such as timing for critical life phases, maintenance of instream flows, impacts to channel-beds and floodplains, fish stranding, proximity to receiving surface waters, and cumulative impacts to listed fish species, critical fish habitat, and essential fish habitat. WDFW recommends that these issues be addressed in the DCSGP, and we are available to assist in that process. (WDFW)

    Response: The Construction Stormwater General Permit addresses fish and aquatic habitat issues through the requirements to control the release of sediments and other pollutants from construction sites. Though this is a general permit that will be applied to many construction sites, the scope of the permit is restricted to requirements for a site plan that should prevent and minimize potential impacts from a single construction site. The focus is on what the permittee can do at the construction site during the construction phase.

    Potential cumulative impacts that occur to hydrology and fish habitat as a result of the extent of development in a watershed are not subjects that can be addressed in this general permit by the permittee nor by the Dept. of Ecology. First of all, those go beyond the scope of the permit which is limited to the construction phase only. Secondly, Ecology cannot predict the timing nor the extent of land areas that will need coverage under this permit. The permit cannot address the potential for cumulative impacts to fish habitat from all construction sites across the state or even within one watershed. Such cumulative analyses should be accomplished by local governments when adopting Comprehensive Land Use Plans under the Growth Management Act.

18. Washington Trout appreciates the opportunity to comment on the subject permit. We have submitted joint comments with other groups on the need to apply this permit to forestry activities. We have the following additional comments on the ability of the draft general permit to meet water quality standards. (Washington Trout)

    Response: Comments noted.

Enforcement

19. We would like to formally request uniform application and enforcement from DOE upon permit implementation. A few of our members have expressed concern with past experiences working with DOE under the existing permit where your agency requested information that was not required. We also have members who have reported businesses that were clearly in violation of their permit, and DOE did nothing to enforce it. DOE

needs to make sure it is consistent with enforcement and permit requirements across the state. (Master Builders)

Response: Ecology strives to implement and enforce general permits consistently across the state.

Eastern WA

20. The comments provided herein are on the Draft Construction Stormwater General Permit. However, many of these comments are relevant to sections of the fact sheet as well. Stormwater manager, engineers, contractors and others have all observed the serious problems that poorly managed construction sites have on conveyance systems and receiving waters. While many local governments have considered runoff from smaller sites, a well crafted State construction stormwater permit for sites down to an acre is needed.

    I believe that one of the challenges that Ecology and Advisory Committee members have faced as they prepared the current draft, has been to balance the general permit legal requirements with benefits, with costs, and with site specific applicability. Accounting for detailed site specific conditions will result in more appropriate standards at a given site, but may make a general permit too complex. On the other hand, making a permit too "general" will result in standards that exceed the requirements in some areas and are not stringent enough in others. The potential for this to occur is highest when attempting to use a single general permit to cover vastly different climatic areas, such as this draft statewide permit does. Those who believe that permit conditions are too stringent and/or do not fit their regional or local conditions will likely seek individual permit coverage, which will be counter productive to the purposes for developing a general permit (streamlined application, shorter process, less Ecology staff time, etc.). I believe that the best way to avoid the need to process numerous individual permit applications is for Ecology to form another advisory committee composed of Eastern Washington stakeholders and develop a separate Eastern Washington General Permit that is better tailored to the varied conditions found east of the Cascade Mountains.

    While the current draft permit does attempt to address eastside versus westside conditions, it only does so in limited ways, not likely to be adequate to avoid individual permit requests. The frame work for developing an Eastern Washington general construction permit is already in place: (1) a steering committee that has worked closely with Ecology on stormwater issues; (2) a technical manual that considers and addresses the range of climatic and geologic conditions in Eastern Washington; (3) a draft Eastern Washington NPDES Phase II Municipal Stormwater General Permit; (4) very knowledgeable professionals from government, industry, and interest groups who are willing to come together again for such an effort; and (5) the current draft permit that can be used as a partial template.

    I certainly respect the hard work of Ecology and the Advisory Committee in crafting what is a good attempt at a statewide permit. However I also firmly believe that developing separate general permits for such vastly different regions will result in a more

efficient regulatory system, less requests for individual permits, improved environmental protections, more defensible site specific requirements, and a less costly compliance effort by many permittees (and less resistance to implementation). For instance the entire phenomenon of snow accumulation and melting seems to have been missed in developing this permit. In eastern Washington and many other parts of the state, snow melt is a major proportion of runoff. Obviously, there may be no runoff during snowfall, and snow can melt in the middle of a long dry spell – how is this addressed in the permit. (Otak)

Response: Ecology recognizes there are practical and climatic differences between Eastern and Western Washington in terms of stormwater management, but does not agree that a separate general permit is economically justified or technically necessary to address these differences. Where Ecology believed it was appropriate to do so, the permit makes distinctions between Eastern and Western Washington. For example the General Permit:

- References the Stormwater Management Manual for Eastern Washington as the source of relevant stormwater management practices and design criteria in Eastern Washington.
- Allows for broader use of the 'erosivity waiver' in Eastern Washington, with areas in the Central Basin (<12" annual precipitation) being allowed to use the EPA calculator to determine eligibility, with no seasonal restrictions.
- Bases the sampling frequency in the permit only on those rainfall or snowmelt runoff events which result in a discharge to surface waters. Eastern Washington generally has considerably fewer rainfall events which result in discharges to surface waters than Western Washington, resulting in a reduced sampling requirement for Eastern Washington.
- Adopts the same, longer timelines for stabilizing disturbed soils as those contained in the Eastern Washington Stormwater Manual.

Unfortunately, Ecology was not able to adopt some of the public comments and suggestions for further distinguishing Eastern Washington in the Construction Stormwater General Permit. To make a distinction between Eastern and Western Washington, Ecology must be able to either legally or technically justify the difference.

Ecology recognizes that snowfall accumulation and snowmelt runoff poses unique stormwater management issues for Eastern Washington. Basic erosion and sediment control BMPs required by the permit and Stormwater Management Manual for Eastern Washington are effective in addressing various weather conditions in Eastern Washington including wind, rainfall, or snowmelt runoff. It may be necessary to modify or install different BMPs to adapt to changing seasons, especially at higher elevations of Eastern Washington. One of the indirect ways the permit addresses snowmelt runoff is to have turbidity and transparency sampling requirements triggered by "discharge events" rather than using a set rainfall amount or storm event to trigger sampling, e.g., 0.50"/24hr storm event. The previous permit required BMP inspections to be conducted weekly and after 0.50"/24hr events; this was replaced with inspections conducted weekly and after stormwater (including snowmelt), and non-stormwater discharge events.

21. The City of Richland, along with the other nine members of the Ten Cities Group, successfully lobbied Ecology in 2001 to develop a separate Eastern Washington Stormwater Manual. Their lobby efforts were based on the significant climatic and soil differences between eastern and western Washington. A separate Stormwater Manual and Model Program were developed with Ecology funding the projects. Ecology also chose to develop a separate NPDES Phase II permit for eastern Washington because of those differences. The Phase II permit is not scheduled to be issued until June 2006 while the Construction Stormwater General Permit is scheduled to effective December 2005 when the current permit program expires. Both permits should compliment each other. We request the schedule to place this language in rule be pushed back to allow both permits be issued at the same time and we request that in the time allowed there be a separate Stormwater Construction General Permit developed for eastern Washington. (City of Richland)

    Response: Ecology disagrees with the suggestion to issue a separate permit for Eastern Washington in June 2006; see Response to Comment 20. The current permit expires on November 18, 2005. Failure to have a re-issued permit in place before the current permit expires would mean Ecology will not have a permit to issue to applicants with construction activities. These applicants would not be able to comply with the federal Clean Water Act. New construction activities which are required under the federal Clean Water Act to have a permit are at legal risk due to third party citizen suits if they do not have the required permit.

22. We stress our request that this rush to put this language into rule be slowed t o allow for the development of an eastern Washington permit that addresses eastern Washington climate and soil conditions (EWWA)

    Response: Ecology disagrees with the suggestion to issue a separate permit for Eastern Washington; see responses to Comments 20 & 21.

23. The members of the Ten Cities Group, successfully lobbied Ecology in 2001 to develop a separate Eastern Washington Stormwater Manual Their lobby efforts were based on the significant climatic and soil differences between eastern and western Washington. A separate Stormwater Manual and Model Program were developed with Ecology funding the projects Ecology also chose to develop a separate NPDES Phase II permit for eastern Washington because of those differences. The Phase II permit is not scheduled to be issued until June 2006 while the Construction Stormwater General Permit is scheduled to effective December 2005 when the current permit program expires. Both permits should compliment each other. We request the schedule to place this language in rule be pushed back to allow both permits be issued at the same time and we request that in the time allowed there be a separate Stormwater Construction General Permit developed for eastern Washington. (EWWA)

    Response: Ecology disagrees with the suggestion to issue a separate permit for Eastern Washington; see responses to Comments 20 & 21.

24. The City of West Richland, along with the other nine members of the Ten Cities Group, successfully lobbied Ecology in 2001 to develop a separate Eastern Washington Stormwater Manual Their lobby efforts were based on the significant climatic and soil differences between eastern and western Washington. A separate Stormwater Manual and Model Program were developed with Ecology funding the projects Ecology also chose to develop a separate NPDES Phase II permit for eastern Washington because of those differences. The Phase II permit is not scheduled to be issued until June 2006 while the Construction Stormwater General Permit is scheduled to effective December 2005 when the current permit program expires. Both permits should compliment each other. We request the schedule to place this language in rule be pushed back to allow both permits be issued at the same time and we request that in the time allowed there be a separate Stormwater Construction General Permit developed for eastern Washington (West Richland)

    Response: Ecology disagrees with the suggestion to issue a separate permit for Eastern Washington; see responses to Comments 20 & 21.

25. General Comment. CWHBA supports a separate Eastern Washington Construction Stormwater General Permit. This position is based on the climatic differences between Eastern and Western Washington. (CWHBA)

    Response: Ecology disagrees with the suggestion to issue a separate permit for Eastern Washington; see responses to Comments 20 & 21.

General Permit Approach

26. It is not made clear in the permit and accompanying documents why a "general permit" is the mechanism selected by Ecology to implement the federal stormwater requirements rather than via Washington Administrative Code. The permit process seems to create a much more onerous process for a project proponent in terms of paperwork, public notice, and so forth, as well as much more work on the part of Ecology to review and issue paperwork, with no real advantage in terms of environmental protection over a set of standards that are set forth in WAC. In other words, using the general permit approach may actually increase the resources required for both the regulator and the regulated entity to achieve the same level of environmental benefit. (Dept. of Corrections)

    Response: This permit is an NPDES permit, which is required under the Clean Water Act (CWA). The CWA requires a permit for discharges of pollutants from a point source into waters of the United States. The CWA also limits the duration of the permit to five years. EPA rules place additional requirements around permits. The use of a rule or WAC to authorize discharges from construction sites would not be legal under the federal CWA and implementing regulations without also complying with the rest of the administrative aspects of permit development, issuance, and granting permit coverage.

    By state statute (Chapter 90.48 RCW), Ecology must issue permits for discharges of "waste materials" into waters of the state. All permits, including general permits,

must comply with several requirements including an application, public notice, a permit term of five years, and the need to recover the costs through permit fees.

Increased Ecology Workload/Permit Delays

27. How many permits does DOE anticipate receiving once this permit is implemented? How does DOE plan to process them in a timely manner without hiring additional staff? At what point will DOE look at hiring staff? What is the maximum number of days review time per permit? According to S2.C, coverage under the permit begins 31 days after DOE receives a complete permit. What will DOE do if there are a number of permits being submitting that cause the review time to exceed a 31-day turnaround? (Master Builders)

    Response: Ecology does not have accurate data to predict the number of sites which will require the permit, and does not know how many will apply for and obtain the permit, but we anticipate as much as a three-fold increase in the number of permits processed annually. A significant number of 1-5 acre projects will not require permit coverage because all stormwater is infiltrated on-site, with no discharge to surface waters; and others will qualify for the Low Rainfall Erosivity Waiver.

    With the passage of SB 6415 last year, Ecology hired an additional 12.5 Full Time Employees (FTEs) to implement and administer the Construction and Industrial General Permits. Most of these employees were allocated to regional offices for inspection and technical assistance duties. Some were added to Ecology Headquarters to process permit applications and manage data. At the beginning of 2005 permit cycle, permits will be processed by a team of four Environmental Specialists at Ecology Headquarters. Additional FTEs may also be hired and allocated according to the program's needs.

    The maximum number of days to review application depends on the completeness of the application and public notices; and whether or not public comments were submitted. After the two required public notices are published, permits are typically granted 31 days after a complete application is received. Unless Ecology responds to the complete application in writing, based on public comments or any other relevant factors, coverage under the permit will automatically commence on the 31st day following receipt of a complete application. Ecology plans to adapt to the changing workload with an appropriate level of staff resources to minimize permit delays and ensure exceptional customer service.

28. We estimate that the Construction Stormwater General permit is going to more than triple the number of permits through DOE, meaning more delays and additional costs to taxpayers. We understand that no additional employees will be hired to process permits but that DOE will be hiring four additional inspectors, for a total of ten statewide. This could cause a potential backlog in permit processing, given the number of sites that will need to apply with the threshold being changed from five acres to one. We urge DOE to

spend its resources wisely to accommodate the higher volume of permits anticipated upon implementation of the new permit. (Master Builders)

Response: Comment noted – also see Response to Comment 27.

29. We are very concerned that the modification in this requirement - lowering the threshold for those projects that qualify - will undoubtedly increase the volume of permits, plans and applications under consideration by the Department of Ecology. Thus, the question remains in our mind as to whether or not the Department of Ecology has sufficient staff resources to timely process these required permits, plans and applications. (Barclays North)

    Response: Comment noted – also see Response to Comment 27.

30. How many more permit applications does Ecology expect to receive as a result of the revised permit? (BIAW)

    Response: Please see Response to Comment 27.

31. How will Ecology review and issue permits in a timely manner (with what resources?) (BIAW)

    Response: Please see Response to Comment 27.

32. How does Ecology plan on dealing with the significant new work caused by the Permit? (BIAW)

    Response: Please see Response to Comment 27.

33. We have serious doubts that the Department of Ecology has the staffing resources necessary to adequately administer this program particularly in the areas of site inspection and enforcement. Kitsap County annually issues over 100 permits for sites that are going to now require an NPDES phase II construction permit. It is our understanding that under the existing phase I construction permit Ecology has not conducted regular visits to permit sites located within unincorporated Kitsap County for over three years. Therefore, it appears unlikely that Ecology will be able to implement this program statewide without significant additional resources. (Kitsap Co)

    Response: Please see Response to Comment 27.

34. It is unclear how Ecology will enforce the permit. The provision for DMR submittal and the increase in the number of sites covered by Ecology is an improvement. Have extra staff been hired by Ecology to do the necessary work? Who will look at the DMR's and who will conduct the site inspections? (RE Sources)

Response: With the passage of Senate Bill 6415 last year, Ecology hired an additional 12.5 Full Time Employees (FTEs) to implement and administer the Construction and Industrial General Permits. Most of these employees were allocated to regional offices for inspection and technical assistance duties. Some were added to Ecology Headquarters to process permit applications and manage data. At the beginning of 2005 permit cycle, permits will be processed by a team of four Environmental Specialists at Ecology Headquarters. Additional FTEs may also be hired and allocated according to the program's needs.

35. It seems to me that administering the myriad of 1 acre sites is going to require a tremendous amount of manpower and other scarce resources. How does Ecology intend to administer and enforce construction activities on 1 acre and larger sites? (Centurion Development Services)

    Response: Comment noted, please see Response to Comment 27.

General

36. Thank you for the opportunity to comment on the Washington Department of Ecology's draft Construction Stormwater General Permit (hereafter "Permit"). These comments are submitted on behalf of the Pacific Rivers Council, American Rivers, The Lands Council, Conservation Northwest, and Washington Trout (collectively "the Conservation Groups"). Please consider these comments, include them as part of the permanent record for this matter, and respond to them in writing. Please also note that these comments may not address every issue that the Pacific Rivers Council, American Rivers, The Lands Council, Conservation Northwest, or Washington Trout have with the Permit and Fact Sheet; these conservation organizations may submit additional comments that supplement this letter. (Conservation Groups)

    Response: Thank you for submitting comments.

37. On behalf of Sound Transit, I would like to thank you for the opportunity to review and comment on the draft Construction Stormwater General Permit. We have appreciated the assistance the Department has provided to our agency over the years and look forward to continuing to work together in the future. The permit is well written, and we appreciate the Department's hard work in drafting process. We offer only the following few comments, which we believe, are important to clarify the scope of the permit and the obligations of the regulated community. (Sound Transit)

    Response: Thank you for submitting comments.

38. Yakima County has a population of 220,000 and is the second largest county in size by area in the State. We are located in the Central Basin of Washington, has arid climate receiving only about 6-8 inches of precipitation a year. On the average, we expect to see in the order of approximately 1,000 projects requiring this permit, i.e., one acre or larger in size for unincorporated area of the County. (Yakima Co)

Response: Comment noted. Thank you for submitting comments.

39. We are submitting these comments on behalf of the Puget Sound Action Team Director and staff, rather than the multi-agency Puget Sound Action Team partnership. In general, we support the draft permit in its current form and commend the department for its efforts. (PSAT)

    Response: Thank you for your support and comments.

Simplify/Clarify Permit

40. This draft permit is necessarily more complex and significantly longer than the existing Stormwater General Permit due to the various rulings and federal requirements that the permit must meet. The permit is expanding its coverage to include projects disturbing as little as one acre. This will mean a substantial increase in the number of permits that will be issued and affect a broad range of development activities. Because of this, simplifying the permit, wherever possible, is necessary to improve compliance and reduce potential harm to the environment. We encourage Ecology to carefully review the permit and reduce repetition, ensure consistency of terminology and conditions, and reformat and restructure the permit to make it easier to understand. (King Co)

    Response: Thank you for your comments. Ecology has made changes to improve the clarity and readability of the permit so that it is easier to understand.

41. The draft permit should include provisions that clarify how it will apply to existing projects. This is primarily an issue for projects in the construction phase that have already received approval under the existing Stormwater General Permit (2000), or that have had significant project review by regulatory agencies, but have not received final approval. This could have particular significance for projects less than five acres that have not been subject to Ecology's review in the past. We recommend that if a project is already in construction and will be "substantially completed" within 6 months of when the new permit goes into effect, the project should be grandfathered under the existing Stormwater General Permit (2000) and should not need to apply/re-apply for a revised permit. If construction will continue beyond six months from when the new permit goes into effect, we recommend the project owner apply for the revised permit within 90 days after the permit goes into effect. (King Co)

    Response: WAC 173-226-220 requires existing permittees to apply for the new permit, and comply with the new permit conditions upon issuance. Specifically: 1) General permits shall be issued for fixed terms not exceeding five years from the effective date; 2) All permittees covered under a general permit shall submit a new application for coverage under a general permit or an application for an individual permit at least one hundred eighty days prior to the expiration date of the general permit under which the permittee is covered; and 3) When a permittee has made timely and sufficient application for the renewal of coverage under a general permit,

an expiring general permit remains in effect and enforceable until a replacement permit has been issued by the department.

Ecology plans to follow EPA's approach for implementing the Phase II requirements for unpermitted <5 acre sites, some of which are on-going or nearly completed projects. Ecology plans to use enforcement discretion with unpermitted <5 acre sites for 90 days after permit issuance.

42. Due to the unique requirements imposed upon discharges to water bodies with TMDLs or that are 303(d) listed, it may be helpful to include a Special Condition for discharges into these water bodies. This would allow for some simplification and should reduce potential confusion. (King Co)

    Response: Ecology agrees with the suggestion to consolidate all 303(d)/TMDL requirements in one Special Condition; these requirements have been moved to Condition S8.

43. We understand that Ecology faces many challenges in crafting a permit that satisfies federal law, state law, and Pollution Control Hearings Board decisions. Since this permit will expand coverage from all projects over five acres to all projects over one acre, this permit must set clear, straightforward requirements to a much broader audience than ever before. As written, the draft permit is so complicated (more than 350 requirements) and long (50 pages and a 63 page fact sheet) that many permittees will likely fail to meet numerous conditions simply because there are too many conditions for people to fathom and track. Much of the complexity and length in the permit results from redundancies, extraneous information and inefficient permit organization. Making the permit more succinct and less complex would likely improve permittee performance; many of WSDOT comments are suggestions for eliminating redundancies and extraneous material. (WSDOT)

    Response: Ecology has revised and reorganized the permit to be more concise and readable.

44. S1 C 3, S3 (2"" introduction paragraph), S4 B 6.i, S4B7, S5 F(introduction), S5 F 3 We suggest striking "terms" from the phase "terms and conditions". The permit consists of conditions No terms are included Many similar legalistic phrases should be eliminated to make the permit more readable. (WSDOT)

    Response: The permit has been reformatted and clarified to the extent possible. "Terms" includes the definitions in Appendix A – Definitions. No change to the permit.

Coordination Between State and Local Stormwater Programs

45. This permit places requirements on project proponents that have not been in place before. Sampling and reporting have been substantially increased. What is not clear is how

potential problems/ violations/reports will be coordinated with our Planning and Land Services Department inspectors. With over 2000 building permits issued in the first 6 months of this year, our inspectors have a case load of over 200 permits each, and cannot visit each site during or just after a substantial rain event. In the event a complaint or report of a site problem is turned in to the State, will your inspectors immediately come out and look at the problem, or will they call our inspectors, or will they send paperwork in the mail weeks after the problem occurred? What we are trying to address here is timeliness and workload, for both of our agencies. What will be the division of labor, since we also have these sites permitted? How will this coordinate with our Phase 1 permit if we are not a Qualified Local Program? We strongly encourage a dialog on this as soon as possible so both our agencies can have the most efficient programs possible, and that your time is spent in jurisdictions that really need the enforcement power that you can provide. (Pierce Co)

Response: Ecology is unable to provide definitive answers on how inspectors will handle the increasing workload, but agrees that coordination is necessary to make the most of limited inspection and enforcement resources.

46. Since NPDES Phase II triggers the permit requirements for construction projects from one to five acres, these small projects should be waived from the Construction Stormwater General Permit until the Phase II permit has been issued by the Department of Ecology. The Phase II permit also provides 5 years for the permittee to get to a fully implemented program. The Construction Stormwater General Permit should follow a similar schedule for the small projects. (City of Yakima)

    Response: Federal rules required 1-5 acres construction sites to be permitted under NPDES beginning in March 2003. It would be illegal for Ecology to waive coverage for individual 1+ acre construction sites for the next 5 years, and could set up construction operators for 3rd party citizen suits under the Clean Water Act.

47. The Construction Stormwater General Permit is scheduled to be effective in December 2005 when the existing program expires. The MS4 Stormwater General Permit for Eastern Washington is not scheduled to be issued until June 2006. Yakima County believes that both permits have to tie together and to compliment each other. Therefore, we are recommending that both deadlines should be made the same. Delay the issuance of the Construction Stormwater General Permit until local jurisdictions under Phase II have the MS4 program in place. (Yakima Co)

    Response: The relationship between the Construction Stormwater Permit and the Phase II Municipal Stormwater Permit does not warrant simultaneous permit issuance dates. Ecology intends to have the two permits compliment each other in terms of requirements for stormwater discharges from construction sites.

48. The Construction Stormwater General Permit is scheduled to be effective December 2005. The MS4 Stormwater General Permit for Eastern Washington is not scheduled to be issued until June 2006. Developers and Redevelopers must comply with the Construction Stormwater Permit effective December 2005. However, MS4 Permittees

have an Implementation Schedule that goes beyond June 2006. There is a void between December 2005 and June 2006 and beyond on MS4s providing information. One example in the Proposed MS4 Stormwater General Permit is at Appendix 4-Required Implementation Schedule, page 1, which reads in Part: "From the effective date of this permit: Provide information to design professionals about training available on how to comply with the requirements of Appendix 2 and apply the BMPs described in the *Stormwater Management Manual for Eastern Washington,* or an equivalent document." Who provides the information to the design professionals prior to June 2006. Will this be an Ecology function? Other examples are ordinances that require erosion and sediment controls at new development and redevelopment projects and post-construction stormwater controls at new development and redevelopment projects. The MS4 Implementation Schedule allows two years from the effective date of the MS4 permit to develop and adopt the ordinances. The CWHBA believes that Ecology should not hold Developers and Redevelopers to compliance with the Construction Permit until the MS4s have completed their Implementation Schedule on issues that impact construction. The important issue that needs clarification for Developers and Redevelopers is who provides direction during the void? (CWHBA2)

Response: See response to Comment 47. Developers and redevelopers must comply with the Construction Stormwater General Permit regardless of the implementation schedule(s) for MS4s. Ecology will provide direction on matters related to construction stormwater before and after the MS4 permits are issued.

Concurrence with Comments Submitted by Others

49. People For Puget Sound agrees with Puget Soundkeeper Alliance's comments on this permit. (People For Puget Sound)

Response: Comment noted

50. Kennedy/Jenks supports comments to be submitted by Weyerhaeuser Company and the Association of Washington Business. (Kennedy-Jenks)

Response: Comment noted

General Timeline

51. Soundkeeper is pleased that Ecology has finally issued a draft to replace the 2000 Construction Stormwater General Permit and hopes that Ecology will manage to issue this permit without further delay. Of course, this draft permit is long overdue. In the Stipulation And Order For Dismissal of consolidated appeals PCHB Nos. 00-173 and 00-174, Ecology had committed to Soundkeeper and the other environmental appellants of the 2000 Construction Stormwater General Permit to have the draft permit issued by September 4, 2002, and to have the final permit reissued by December 18, 2002. If this permit is issued in November 2005, as Ecology plans, it will be just less than three years late. (Puget Soundkeeper)

Response: Ecology regrets the delays associated with the issuance of the Construction Stormwater Permit.

Vesting

52. BIAW has learned that Ecology intends to require all development, even developments that are vested under Washington state statute and case law, to apply for the new Permit once it goes into effect. Ecology should reevaluate this stance and inform local governments that it does not intend to enforce this policy.

The Washington Legislature codified the vesting common-law doctrine. RCW 58.17.033(1) provides in pertinent part:

> A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.

Thus, vesting means that a land use application "will be considered only under the land use statutes and ordinances in effect at the time of the application's submission."[1]

Washington case law has addressed what constitutes "other land use control ordinances" as specified in the vesting statute. One case, *Westside Business Park, LLC v. Pierce County*,[2] addressed the very issue of stormwater drainage.

In *Westside*, Pierce County adopted a new storm drainage ordinance in response to the federal Clean Water Act. The county argued the newly adopted storm drainage ordinance applied to the development. The court disagreed and held that vesting occurred and that the ordinance did not apply to the development.

The Washington State Supreme Court in another case[3] also indicated that stormwater regulations or ordinances would vest. The case involved a 78-home residential development project that was approved in 1988. The court said that although a new surface water drainage code was adopted by the county in 1990, the new stormwater codes did not apply; rather, the 1979 Surface Water Design Manual applied because the project was vested prior to the newly enacted code.

Thus, under the plain language of RCW 58.17.033 and Washington case law, new development projects approved under the current construction stormwater rules would not have adhere to the new Permit drafted by Ecology. (BIAW)

[1] *Noble Manor Co. v. Pierce County*, 133 Wash.2d 269, 275 (1997)
[2] 100 Wn.App 599, 5 P.3d 713 (2000).
[3] *Phillips v. King County*, 136 Wn.2d 946, 968 P.2d 871 (1998).

Response: Ecology has determined that Washington State's vesting law does not supersede Clean Water Act requirements which are implemented in the general permit.

S1. Permit Coverage

No Exposure

53. We urge the Department of Ecology to make provision for a "No Exposure Certification" similar to the one provided with the Industrial Storm Water General Permit. It is important that projects that do not have the potential to cause water quality impacts to surface waters of the state be provided with a means to notify Ecology that the possible need for a permit has been looked at, and that it has been determined a permit is not required, and that Ecology concurs with that determination. (City of Kennewick)

    Response: Ecology considered the potential workload and liability associated with some type of "No Exposure" certification process for construction sites, and has determined that it is not appropriate, and it is only applicable to facilities under the Industrial Stormwater who can prevent stormwater from being contaminated by industrial activities, typically by installing covering or roofing the affected area. Placing a roof over an entire 1+ acre construction site is not feasible. Most sites have the potential to discharge stormwater, but if a site's topography and soils are such that there is no potential for stormwater to leave the site and enter a waterway under any condition, the permit is not required. This determination is ultimately the responsibility of construction operators who may need to seek professional advice from an engineer or hydrologist to evaluate the site's potential for discharge, but Ecology inspectors may be able to assist on a case by case basis.

Impaired Waterbodies

54. S1.D.5 - Regarding Limitation of Coverage for Discharges to Impaired Waters (pg 6) Comment #1: This section (and many others) places special restrictions and requirements on sites that discharge to water bodies/reaches listed on the 303(d) list. However, I think that Ecology should discuss the states classification systems for water bodies and clarify that the 303(d) list is only composed of those listings under Class 5 – Needs TMDL. (Otak)

    Response: Ecology disagrees that additional explanation on the State's classification system is necessary, but has deleted the language in S1.D.5 (see Response to Comment 55); and consolidated all 303d/TMDL-related requirements to Condition S8 to improve clarity and minimize confusion. The following language in S8.A & B should eliminate any confusion of when the additional requirements apply:

    D. Permittees that discharge to water bodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH or phosphorus, shall conduct water quality sampling according to the requirements of this section.

E. All references and requirements associated with Section 303(d) of the Clean Water Act mean the most current listing by Ecology of impaired waters that exists on November 16, 2005, or the date when the operator's complete permit application is received by Ecology, whichever is later.

55. Condition S1.D.5. is an illogical and nonsensical approach to discharges to impaired waterbodies. It asserts that discharges associated with construction activities to waters listed as impaired for turbidity, fine sediment, high pH, phosphorus, and possibly other pollutants are "not covered by this permit," "unless it can be documented through" the permit's water quality sampling requirements that such discharge "will not cause or contribute to a violation of water quality standards." There is a chicken and egg problem here – it is not possible for a permittee to demonstrate compliance through monitoring under the permit, and, therefore eligibility for permit coverage, before getting permit coverage and starting a discharge. The permit's approach is to render the nominal prohibition on permit coverage for these discharges a nullity, which is an unacceptable farce. Instead, this permit should simply and honestly allow coverage for these discharges and impose on them more stringent requirements, such as numeric effluent limitations, to ensure that they do not cause or contribute to violations of water quality standards. (Puget Soundkeeper)

Response: Ecology agrees with the general suggestion to delete S1.D.5, and has consolidated all 303(d)/TMDL-related requirements in Condition S8. However, one possible exclusion needs to be retained in S1.D – Limitations on Coverage:
The following stormwater discharges are not covered by this permit:

<u>Where an applicable Total Maximum Daily Load (TMDL) specifically precludes or prohibits discharges from construction activity, the operator is not eligible for coverage under this permit.</u>

56. S-1 Requirements associated with water bodies that are on the 303d list or have Total Daily Maximum Loads (TMDL) are interwoven throughout special conditions S-1, S-3, and S-4 The mingling of unique requirements associated with such water bodies with the more generic conditions associated with all other water bodies makes the permit unnecessarily complicated and more difficult to understand As the majority of projects will not discharge to listed water bodies or water bodies with TMDLs, it may be advantageous to have a separate special conditions dedicated solely to the subset water bodies that are on the 303d list or have TMDLs. (WSDOT)

Response: Ecology agrees with the comment, and has consolidated all 303(d)/TMDL-related requirements in Condition S8.

Significant Contributor of Pollutants

57. Condition S1.E.2. alludes to authorization under the permit of discharges that Ecology "reasonably expects to cause a violation of any water quality standard." Ecology must condition NPDES permits to ensure that discharges do not cause or contribute to violations of water quality standards. 33 U.S.C. § 1311(b)(1)(C). Therefore, discharges

that are reasonably expected to cause a violation of any water quality standard should be prohibited, not authorized by permit. (Puget Soundkeeper)

Response: The permit does not "authorize" discharges which Ecology "reasonably expects to cause a violation of any water quality standard". Rather, it requires these sites to obtain coverage under the permit. When permitted, the discharger will be required to implement a Stormwater Pollution Prevention Plan with all appropriate source control and treatment best management practices (AKART); and perform monitoring and adaptive management mechanisms in accordance with 90.48.555. In addition, RCW 90.48.555(6) has been incorporated into the permit in Condition S3: Compliance with water quality standards shall be presumed, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the permittee is:

(a) In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions; and

(b)(i) Fully implementing storm water best management practices contained in storm water technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in storm water technical manuals approved by the department, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

58. The term Significant Contributor of Pollutants/Pollution should be clearly defined and made consistent with other Ecology permits and regulations, including Municipal NPDES permits and Underground Injection Control regulation. The term is not defined by state statute and the permit provides no guidance for its meaning through numeric standard or presumptive measurement, e.g. MEP. The determination of a significant contributor is a qualitative decision made by Ecology without guidance in the permit. As our detailed comments indicate, it is possible the permit would require anyone discharging a pollutant to the state's waters from any site, regardless of size, to obtain coverage under the permit even if the discharge complies with state water quality standards. We do not believe Ecology intended this result and encourage careful review of these provisions. (King Co)

Response: These terms are from the federal Clean Water Act and have not changed from the previous version of the permit. EPA has not established a definition of "significant contributor".

A plain reading definition from the CWA is "contributes to a water quality standards violation" or is a "significant contributor". The dictionary definition for significant is: having or expressing a meaning – meaningful; hence "significant contributor" could be defined as meaningful contribution of pollutants to waters of the state. In this case meaningful contribution would in all likelihood be a site-specific and fact-specific determination.

The "significant contributor" condition has been used by Ecology very rarely and it is expected to be used even less in the future since the permit threshold has now dropped from five acres of disturbance to one acre.

59. S1E2. I assume that the statement "reasonably expects to cause a violation of any water quality standard" means that with coverage and the practice of BMPs, there will be no water quality violation. It appears also that this wording should be changed from "reasonably expects" to "might expect," otherwise Ecology is not requiring BMP installation at places that might cause a water quality violation. (RE Sources)

    Response: You are correct that the permit and regulations presume that water quality standards will be met if proper practices are followed in accordance with RCW 90.48.555(6) (see Comment 57). The phrase "reasonably expects to cause a violation of any water quality standard" could also apply if an Ecology Water Quality Specialist determines that a project's characteristics (e.g., location, soils, timing, slopes, absence of BMPs, etc.) are such that a water quality violation may occur unless the site is brought under permit and required to implement an appropriate SWPPP and BMPs, maintain AKART, etc. Ecology has considered a dictionary definition of "reasonable" (*within the bounds of common sense*), and has chosen to retain "reasonably expects", rather than "might expect".

60. D - The Director may require any discharger to apply for and obtain coverage under an individual permit or another more specific general permit. Such alternative coverage will be required when the Department determines that: this general permit does not provide adequate assurance that water quality will be protected; or there is a reasonable potential for the project to cause or contribute to a violation of water quality standards.
    E - This permit may be required for any size construction site discharging stormwater to waters of the state which Ecology:
    1. Determines to be a significant contributor of pollutants to waters of the state of Washington, or
    2. Reasonably expects to cause a violation of any water quality standard.
    There is not sufficient guidance in these two sections to allow the permittee to know when these two conditions would be implemented. In section D the trigger is "a reasonable potential…" and in section E "Reasonably expects…" to cause or contribute to a violation to water quality standards. In section D "The Director may require…" and in section E "Ecology determines"
    The applicant should be able to anticipate when an individual permit or more specific general permit is required. Specific triggers should be identified rather than terminology such as 'adequate assurance' or 'reasonable potential' (King Co)

    Response: The use of conditions S1.D. and S1.E (moved to S1.B.1.c) will be site specific and rarely used. See response to Comment 57. In a general permit, there is no way to include all the potential permit triggers without increasing the complexity of the permit, so no revisions will be made.

61. S1.E.2 Coverage for Significant Contributors (pg 6) Comment # 2: Please define "reasonably expect" and discuss the criteria that will be used by Ecology in making the determination. (Otak)

    Response: See response to Comments 57, 58, and 59.

62. Please describe the process used to determine "significant contributor" and "reasonably expects to cause a violation of any water quality standard" in section S1.E. This section needs clarification, as it is a trigger for requiring a permit. (Master Builders)

    Response: See response to Comments 57, 58, and 59.

63. There is no provision in the draft permit for small work sites in shorelands, where projects considerably smaller than one acre have a much higher and more immediate potential to degrade water quality in adjacent surface water than projects of a much larger footprint located farther inland. Ecology has the authority to be more stringent than the federal law. Provision for inclusion of small shoreland projects in this draft permit would be a very useful element in achieving the objectives of the permit for environmental protection. (Dept. of Corrections)

    Response: Condition S1.E (moved to S1.B.1.c) may be used to require certain small (<1 acre) shoreline projects to be permitted. Site location and proximity to surface water are important considerations when Ecology evaluates the potential for a project to cause a violation of water quality standards.

64. E. - Coverage for Significant Contributors of Pollutants
    Significant Contributor of Pollutants/Pollution needs to be clearly defined and consistent across permits. This term is also used in the Municipal NPDES and UIC Permits and is not consistent. No supporting criteria for this term have been found within the RCW. There is no numeric standard or presumptive measurement that can be applied to this term (i.e. MEP or AKART) and the determination of a significant contributor is a qualitative decision made by Ecology, without guidance in the permit. This is in addition to State Water Quality Standards. Incidental, one-time releases could trigger a permit irregardless of the size of the project. (See definitions for further comments). (King Co)

    Response: See response to Comments 57, 58, and 59.

65. **E.2. -** The applicant should be able to anticipate when an individual permit or more specific general permit is required. Specific triggers should be identified rather than terminology such as 'adequate assurance' or 'reasonable potential' (King Co)

    Response: Under WAC 173-226-200(6) and WAC 173-226-240(2), Ecology has the authority to require a particular project to obtain an individual permit, rather than covering the project under the general permit. However, individual permits are rarely required for construction projects. With the inclusion of water quality sampling and

reporting requirements in the revised permit, individual permits may be used even less. Ecology has decided not to expand on the individual permit language in S1.D, because it would not be appropriate for a general permit to list all the interrelated project characteristics which could trigger an individual permit. Important considerations would include a combination of site specific factors including, but not limited to, project size, soils, topography, proximity to surface water(s), timing/duration of project, etc.

Ecology staff reviews SEPA documents regularly and, when possible, provides project proponents with early notification of the need for an individual permit. Also, operators of large or complex projects are encouraged to seek Ecology review of their project early on to determine if an individual permit may be required; or if design changes may be incorporated in order to prevent the need for an individual permit.

66. F. – *A significant amount means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment*;
A definition for "significant amount" of a pollutant is included in this subsection. This is a defined term and included in Appendix A. The last sentence of the first paragraph should be deleted to avoid potential confusion or conflicts *Delete* – "an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or" (King Co)

Response: This language (an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or) is included in the definition of "Significant Amount" and remains from the previous permit. It is also included in the Industrial Stormwater General Permit. This language could be used to declare a site a "significant contributor" because a discharger did not apply "all known and reasonable methods of prevention, control and treatment" (AKART). A fundamental requirement of the Ground Water Quality Standards is that AKART must be applied to all discharges to ground water, regardless of the quality of the water.

According to the Surface Water Quality Standards (WAC 173-201A-020):

> *AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.*

A site-specific and fact-specific AKART determination could be independent of demonstrating an actual or potential violation of numeric criterion in the applicable water quality standards.

The "significant contributor" condition has been used by Ecology very rarely (one time during the previous permit cycle), and it is expected to be used even less in the future since the permit threshold has now dropped from five acres of disturbance to one acre. No additional change to the permit.

67. Comment: S1 E 1 and 2 This section is confusing. What is the difference between being a "significant contributor of pollutants" and "causing a violation of standards"? If the state standards aren't the definition of significant, what is? (WSDOT)

    Response: See response to Comments 57, 58, 59 and 65.

68. S1 E needs additional clarification, especially given that it serves as a trigger for the permit process. If this section is not clarified by Ecology, the entire Permit will be at risk of being void for vagueness. Thus, Ecology must describe the standard or process used to determine "significant contributor" and "reasonably expects to cause a violation of "any water quality standard". Also, Ecology must clarify what is included as "any water quality standard" (BIAW)

    Response: See response to Comments 57, 58, 59 and 65.

    Also, "Any water quality standard" refers to any and all standards in Chapters 173-200 WAC (the Ground Water Quality Standards), 173-201A WAC (the Surface Water Quality Standards) and 173-204 WAC (the Sediment Management Standards) in effect at the time of discharge.

69. S1.E, page 6, has terminology that requires clarification and standards in the Permit since the terms trigger the requirement to obtain a Permit "for any size construction site discharging stormwater." The specific terms in S1.E are: "significant contributor"; "reasonably expects"; and "any water quality standard". (CWHBA1)

    Response: See response to Comments 57, 58, 59, 65, and 66.

70. **Condition S1.E.2.** Discharges must be <u>prohibited</u> if they will reasonably cause a violation of water quality standards. This should be clearly stated. (People For Puget Sound)

    Response: Condition S3, paragraph 1, clearly states that "Discharges shall not cause or contribute to a violation of surface water quality standards,…". No revision made. To clarify the language in S1.E.2, once Ecology identifies a construction site which is a "significant contributor" (i.e., reasonably expected to cause a violation), and requires permit coverage, the expectation is that the site will be brought into compliance with a SWPPP and BMPs to prevent violations of water quality standards.

Discharges to Ground Water/UIC

71. F. – Permittees who discharge to ground shall comply with any applicable requirements for the Underground Injection Control (UIC) regulations, Chapter 173-218 WAC. Add - discharge to ground through a structure meeting the regulatory description of a UIC well…(King Co)

    Response: Ecology agrees with the suggestion and has revised the sentence: "Permittees who discharge to groundwater through an injection well shall comply with any applicable requirements of the Underground Injection Control (UIC) regulations, Chapter 173-218 WAC." The following definitions from WAC 173-218-030 have been added to Appendix A:
    - *Injection well* means a "well" that is used for the subsurface emplacement of fluids. (see *Well*)
    - *Well* means a bored, drilled or driven shaft, or dug hole whose depth is greater than the largest surface dimension. (see *Injection Well*)

72. Discharges to ground water that is "hydrologically connected" to surface waters of the state require NPDES permit coverage. E.g., *Idaho Rural Council v.Bosma,* 143 F. Supp. 2d 1169, 1178-80 (D. Idaho 2001). Accordingly, Condition S1.F. should require permit coverage for discharges to groundwater that is hydrologically connected to surface waters of the state. (Puget Soundkeeper)

    Response: Ecology believes there also must be a connection of pollutants discharged to ground flowing to and discharged to surface waters (Washington Wilderness Coalition v. Hecla Mining, 870 F. Supp 983, 990). Where there is a discharge to ground causing pollutant discharge to surface water it will be dealt with, on a case by case basis, using existing permit conditions.

73. S1F. If sites that only discharge to ground water are not covered under the construction stormwater permit, where are they covered? Does this mean that no BMPs are needed when there is a discharge to ground water? It appears that there is potential to affect pH or to discharge oil & grease or fecal coliforms. Please address. (RE Sources)

    Response: If a discharge to ground is determined to be a "Significant Contributor of Pollutants", Ecology can require permit coverage under this general permit or an individual State Waste Discharge Permit.

74. S1.F (Page 6 of 50)
    "Sites that discharge to ground water only, do not require coverage under this permit, unless Ecology determines that the site contributes a significant amount of pollutant(s) to ground water". Who determines in Ecology there is a significant amount of pollutants? Does the UIC people determine these pollutants? Is there a numeric limitation attached to this statement? (City of Richland)

Response: Ecology field staff determine if a site is a "Significant Contributor of Pollutants". The UIC people do not make this determination. There is no numeric limitation attached to this statement, but Ecology would base the determination on the potential pollutants, the Ground Water Quality Standards, and Implementation Guidance for the Ground Water Quality Standards http://www.ecy.wa.gov/biblio/9602.html .

Ecology could declare a site a "significant contributor" because a discharger did not apply "all known and reasonable methods of prevention, control and treatment" (AKART). A fundamental requirement of the Ground Water Quality Standards is that AKART must be applied to all discharges to ground water, regardless of the quality of the water.

According to the Surface Water Quality Standards (WAC 173-201A-020):

> *AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.*

A site-specific and fact-specific AKART determination could be independent of demonstrating an actual or potential violation of numeric criterion in the applicable water quality standards.

The "significant contributor" condition has been used by Ecology very rarely (one time during the previous permit cycle), and it is expected to be used even less in the future since the permit threshold has now dropped from five acres of disturbance to one acre. No additional change to the permit.

75. S1 F (Page 6 of 50)
"Sites that discharge to ground water only do not require coverage under this permit, unless Ecology determines that the site contributes a significant amount of pollutant(s) to ground water". Who determines in Ecology there is a significant amount of pollutants? Does the UIC people determine these pollutants? Is there a numeric limitation attached to this statement? (EWWA)

Response: See response to Comment 74 above

76. S1 F (Page 6 of 50)
"Sites that discharge to ground water only do not require coverage under this permit, unless Ecology determines that the site contributes a significant amount of pollutant(s) to ground water". Who determines in Ecology there is a significant amount of pollutants? Does the UIC people determine these pollutants? Is there a numeric limitation attached to this statement? (West Richland)

Response: See response to Comment 74 above

77. The permit is a combined NPDES/State Waste Discharge Permit that regulates both surface and groundwater discharges under the federal Clean Water Act and RCW 9048. The federal Clean Water Act authorizes citizen suits to enforce conditions contained in NPDES Permits. This enforcement provision of the Clean Water Act does not extend to groundwater discharges. RCW 90 48 does not contain any citizen-suit enforcement provision. To minimize the risk of a citizen-suit action brought to enforce alleged violations of groundwater conditions in this permit, the permit should state that the groundwater provisions are issued under RCW 90 48 and not under the federal Clean Water Act. This language could be added to the cover page or to Special Condition S1F. (Costco)

    Response: Ecology agrees that there is no citizen suit provision contained in Chapter 90.48 RCW. The groundwater conditions of the permit are based on authority of 90.48. Ecology does not believe that language to that effect is necessary for the permit.

78. The permit is a combined NPDES/State Waste Discharge Permit that regulates both surface and groundwater discharges under the federal Clean Water Act and RCW 90 48. The federal Clean Water Act authorizes citizen suits to enforce conditions contained in NPDES Permits. This enforcement provision of the Clean Water Act does not extend to groundwater discharges RCW 90 48 does not contain any citizen-suit enforcement provision. To minimize the risk of a citizen- suit action brought to enforce alleged violations of groundwater conditions in this permit, the permit should state that the groundwater provisions are issued under RCW 90 48 and not under the federal Clean Water Act. This language could be added to the cover page or to Special Condition S1F. (Sound Transit)

    Response: See Response to Comment 77.

Construction Activities Required to Seek Coverage

79. S1.B.1, page 4. The Construction Stormwater General Permit refers to construction activities required to seek coverage "that result in the disturbance of <u>one acre</u> or more of total land area…" The Preliminary Draft Fact Sheet for MS4s, page 2, paragraph 4, reads in part: "the Permit only requires new development and redevelopment controls on sites that disturb <u>more than one acre of land</u>." Which standard prevails for Developers and Redevelopers? [underscore added for emphasis] (CWHBA1)

    Response: The Construction Stormwater General Permit contains the correct threshold (one acre or more), which is based on the EPA's Phase II Stormwater Rule.

80. S1.B.2 Monitoring is required for sites that are less than one acre that are part of a "common plan of sale." This term should be further defined so that it is clear when the provision applies to sites that are less than one acre. (AGC)

Response: To clarify, water quality sampling is not required for sites smaller than one acre, but site inspection and visual monitoring are required on all sites under the permit, regardless of size. The permit contains the following definition of "Common Plan of Development or Sale" in Appendix A, which is based on EPA guidance:
Common plan of development or sale means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include:
1) phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g. a development where lots are sold to separate builders);
2) a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and
3) projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility.
If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements.

81. S1.B.3 is confusing. Do construction activities in S1.D have to seek individual permits? Otherwise, the phrasing of S1.B.3 is misleading ("are not required to seek coverage under this permit") (BIAW)

Response: S1.B3 has been clarified and should be less confusing. The categories of discharges listed in S1.D. cannot be covered under this permit, due to federal requirements, and are categorically excluded.

- Post-construction stormwater discharges by definition, are not discharges from Construction Activity; these discharges are typically regulated under the municipalities Phase I or II Municipal Stormwater Permit.
- Non-point Silvilculture is categorically excluded by 40 CFR Subpart 122.27.
- Discharges construction projects on federal or tribal land (except the Puyallup Reservation) must be covered by EPA's Construction Stormwater Permit.
- Sites already under an individual NPDES permit cannot be covered under a general permit.
- The exclusion for discharges to certain 303(d)/TMDL waters has been removed. All relevant requirements for these types of discharges have been consolidated in S8.

82. S1 B 3 In order to determine when permit coverage is not necessary, one is directed to 5 locations within the permit. There must be a more straightforward way to state when permit coverage is/is not required. (WSDOT)

Response: Condition S1.B has been clarified and reformatted.

83. Not more than two years ago the Department of Ecology adopted new storm water guidelines and required local jurisdictions to implement these guidelines as part of their

NPDES permits. As you may know these new storm water guidelines greatly increase the size of detention facilities. At this point we fail to see why additional requirements and a lower threshold are needed for permitting, given that these additional stormwater requirements have been implemented to increase detention and reduce flows. (Barclays North)

Response: The new permit thresholds which apply to sites which disturb 1-5 acres are mandated by federal rule (40 CFR Parts 9, 122, 123, and 124).

84. **S1.B.2** Does this statement mean, within a development, that each construction site, even if less than one acre, will require a construction permit? Even if the entire site is already cleared? Please clarify the language. (Pierce Co)

Response: Yes, sites smaller than one acre need permit coverage, if they are part of a "Common Plan" which is one acre or larger. The permit contains the following definition of Common Plan in Appendix A, which is based on EPA guidance:

Common plan of development or sale means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: 1) phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g. a development where lots are sold to separate builders); 2) a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and 3) projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements.

85. B.3. - However, construction activities specified in Conditions S2.E, and S2.F. are not required to seek coverage under this permit, except when required by Ecology in accordance with S2.E.5, G4, G5, or other applicable statute, permit or regulation.
This section refers you to section S2.E, S2.F, S2.E.5, G4, and G5 to determine when a permit is required or not required. This is confusing and difficult to follow as it is unclear under what circumstances one is not required to seek permit coverage. Please summarize the information here rather than referencing other sections. It is not clear how G4 and G5 apply to this section. What other statute, permit or regulation would apply to this section? As written, this is not reviewable and is nonspecific.
Add – Special Conditions S2.E – Qualified Local Programs and S2.F – Low Rainfall Erosivity Waiver
Add – Special Condition S2.E.5 - Qualified Local Programs, Full Permit Applicability; General Condition G4 – General Permit Modification and Revocation; General Condition G5 – Revocation of Coverage Under the Permit.
Delete - or other applicable statute, permit or regulation. (King Co)

Response: This condition has been revised to improve clarity:

"Operators who obtain an Erosivity Waiver in accordance with Condition S2.F, are not required to seek coverage under this permit."

86. B.4. – Construction activity does not include routine maintenance….
Delete – "routine" (King Co)

Response: Ecology has decided not to delete "routine" from the definition in order to be consistent with federal regulations. The definition of small construction at 40 CFR 122.26(b)(15)(i) includes the phrase "Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." EPA has revised the definition of "large construction" in their general permit to include similar language. However, the term "routine maintenance" should not be confused with activities such as repairs, replacement, and other types of non-routine maintenance that are required to obtain permit coverage where more than one acre is disturbed.

Who is the Permittee?

87. Who is the permittee under this permit - the owner or the operator? The application form requires both the owner and the operator to be identified; however, it is not clear whether either or both are permittees. From the standpoint of the owner, it is important that the operator be bound by the permit and be legally responsible for those aspects of the permit that the operator is charged with implementing. Ecology has brought enforcement actions against owners on construction projects when the owner had little or nothing to do with the construction activities. From a policy standpoint, it is in Ecology's interest to be able to enforce violations of the permit against the responsible party. From a fairness standpoint, only the party responsible for the construction activity that causes the violation should be subject to an enforcement action. (Costco)

Response: The operator is responsible for applying for the permit as required by 40 CFR 122.21(b); therefore, the operator is the permittee. The operator/permittee is the person who has operational control over construction plans and specifications, and/or the person who has day-to-day supervision and control of activities occurring at a construction site. In some cases, the operator may be the owner or the developer, in other cases the operator may be the general contractor.

88. The permit uses the terms "applicant," "operator," and "permittee" throughout. Though these terms are defined in Appendix A, the permit is unclear as to which of these three players actually owns the legal responsibility for permit compliance. (Dept. of Corrections)

Response: The operator is the permittee. See Response to Comment 87.

89. We would like the permit to identify both the owner and the operator as permittees. The application form requires both the owner and the operator to be identified; however, it is not clear whether either or both are permittees. From the standpoint of the owner, we believe that it is important for the operator to be bound by the permit and to be legally

responsible for those aspects of the permit that the operator is charged with implementing. From a policy standpoint, we believe that it is in Ecology's interest (and good public policy) to be able to enforce violations of the permit against the responsible party. Identifying both the owner and operator as permittees under this permit would enable Ecology to more easily bring enforcement actions against operators of construction projects when they cause violations of the permit. (Sound Transit)

Response: The operator is responsible for applying for the permit as required by 40 CFR 122.21(b); therefore the operator is the permittee. Ecology does not have the legal authority to require the owner to be the permittee unless the owner meets the definition of "operator". The operator is the person who has operational control over construction plans and specifications, and/or the person who has day-to-day supervision and control of activities occurring at a construction site. In some cases, the operator may be the owner or the developer, in other cases the operator may be the general contractor.

Authorized Discharges/Non-Stormwater, etc.

90. Special Condition S1.C.3. Non-Stormwater Discharges – The list of conditionally authorized non-stormwater discharges should be broadened to mimic the list identified by EPA in the *NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities* (permit effective July 1, 2003; modified January 21, 2005).

Discussion – EPA's list at part 1.3.B. of the referenced permit includes allowable non-stormwater discharge sources which Ecology has chosen not to include. These are:

109. Waters used to wash vehicles where detergents are not used;
4. Water used to control dust in accordance with Subpart 3.4.G;
5. Routine external building wash down that does not use detergents;
12. Landscape irrigation

It is inexplicable that Ecology would not simply adopt EPA's list. The implication is that if these "non-stormwater" discharges are anticipated, a construction project would need to apply for and obtain a separate individual discharge permit issued under WAC 173-220. This is unnecessarily burdensome for both the permittee and Ecology, and provides no real additional environmental control. (Note that S1.C.3. requires non-stormwater discharges be adequately addressed in the SWPPP and comply with Special Condition S3. *Compliance with Standards*.) Unless Ecology can identify a specific water quality or regulatory policy concern associated with the discharge of these four types of "non-stormwaters," they should be added to the authorized list. (Weyerhaeuser)

Response: Ecology agrees to revise the list of "non-stormwater" discharges to include the following "non-stormwaters", consistent with EPAs list:

- Water used to control dust;
- Routine external building wash down that does not use detergents; and
- Landscape irrigation

However, Ecology has decided not to authorize the discharge of "waters used to wash vehicles" since Ecology's Stormwater Management Manuals (BMP C106), specifically requires wheel wash water to be "discharged to a separate onsite treatment system, such as closed-loop recirculation or land application, or to the sanitary sewer with proper local sewer district approval".
This requirement has been included in Special Condition S9.D.9 based on the potential for this wash water to contain toxic concentrations of metals, petroleum products and/or excessive turbidity.

91. Condition S1.C.3. would "conditionally authorize" specified types of non-stormwater discharges. These discharges should be sampled and analyzed, or otherwise properly and objectively evaluated, to determine whether they are likely to cause or contribute to violations of water quality standards as part of the "conditional authorization" provided by the permit. Also of concern is the "conditional authorization" to discharge "ground water." This should be limited to "uncontaminated ground water." (Puget Soundkeeper)

    Response: The sampling requirements in Special Condition S4 have been revised to include authorized non-stormwater discharges, rather than limiting sampling to stormwater discharges only. In addition, Ecology may require additional sampling and analysis on a case by case basis, in accordance with Condition G13.

    To be consistent with EPA's general permit, the term "uncontaminated" has been added to the following types of non-stormwater: "ground water", "water line flushing", "air conditioning condensate", "excavation dewatering", and "foundation or footing drains".

92. How will Ecology or a permittee determine that S1.C.3. nonstormwater discharges are consistent with permit conditions requiring compliance with water quality standards? (Puget Soundkeeper)

    Response: The following language in S3 has been determined to be adequate to prevent the discharge of contaminated non-stormwater which results in a violation of water quality standards:
    "Discharges shall not cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), sediment management standards (Chapter 173-204 WAC), and human health based criteria in the National Toxics Rule (40 CFR Part 131.36). Discharges that are not in compliance with these standards are not authorized."

    The sampling requirements in Special Condition S4 have been revised to include authorized non-stormwater discharges, rather than limiting sampling to stormwater discharges only. In addition, Ecology may require additional sampling and analysis on a case by case basis, in accordance with Condition G13.

93. Can ground water that is contaminated by pollutants including, but not limited to, septic tank pollution or petroleum hydrocarbons, be considered a "conditionally authorized" non-stormwater discharge? If not, why not? (Puget Soundkeeper)

Response: No, this type of groundwater would not be authorized because the conditional authorization only applies "provided the discharge is consistent with the terms and conditions of this permit" including Condition S3 which does not authorize discharges that cause or contribute to violations of water quality standards (see response to Comment 92).

94. C.3. - Non-Stormwater Discharges.
Add –
Lawn watering and landscape irrigation
Diverted stream flows
Irrigation water
Flows from riparian habitat and wetlands
(King Co)

Response: Landscape irrigation has been added to be consistent with the EPA General Permit. However, Ecology does not believe other types of irrigation water (i.e., agricultural) need coverage under this permit. The other discharges suggested (diverted stream flows, and flows from riparian habitat and wetlands) are surface waters of the state and do not require specific authorization under an NPDES permit. In-water work would be handled separately under CWA 404 certification or other permits.

95. *C.3.g. Discharges from excavation dewatering (see S9.D.10); and*
Add – "dewatering discharges must meet requirements in S9.D.10, SWPPP, Control De-Watering)" (King Co)

Response: Ecology agrees, in part, and has revised this section as follows:
Discharges from excavation dewatering (~~see~~ in accordance with S9.D.10)

96. C.3. - All non-stormwater discharges, except for discharges from fire fighting activities, shall be adequately addressed in the SWPPP and comply with Special Condition S3. *Add* - "Compliance with Standards." (King Co)

Response: Ecology disagrees that the suggested change is necessary.

97. Section C. 3. Authorized Discharges:
In the fact sheet (page 17) a reference is made to allowable non-storm discharges that include dust suppression. The permit does not include dust suppression as a conditionally authorized non-stormwater discharge. This is a common source of non-storm discharges at a construction site. Please reconcile the permit with the fact sheet to list dust control water as a conditionally authorized non-stormwater discharge. (Boeing)

Response: Ecology agrees with this suggestion. Dust control has been added to the

list of authorized non-stormwater discharges.

98. Irrigation and drainage is allowed in the Industrial Storm Water General Permit it should be allowed in this permit. Irrigation may be necessary to establish vegetative cover at a construction site before final stabilization. We request that the Department revise Section C.3. of the Construction Storm Water General Permit to include irrigation and drainage as a conditionally authorized non-storm discharge. (Boeing)

    Response: Ecology agrees with this suggestion. Landscape irrigation has been added to the list of authorized non-stormwater discharges.

99. The Industrial Storm Water General Permit also lists authorized non-storm discharges. Uncontaminated ground water or spring water is specifically listed. Did the Ecology intend to omit the word "uncontaminated" in Section C. 3. f.? (Boeing)

    Response: The term "uncontaminated" has been added. Please see response to comment 91.

100. Section C. 3. Authorized Discharges
    The draft presented by the Department to the Public Advisory Committee in May 2005, included subsection 4, which allowed for coverage of projects impacting less than 5 acres, under an existing Industrial General Stormwater Permit.

    ... 4. Permitted Industrial Facilities. Industrial facilities with coverage under the Industrial Stormwater general Permit that also discharge stormwater from construction activities with less than 5 acres of soil disturbance do not require separate coverage under this permit, if all construction activity is located within the permitted facility and the SWPPP adequately addresses stormwater from construction activity in accordance with Special Conditions S4 & S9 of this permit. This exemption may be withdrawn in accordance with General Conditions G4 and G5 of the Industrial Stormwater Permit.

    We support this exemption to coverage under this permit by coverage under an equally protective companion general permit; and we request that the Department include it in the final permit. This provision would significantly reduce administrative burden to permittees and the Department without adverse impact to water quality. (Boeing)

    Response: Ecology agrees conceptually with the suggested change, which is why this provision was included in the *preliminary* Draft permit. However, during legal review of the draft permit, it was determined that the Industrial Stormwater General Permit categorically excludes Construction Stormwater discharges, and therefore the suggested change cannot be legally implemented until the Industrial Permit is revised to make this provision possible.

101. **S1.D.4. Limitations on Coverage (for Sites Covered Under an Existing NPDES Individual Permit) -** The draft permit language is ambiguous and unnecessarily restrictive. Alternative permit language is proposed which provides comparable regulatory oversight.

Discussion - Ecology's preliminary draft General Construction permit (May 12, 2005 version) took a more reasonable approach on this issue. In that earlier draft, a regulatory policy choice was presented which distinguished between small (<5 acre) and large sites, and to eschew a requirement for duplicate stormwater permitting. The proposed permit language backtracks on these important outcomes by not crediting sites performing under the Industrial Stormwater General Permit and then by including construction activities in the 1-5 acre size range.

An additional concern is that the term "stormwater management and/or treatment requirements" could have varied interpretations. For example, does "stormwater management" include the monitoring/sampling and reporting activities, or is it a reference to the need for appropriate and applicable BMPs?

We suggest the following permit language offers a reasonable balance by requiring the discharge from a small construction activity be authorized by NPDES permit and compliant with a SWPPP appropriate for the anticipated stormwater pollutants. With these conditions in place, the requirement to obtain a second NPDES permit for the activity is excused.

4. Industrial facilities with coverage under the Industrial Stormwater General Permit, or an existing NPDES individual permit, that also discharge stormwater from construction activities with less than 5 acres of soil disturbance do not require separate coverage under this permit, if all construction activity is located within the permitted facility and the SWPPP adequately addresses stormwater from construction activities. This exemption may be withdrawn by Ecology with a determination that the discharge is a significant contributor of pollutants to waters of the state of Washington, or that the discharge would cause a violation of any water quality standard. (Weyerhaeuser)

Response: See Response to Comment 100

102. Deletion of provision allowing sites less than 5 acres to be covered under existing Industrial Stormwater General Permit Coverage. (S1.C.4 in preliminary draft permit). The draft permit deletes a provision that allows coverage under the Industrial Stormwater General Permit for construction activities of less than five acres at facilities already covered under the individual NPDES permits. This provision should be reinstated. It is unnecessary and duplicative to require coverage under two permits where existing coverage will require the same level of control and pollution prevention. (AGC)

Response: See Response to Comment 100

103. S1.C.4 The draft permit deletes this section from the preliminary draft permit. Under provision sites less 5 acres could be covered under the ISGP without having to seek independent coverage under the CSGP. (AGC)

Response: See Response to Comment 100

S1.D. Limitations on Coverage (Post-Construction, Silvicultural Activity, etc)

104. Site Stability and Toxic Contamination (S1.D.1, Definitions). Phthalates, PAHs, and other toxic contaminates related to construction are not adequately addressed in the permit. For example, "site stability" or "final stabilization" is not clearly defined as being when 100% of the onsite stormwater on site is handled with appropriate BMPs and/or treatment. The focus is on erosion rather than on stormwater runoff. After the dirt-moving phase is completed, construction-related materials involve toxic chemicals that should not be allowed to flow in stormwater offsite. Freshly applied or used chemicals will have a higher percentage of washoff during storm events during the early construction phase as opposed to weathered surfaces later. Protection from runoff related to these chemicals should be addressed. (People For Puget Sound)

    Response: The existing language in S1.D.1, excluding "post-construction" discharges from the permit requirements is consistent with the EPA General Permit.

105. *D.3 – Stormwater from any federal project or project on federal land or land within an Indian Reservation except for the Puyallup Reservation.*
What is the burden upon the municipality that receives stormwater runoff from these projects when the discharge is entering their MS3 system and exceeds water quality standards? (King Co)

    Response: This question is beyond the scope of the construction stormwater permit, and relates more directly to the Phase I/II Municipal Stormwater Permits which have a separate public comment period. Under federal requirements, discharges from federal/tribal projects cannot be covered under an Ecology-issued permit, and therefore must be covered under EPA's Construction Stormwater Permit which requires BMPs sufficient to prevent water quality violations.

106. **D.5 & D.6 –** Move these sections to a Special Condition section for 303(d) listed streams and TMDL regulated water bodies. Reference to Special Conditions S3.A. & B. and Special Conditions S4.G where appropriate. (King Co)

    Response: These sections have been deleted (see Response to Comment 56); and all 303(d)/TMDL related requirements have been consolidated in Condition S8.

107. By this letter, the Conservation Groups are commenting on Permit Condition S1.D.2., which excludes from coverage under the Permit certain nonpoint source silvicultural activities as described at 40 C.F.R. §122.27 ("Section 122.27"). In the text of Condition S1.D.2., Ecology explains that the limitation on coverage does not apply to "road construction beyond forest practices standards" or other construction activity "in preparation for other forest conversion". These activities apparently need Permit coverage if otherwise required by the federal Clean Water Act. While the Conservation Groups appreciate Ecology's recognition that forest practice construction activities

associated with conversion require NPDES permit coverage, the Conservation Groups object to the language in Condition S1.D.2. for two reasons.

First, Condition S1.D.2. cannot operate as a Limitation on Coverage, as intended: the nonpoint sources described in Section 122.27 are already exempt from the NPDES program and Section 122.27 does not exclude any point sources from otherwise applicable NPDES permitting requirements. Condition S1.D.2. is therefore superfluous and can only lead to confusion regarding which forestry-related construction activities require NPDES permit coverage. To cure this problem, Ecology should eliminate Condition S1.D.2. as a Limitation on Coverage. Second, Condition S1.D.2. improperly excludes from coverage those forestry-related construction activities that are subject to Washington's Forest Practices Act but not associated with the conversion of forest lands to other uses. There is no legal or principled basis for excluding forest practice construction activities that are not associated with conversion from coverage under the Permit. Since these construction activities may need NPDES permit coverage, Ecology's Permit should provide coverage for them. If Ecology desires to include a statement in the Permit explaining which forestry-related construction activities require NPDES permit coverage, Ecology should revise the text of Condition S1.D.2. so it is consistent with the law, and move the revised language to Condition S1.B. ("Construction Activities Required to Seek Coverage Under this General Permit").

1. Condition S1.D.2. does not and cannot operate as a Limitation on Coverage.

Ecology should delete Condition S1.D.2. and the reference to the silvicultural exemption at 40 C.F.R. §122.27 because Condition S1.D.2. does not and cannot operate as a Limitation on Coverage, as apparently intended. Condition S1.D.2. is superfluous because the pollution sources it attempts to exclude by reference to Section 122.27 are already exempt from the Clean Water Act's NPDES permitting requirements. As applicable here, the Clean Water Act requires NPDES permit coverage for any construction activity that disturbs more than one acre of land and results in point source stormwater discharges to surface waters. 33 U.S.C. §§1311(a),1342(a), & 1362(12); 40 C.F.R. §§122.26(b)(14)(x) & (b)(15). Although the silvicultural exemption in Section 122.27 does exclude certain *nonpoint sources* from the NPDES permitting program, that exemption does not and cannot alter the applicability of the NPDES permit program to *point source* discharges. *League of Wilderness Defenders v.Forsgren*, 309 F.3d 1181, 1186 (9th Cir. 2002) (Section 122.27 excludes nonpoint source silvicultural activities from NPDES permit requirements, but does not exclude point source discharges like the aerial application of insecticides). Insofar as Section 122.27 exempts nonpoint silvicultural sources, Section 122.27 is redundant and will remain inoperative in Ecology's Construction Stormwater General Permit, which only regulates point source discharges. Nor does Condition S1.D.2.'s reference to the list of silvicultural point sources in Section 122.27 implicitly exclude from Permit coverage those point sources not listed in that section. The list of silvicultural point sources in Section 122.27 is merely illustrative and is not exhaustive or exclusive. *League of Wilderness Defenders*, 309 F.3d at 1188. Thus, referencing Section 122.27 does not by implication exempt any silvicultural point source discharge from the Act's NPDES permitting requirements. *Id*. Condition S1.D.2. is superfluous because reference to Section 122.27 does not operate to limit coverage of the Permit—it simply does not affect whether a particular point source discharge of

stormwater needs an NPDES permit. If a forestry-related construction activity results in a point source discharge, it needs an NPDES permit and is unaffected by Section 122.27. *Id*.; 40 C.F.R. §§122.26(b)(14)(x) & (b)(15). Alternatively, if the discharge is from a nonpoint source, it does not need a Permit and referencing Section 122.27 is simply redundant. Ecology should therefore eliminate Condition S1.D.2. as a Limitation on Coverage to avoid any confusion regarding which forestry-related construction activities require NPDES permit coverage.

2. Forest practice construction activities that are not associated with conversion but that result in a point source stormwater discharge to surface waters require an NPDES permit and should be covered by Ecology's Construction Stormwater General Permit. Should Ecology elect not to delete the language in Condition S1.D.2., Ecology should revise that condition so the Permit accurately reflects the law and provides coverage for *all* construction activities that disturb more than one acre of land and have point source discharges of stormwater, including forest practice construction activities not associated with conversion. There is no legal basis for excluding from the Permit forest practice construction activities not associated with conversion. The Clean Water Act and its implementing regulations certainly do not provide such an exclusion. *See* 33 U.S.C. §§1311(a) & 1342(a); 40 C.F.R. §§122.26(b)(14)(x) & (b)(15). Nor does the silvicultural exemption in Section 122.27 provide such an exclusion; that exemption only applies to nonpoint sources and does not distinguish between forest practice construction activities that are associated with conversion and those that are not. Although Washington law does forbid Ecology from authorizing a permit system pertaining to *nonpoint* sources of pollution arising from forest practices, the Washington statute does not prohibit application of the NPDES permitting program to forest practice construction activities with *point source* discharges. *See* RCW 90.48.420(3). Nor could Washington law do so: if Washington law attempted to exempt certain forest practice construction activities from NPDES permit requirements, such a statute would be invalid. *Northern Plains Resource Council v. Fidelity Exploration and Dev. Co*., 325 F.3d 1155, 1164 (9th Cir. 2003) (states have no authority to create a permit exemption from the CWA for discharges that would otherwise be subject to the NPDES permitting program). There is simply no legal or principled basis for excluding from Permit coverage forest practice construction activities not associated with conversion. In fact, timber operations routinely involve road, landing, and gravel pit construction activities that disturb more than one acre of land, result in point source discharges of stormwater, and require coverage under an NPDES permit. The Washington Department of Natural Resources recognizes that certain forest practices qualify as "construction activities". *See* Wash. Admin. Code §222-16-050. Moreover, road construction normally includes construction of roadside ditches and other mechanisms designed to channel and direct stormwater off the road. These ditching and construction activities are or can result in point source stormwater discharges subject to NPDES permit requirements. *See Environmental Protection Information Center v. Pacific Lumber Company*, 301 F.Supp.2d 1102, 1113 (N.D. Cal. 2004) (conduits and channels in timber company's runoff system constituted "point sources"); *Na Mamo O 'Aha'ino v. Galiher,* 28 F.Supp.2d 1258, 1261 (D. Hawaii, 1998) ("Construction, as described in 40 C.F.R. §122.26(b)(14)(x), is a point source activity"); *Molokai Chamber of Commerce v. Kukui (Molokai), Inc*., 891 F.Supp. 1389, 1401 (D. Hawaii 1995) (noting that construction

activity involving the movement of earth creates circumstances where rain can cause polluting runoff that continues to pollute until the earthwork construction is corrected); and *Sierra Club v. Abston Construction Company*, 620 F.2d 41, 45 (5th Cir. 1980) (point source may be present where erosion of spoil pile walls results in discharges to navigable waters from ditches, gullies and similar conveyances, even if nothing was done beyond the mere collection of rock and other materials). Consequently, Ecology should revise the Permit so it accurately reflects the law and provides NPDES permit coverage for *all* forest practice construction activities—whether related to conversion or not—that disturb more than one acre of land and have point source stormwater discharges to surface waters. Specifically, Ecology should revise the text of what is now Condition S1.D.2. so it is absolutely clear that: 1) Section 122.27 only exempts nonpoint sources from which there is natural runoff; 2) Section 122.27 does not exempt any point source discharge from compliance with the NPDES permit program; and 3) Permit coverage is required for all forestry-related construction activities that disturb more than one acre of land and have point source stormwater discharges to surface waters. Ecology should also include in the revised text an illustrative list of forestry-related construction activities that may require NPDES permit coverage, including construction of roads and landings. Once revised, the new text should be moved to Condition S1.B. ("Construction Activities Required to Seek Coverage Under this General Permit"). If Ecology does not intend to provide any NPDES permit coverage for forest practice construction activities not associated with conversion, the Conservation Groups hereby request that Ecology explain the legal and factual bases for that decision. Additionally, the Conservation Groups request that Ecology answer the following questions in its response to these comments:

- Why is Ecology not covering in this Permit forest practice construction activities not associated with conversion?
- What legal basis is there for excluding forest practice construction activities not associated with conversion from the NPDES permit program?
- What basis is there for concluding that all forest practice construction activities not associated with conversion do not discharge stormwater to surface waters from a point source? Alternatively, if Ecology intends to issue a separate NPDES general permit, or separate individual permits, for forest practice construction activities not associated with conversion, the Conservation Groups hereby request that Ecology state that in the response to comments and provide a schedule for issuing those permits.

3. Conclusion. The Conservation Groups object to Condition S1.D.2. because it is superfluous and can only lead to confusion regarding which construction-related point source stormwater discharges require NPDES permit coverage. Additionally, the Conservation Groups are quite concerned that Condition S1.D.2. is an attempt to illegally and improperly extend a Limitation on Coverage to forest practice construction activities not associated with conversion. The Conservation Groups therefore request that Ecology delete Condition S1.D.2. or revise and move its text to Condition S1.B., so that all forestry-related construction activities that require it can obtain Permit coverage. (Conservation Groups)

Response: Under federal law, 40 CFR 122.27 states "Nonpoint Source Silvicultural Activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting

operations, surface drainage, or road construction and maintenance from which there is natural runoff" are exempt activities from NPDES permits.

The activities described above are those that are generally considered as forest practices in Washington state and are also considered nonpoint sources of pollution.

Under state law, RCW 90.48.420 & RCW 76.09.040 adoption of forest practices rules pertaining to water quality by the forest practices board shall be accomplished after reaching agreement with the director of the department or the director's designee on the board. Adoption shall be accomplished so that compliance with such forest practice[s] rules will achieve compliance with water pollution control laws.

In addition, RCW 90.48.420(3) states "Notwithstanding any other provisions of chapter 90.48 RCW or of the rules and regulations promulgated thereunder, no permit system pertaining to nonpoint sources of pollution arising from forest practices shall be authorized, and no civil or criminal penalties shall be imposed with respect to any forest practices conducted in full compliance with the applicable provisions of RCW 76.09.010 through 76.09.280,forest practices regulations, and any approvals or directives of the department of natural resources thereunder."

In Washington, nonpoint source pollution from forest practices is regulated under the Forest Practices Act, ch 76.09 RCW. One of the purposes of the Act is to …"achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices." RCW 76.09.010(g). However, some forest practices, such as clearing a site for construction activity, create point sources of pollution and are regulated under and NPDES permit. The construction permit has been reformatted to make it clear that nonpoint source silvicultural activities do not need to be covered under the construction stormwater permit, while also making it clear that forest practices that prepare a site for construction are part of the construction activity that is subject to NPDES permit requirements.

Specifically, Condition S2.F (Limitations on Coverage), Non point Silvicultural Activities has been revised: the 2nd sentence was deleted, and the last sentence was moved to S1.B Operators Required to Seek Coverage Under this Permit (revised and reformatted; insertions and deletions below):

B. Operators Required to Seek Coverage Under this General Permit:

3. Operators of the following construction activities are required to seek coverage under this permit:

a. Clearing, grading and/or excavation which results in the disturbance of one or more acres, and discharges stormwater to surface waters of the state; and clearing, grading and/or excavation on sites smaller than one acre which are part of a larger common plan of development or sale, if the

common plan of development or sale will ultimately disturb one acre or more, and discharges stormwater to surface waters of the state.

i. This includes forest practices that are part of a construction activity that will result in the disturbance of one or more acres, and discharges to surface waters of the state (i.e., forest practices which are preparing a site for construction activities); and

D. Limitations on Coverage

The following stormwater discharges are not covered by this permit:

4. Nonpoint Source Silvicultural Activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff as excluded in 40 CFR Subpart 122.27. ~~This does not include construction activities such as such as road construction beyond forest practices standards, utilities being installed, and/or stumps being removed (clearing and grading), in preparation for other forest conversion. Where construction activities and forest practices are occurring simultaneously, this permit may be required for the non-forest practices activities on the site.~~ **This permit is also required for forest practices that are part of a construction activity that will result in the disturbance of one or more acres, with a discharge to surface waters of the state (i.e., forest practices which are preparing a site for construction activities). [Moved to S1.B]**

108. **Silviculture (S1.D.2)**. Given the recent court ruling and the major potential for adverse impacts from silviculture operations, People For Puget Sound requests that Silviculture operations not be exempt from coverage under this permit. (People For Puget Sound)

Response: Please see response to comment 107 above.

109. Recently, a federal district court ruled that silvicultural activities may need NPDES permit coverage for stormwater discharges associated with industrial activities, potentially including road and other construction activities. *Environmental Protection Information Center v. Pacific Lumber Co.*, 301 F.Supp. 2d 1102, 1111 (N.D. Cal. 2004). The Construction Stormwater General Permit may be an appropriate vehicle for permitting such activities. The limitations on coverage in Condition S1.D.2. should be reconsidered. Puget Soundkeeper Alliance supports comments submitted by the Washington Forest Law Center on this issue. (Puget Soundkeeper)

Response: Please see response to comment 107 above.

110. Why are stormwater discharges from silviculture-related construction activities excluded from coverage under this permit? (Puget Soundkeeper)

Response: Please see response to comment 107 above.

111. Page 5, S1.D, paragraph 1: Although water quality will be protected, water quantity protection should be considered for protection because it directly correlates to water quality in many situations. (WDFW)

Response: Excessive flows are considered a type of water pollution which can degrade aquatic habitat. The permit does protect downstream waterways from erosion related to increases in the velocity and peak volumetric flow rate of stormwater runoff from construction sites (Condition S9.D.3). The sedimentation pond BMP requires the use of a discharge device that regulates flows (see figure 4.26, Volume IV, Stormwater Management Manual for Western WA). While it does not provide the same level of control as a discharge device designed to meet Ecology's flow duration standard, it does provide a significant level of control for most storms that would occur during a 2-year construction site life or less. Also, at construction sites that must comply with a flow control requirement for the developed site condition, it is not unusual for the detention pond and flow release structure to be built early in the construction phase where it is used as the sedimentation pond during construction. In those cases, the construction site does have effective flow control.

S2. Application Requirements

S2.A. Application Form

112. Improper requirement that SWPPPs be prepared and available at the time of application for coverage.

The statement in the fact sheet that SWPPPs must be available at the time a Notice of Intent (NOI) is filed results from an erroneous interpretation of the law. The only reported case involving a general NPDES permit for construction activities concluded that an agency was not in fact required too review and approve a SWPPP prior to granting coverage under the general permit (*Texas Independent Producers and Royalty Owners Association v. EPA*, 410 F.3d 964 (7th Cir. 2005)). The Court further ruled that a NOI for coverage under the construction permit is not a permit application subject to public notice or a right to hearing under section 402 of the Clean Water Act, 33 U.S.C. § 1342.

The same rationale is applicable under Washington law. The Department's regulations make a clear distinction between notice and opportunity for a hearing on the issuance of a general permit as opposed to an application for coverage under a general permit (WAC 173-226-130). There is no right to or means to request a public hearing with respect to an application for coverage under a general permit (WAC 173-226-130(5)). The Pollution Control Hearings Board has also ruled that the grant of coverage under the CSGP is a limited decision as to whether it is appropriate to grant coverage under the general permit or to require an application for an individual permit (*Cascade Conservation League v. Ecology*, PCHB 98-082 (1999); *Ladwag v. Ecology*, PCHB 98-113 (1999); *States v. Ecology*, PCHB 97-176 (1999)).

The draft CSGP is readily distinguished from the permit scheme at issue in *Environmental Defense Center Inc. v. EPA*, 344 F.3d 832 (9th Cir 2003). That decision invalidated an EPA rule for municipal stormwater permits that allowed coverage under a general permit without any assurance as to how a municipality would regulate stormwater discharges. The same deficiency was found more recently in EPA regulations governing general NPDES permits for confined animal feeding operations (CAFO) (*Waterkeepers Alliance, Inc. v. EPA*, 399 F.3d 486 (2d. Cir. 2005)). The CAFO permit scheme, as with the municipal permit regulations at issue in *Environmental Defense Center*, set no prescriptive requirements for a pollution prevention plan and did not incorporate a plan as an enforceable condition of the permit. In both of these cases, the agency was essentially making an individual permit decision with each application for coverage.

In contrast to the EPA rules addressed in the Ninth Circuit and Second Circuit decisions, the proposed CSGP includes detailed and enforceable conditions on what BMPs must be adopted and the elements that must be included in a SWPPP. In granting coverage the question is whether the existing and enforceable conditions in the permit are applicable to a particular construction site. In this regard, the coverage decision under the CSGP is not

a NPDES permit decision and the Department is not required to review and approve a SWPPP in advance of granting coverage.

This is a significant issue regarding the viability of the general NPDES permit program in Washington. If Ecology truly believes that a SWPPP must be available at the time of application, it is necessarily assuming that the Department has an obligation to review and approve each SWPPP. That is why the Courts in the *Environmental Defense Center* and *Waterkeepers Alliance* concluded that the SWPPPs must be filed. AGC believes that the Department of Ecology is seriously undermining if not rejecting the CSGP to the extent that the Department applies this authority to require SWPPP availability at the time a NOI is filed. (AGC)

Response: Condition S2 has been revised to remove the public availability of SWPPPs during the public comment period. Provision are included to allow SWPPPs to be reviewed by Ecology, local governments, or the public, after permit coverage is granted.
The NOI (permit application) will contain the following language:
Stormwater Pollution Prevention Plan (SWPPP)
Has a SWPPP been developed that includes a narrative and drawings? Yes No
If NO, will a plan be developed prior to the start of construction? Yes No
A permit cannot be issued unless the permittee indicates that the SWPPP is completed or certifies that it will be developed prior to the commencement of the construction activity.

113. Moreover, permit applicants could be endlessly delayed by public requests and appeals of SWPPPs under section S2. We believe the appeal process could be misused to stall or stop important projects, such as schools, housing and hospitals. (Master Builders)

Response: Please see response to Comment 112.

114. The Washington general permit is similar to the general permit adopted by the EPA. Washington allows for public comments and input during the creation of the general permit. Allowing the public to further comment on an applicant's SWPPP and allowing the process to be held up is contrary to Washington law. By requiring an applicant to provide the SWPPP at the time of applying for the general permit and allowing for an additional public hearing, DOE is eviscerating the administrative efficiency inherent in the general permit and is making the general permit no different than the process for obtaining an individual permit. MBA urges DOE to reconsider the requirements under S2.A.9. Such a requirement could lead to litigation, further tying up the already delayed permit issuance. (Master Builders)

Response: Please see response to Comment 112.

115. A.9 - Certification by the applicant that an adequate SWPPP has been developed in accordance with this permit. While it is not required that you submit your SWPPP with your permit application for it to be deemed "complete", it is recommended that you

submit your SWPPP as part of your application to avoid delays in receiving permit coverage as a result of public comments regarding the SWPPP. If during thirty-day public comment period required by WAC 173-226-130(4), a member of the public requests a copy of the SWPPP, and it is not on file with Ecology, Ecology will notify the applicant to submit the SWPPP immediately. The public comment period will be extended one additional day for each day after the applicant is notified of the need to submit the SWPPP, until Ecology receives a copy of the requested SWPPP;

Meeting this requirement is problematic for municipal departments such as King County DOT that bid out Capital Improvement Project (CIP) work to third-party Contractors. Specific details such as staging and storage areas, spill prevention and control BMPs, specific sources of spills/pollutants, etc., are usually not known until the Contractor(s) has been hired, which normally occurs well after the permit application.

The section needs to allow municipal applicants the ability to certify that an adequate project-specific SWPPP will be developed in accordance with the permit, prior to the start of construction. At the time of permit application submittal for CIP projects that are constructed by third-party Contractors, a generic or first stage SWPPP should be deemed adequate for public review. The generic SWPPP would show commitments to what information will be provided in the more detailed project-specific SWPPP, such as the location of critical areas where certain activities are prohibited. This generic SWPPP would be used to meet the public comment period stricture and not delay large scale, multi-contract projects. King County would like the opportunity to work on this particular topic further with Ecology.
Add - Permittees that bid out projects may submit a SWPPP that lacks specificity on details that will not be known until the contractor(s) are hired. These SWPPPs will be required to contain specific commitments and detailed BMP descriptions that are known to be needed for the project at the time of application submittal. (King Co)

Response: Please see response to Comment 112.

116. S2.A.9 (Page 7 of 50) “Certification by the applicant that an adequate SWPPP has been developed in accordance with this permit”.S9.B states that the SWPPP must be prepared “beginning with initial soil disturbance”, yet, S2.A.9 states that an applicant must certify that an adequate SWPPP be prepared with the permit application and available for anyone making comments. These two sections contradict each other. (City of Richland)

Response: Please see response to Comment 112.

117. S2 A 9 (Page 7 of 50) "Certification by the applicant that an adequate SWPPP has been developed in accordance with this permit". S9 B states that the SWPPP must be prepared "beginning with initial soil disturbance", yet, S2 A 9 states that an applicant must certify that an adequate SWPPP be prepared with the permit application and available for anyone making comments. These two sections contradict each other. (EWWA)

Response: Please see response to Comment 112.

118. S2 A 9 (Page 7 of 50) "Certification by the applicant that an adequate SWPPP has been developed in accordance with this permit". S9 B states that the SWPPP must be prepared "beginning with initial soil disturbance", yet, S2 A 9 states that an applicant must certify that an adequate SWPPP be prepared with the permit application and available for anyone making comments. These two sections contradict each other. (West Richland)

Response: Please see response to Comment 112.

119. S2. Application Requirements, Section A. Application Form ... A complete application contains ....9. Certification by the applicant that an adequate SWPPP has been developed in accordance with this permit…

Recommend that three changes be made to this section. First, SWPPPs should not be required at the time an application for coverage is made under the general permit, but only when construction work is about to begin. That is the rule today under the existing general permit, and is more realistic, less burdensome, and better calculated to provide timely and relevant information to regulators and the public than the accelerated deadline the department is now proposing. Second, automatically extending the 30-day public comment period on an application for coverage under the permit whenever someone requests a copy of a SWPPP is not required under federal or state law, and has the potential to delay many construction projects. Third, the citations to WAC 173-226-130, subsection (4) in this section are incorrect. By its terms, subsection (4) applies only to the process of adopting a general permit. Subsection (5) applies to a business filing an application for coverage under a general permit once that permit has been issued.

Discussion: The existing construction stormwater general permit requires that a stormwater pollution prevention plan (SWPPP) be developed before construction work begins. The draft revised permit would require that the SWPPP be developed by the time an application for coverage is submitted to Ecology. This departure from current practice would impose an undue and unnecessary burden on businesses. Detailed drawings that are required to appear in the SWPPP typically are not available at the time an application for coverage must be filed (at least 30 days before a construction project begins). As a result, companies will be less likely to submit applications for coverage to the department early in their planning cycles, which in turn may lead to permit processing and construction delays. Projects that for business reasons must be planned and executed on short notice also would be adversely impacted if a SWPPP were required to be in place before an application for coverage may be submitted to the department.

The draft permit also would require SWPPPs to be made available on request from a member of the public during the 30-day public comment period on an application for coverage. Under the permit, any member of the public could delay a construction project by requesting a copy of the SWPPP, since the 30-day public comment period would be extended automatically one day for each day that a SWPPP has been requested but not yet delivered to the requestor and/or Ecology. The Fact Sheet accompanying the draft permit indicates that the changes above were incorporated into the draft in light of recent decisions from the Ninth and Second Circuit federal appeals courts addressing the public

availability of notices of intent (NOIs), the equivalent of Washington's application for coverage, and plans to control discharges under two of the Environmental Protection Agency's (EPA) Clean Water Act permit programs (Environmental Defense Center ***v*** EPA, 344 F 3d 832 (9'h Cir 2003), cert. denied, 541 U S. 1085 (2004) *("EDC'),* and Waterkeeper Alliance, Inc v EPA, 399 F.3d 486 (2d Cis 2005) ("Waterkeeper")) However; the EPA permit programs under scrutiny in those two cases differed markedly from the department's construction general permit program. In the only federal court decision to date that has addressed this issue in the context of a construction general permitting program, the Seventh Circuit ruled in June that NOIs and SWPPPs are not subject to the public review requirements of the Clean Water Act applicable to individual NPDES permits (Texas Independent Producers and Royalty Owners Ass 'n ***v*** EPA, 410 F .3d 964 (7" Cir. 2005) ("Texas Independent Producers") The department should hesitate to embrace a contrary result, In the Ninth Circuit's EDC decision, three judges by a 2-1 vote determined that NOIs which incorporated individualized stormwater management plans under EPA's general permitting program for municipal separate storm sewer systems (MS4s) were the functional equivalents of individual NPDES permits. (EDC, 344 F 3d at 857) Accordingly, the two judges in the majority held that those documents were subject to the Clean Water Act's public review requirements for individual NPDES permits. Id, at 857-58 The Second Circuit applied similar reasoning in support of its holding that individualized "nutrient management plans" must be made publicly available under EPA's permitting scheme for discharges from concentrated animal feeding operations (CAFOs) (See Waterkeeper, 399 F 3d at 503-04) The Ninth and Second Circuit decisions are not germane to the situation here because applications for coverage (the Washington equivalent of an NOI) and associated SWPPPs prepared under the construction general permit are not the "functional equivalents" of individual discharge permits. Historically the department has not treated applications for coverage under a general stormwater permit as an NPDES permitting decision. Likewise, state law generally does not require the submittal of SWPPPs for Ecology's review. (*See Save Lake Sammamish*, 1996 WA ENV LEXIS 165 (WA Pollution Control Hearings Bd. 1996); *see also* Ecology's Responses to Comments on the Sand and Gravel General Permit (Jan. 2005), App. C at 47-48 (declining requests to require the submittal of SWPPPs and their review by Ecology).) Furthermore, as the department has noted in connection with other stormwater general permits, SWPPPs are not the primary tool for demonstrating compliance with the terms of a general permit. Rather, water quality monitoring and reporting requirements in the permit are meant to serve that purpose. (*E.g.,* Ecology's Responses to Comments on Sand and Gravel Permit, App. C at 47.) In addition, the notice requirement for an application for coverage under a general permit is limited to the time period specified in WAC 173-226-130(5). Applications for coverage under a general permit are not subject to the permit application notice and timing requirements specified in RCW 90.48.170. That section regulates the issuance of municipal rather than industrial (including construction) permits. The department's construction general permitting program differs in other important respects from EPA's MS4 and CAFO programs which failed to pass muster in the Ninth and Second Circuit courts. In the Ninth Circuit case, EPA had an affirmative statutory duty to ensure that MS4 operators reduced stormwater pollution to the "maximum extent practicable" (See EDC, 344 **F** .3d at 852 (citing 3.3 i J S C 5 1342(p)(3)(B)(iii)) f i e "maximum extent

practicable" standard does not apply to industrial stormwater permitting programs, including construction general permits (See Defender:$ o j Wildlqe e Browner, 191 F 3d 1 159, 1 165 (9" Cir1999)) Ecology's construction general permit also contains more detailed requirements for what an NO1 and/or SWPPP must contain than did the MS4 or CAFO regulations for their associated discharge management plans, including with respect to benchmarking whether SWPPP measures are working, and adaptive management mechanisms to force changes to SWPPPs when they are not. To a substantial degree, EPA had failed to provide meaningful standards for MS4 and CAFO operators to use in preparing their individualized discharge management plans. In light of those shortcomings, coupled with EPA's decisions not to require submittal or public ele ease of the documents, it is not surprising that the Ninth and Second Circuits ruled against EPA. The Agency in effect had said to MS4 and CAFO operators that they must prepare adequate discharge management plans, but that EPA would deem any such plan to he in compliance with the Clean Water Act, regardless of its content. (See EDC, 344 F 3d at 855, and Waterkeeper, 399 F 3d at 500) In contrast, under RCW 90 48555 and Ecology's &aft construction permit, compliance with applicable water quality standards may be presumed only if permittees agree to follow best management practices (BMPs) found in Ecology's own stormwater technical manuals, or commit themselves to other BMPs which are "demonstrably equivalent" to the manuals' BMPs, (See Construction Permit Fact Sheet at pp. 10-11 and 36). The Seventh Circuit's opinion in the EPA construction permit case, rather than the Ninth and Second Circuit decisions relating to EPA's MS4 and CAFO permits, is the relevant case for review in connection with this permit. The Seventh Circuit found that NOIs and SWPPPs under EPA's construction general permit (the terms of which are substantially similar to those in Ecology's draft permit) are not functional equivalents of individual NPDES permits. (*See Texas Independent Producers*, 410 F.3d at 977-78.) Accordingly, NOIs and SWPPPs under the federal construction general permit are not subject to the Clean Water Act's public participation requirements for individual permits. The Seventh Circuit's ruling is consistent with the general permitting approach that is well established in Washington, where applications for coverage under a general permit have not been treated as individual permitting decisions. The Seventh Circuit opinion also comports with prior state law precedent (for example, the *Save Lake Sammamish* case decided by the Pollution Control Hearings Board) to the effect that Ecology need not require submittal of SWPPPs for its review.

The Seventh Circuit's approach to general permitting keeps the regulatory focus where it should be in connection with an NOI—whether a construction activity is appropriate for regulation under the terms of a general permit—and not on the propriety of the general permit's terms and conditions. Businesses and the public are given ample opportunity to state their views on the permit's terms and conditions while the permit is under development. Once that general permit has been issued, however, no purpose other than delay would be served by reopening debate on the permit's terms and conditions each time a company submits an NOI for coverage under the permit. Moreover, in submitting an NOI a business is stating not only its intent to be covered by the general permit, but also its acceptance that legal consequences may be imposed if it fails to comply with the permit terms. That is true regardless whether the business has prepared a SWPPP before

it submits an NOI, or before it actually begins construction work. Accordingly, Ecology should not require that SWPPPs be completed or submitted with NOIs, nor should the public comment period be automatically extended for someone who requests a copy of a SWPPP. The draft permit should be amended to retain the existing rule: that SWPPPs must be developed before construction begins. (Boeing)

Response: Please see response to Comment 112.

Ecology has taken the position that a SWPPP, if requested by a member of the public, must be submitted with the Permit application. S2.A.9 further states that if the SWPPP is not submitted, the public comment period will be extended each additional day until is submitted. Ecology cites to *Environmental Defense Center v. Environmental Protection Agency*, 319 F.3d 398 (2003) to support its position. Ecology's reading of this case is erroneous and should not be extended to Washington's Permit.

WAC 173-226-030(13) defines "General Permit" as a "permit that covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger." WAC 173-226-050 provides that the director of Ecology may issue general permits to satisfy any or all of the waste water discharge permit requirements of chapter 90.48, Water Pollution Control. WAC 173-226-060 further provides how a general permit is prepared, including the opportunity for public notice.

The Washington Waste Discharge General Permit Program is meant to provide one permit that will be applied to all dischargers. The general permit, in great detail, provides exactly what requirements the discharger must adhere to. The general permit then relies on the discharger to adhere to those requirements, including requiring the discharger to hire a certified inspector. In addition, Ecology has inspectors who enforce the general permit.

Another case, *Tex. Indep. & Royalty Owners Ass'n et al., v. Env't Prot. Agency*, 410 F.3d 964 (7th Cir. 2005) (*Texas Independent*) recently decided by the Seventh Circuit Court of Appeals is more line with Washington's general permit. In that case, the court agreed with the EPA that a general permit differs from an individual permit. General permits are proposed through a notice in the Federal Register, and the EPA solicits and receives public comments on the proposed general permits. That is the time when the public has the opportunity for a public hearing. The court agreed with the EPA that requiring "an additional public hearing for each individual NOI and SWPPP would eviscerate the administrative efficiency inherent in the general permitting concept" and in effect make "the general permit scheme no different from the process for obtaining individual permits." *Texas Independent*, 410 F.3d at 978.

The Washington general permit scheme is similar to the general permit adopted by the EPA. Washington expressly allows for public comments and input during the creation of the general permit. Allowing the public to further comment on an applicant's SWPPP, and by allowing the process to be held up, is contrary to Washington law. In essence, by

requiring an applicant to provide the SWPPP at the time of applying for the general permit and allowing for an additional public hearing, Ecology is eviscerating the administrative efficiency inherent in the general permitting concept, and, in effect, is making the general permit scheme no different from the process for obtaining individual permits.

BIAW strongly urges Ecology to reconsider the requirement under S2.A.9. Such a requirement could lead to litigation, further tying up the Permit which both Ecology and the building industry have been seeking for quite some time. (BIAW)

Response: Please see response to Comment 112.

120. S2.A.9 The permit should clarify what constitutes an "adequate" SWPPP for the purpose of certification in a NOI. There should be no delay in granting coverage because a member of the public has asked to review a SWPPP. The adequacy of a SWPPP is an enforcement issue and not a consideration in granting or denying coverage. (AGC)

Response: See response to Comment 112; SWPPPs are not subject to public review during the public comment period. Condition S9 contains a complete description of what constitutes an "adequate" SWPPP.

121. **S2.A.9. Application Form (Certification of an Adequate SWPPP)** – There are multiple problems with this proposed permit paragraph. First, the requirement to certify development of an "adequate" SWPPP coincident with the submittal of a Notice of Intent places an ambiguous and unnecessary burden on a permit applicant. Second, the directive to submit the SWPPP to facilitate 30-days of public review stems from Ecology's misread of a recent U.S. 9th Circuit Court decision. Finally, the reference to WAC 173-226-130(4) is incorrect.

Discussion – Ecology should revise the first sentence to read

"Certification by the applicant that ~~a~~an ~~adequate~~ SWPPP ~~has been~~ will be developed in accordance with this permit."

This permit requires the SWPPP be developed in accordance with S9 and be implemented through the duration of the construction activity. The word "adequate" is superfluous and can only result in varied interpretations and disagreement. Shifting the production of the SWPPP to coincide with the commencement of on-site construction is fully protective of Ecology interests and is a more natural fit with the typical sequence of project conceptualization, scoping/engineering, capital funding, and construction contractor selection. We note that Special Condition S9.B.1. directs the preparation and implementation of the SWPPP "beginning with the initial soil disturbance…" This is a more understandable and reasonable requirement.

Weyerhaeuser fully endorses the comments to be submitted by the Associated General Contractors regarding Ecology's position on the timing of SWPPP submittal and public

comment provision. Taken together, the proposed permit language has the real potential to extend the permitting timeline and add cost to a construction project. No incremental environmental improvement can be expected from the approach proposed by Ecology.

Finally, WAC 173-226-130(4) is clearly referring to the adoption of a general permit. That is the process now underway with this CSWGP. As such, the reference to -130(4) is simply not relevant to the S2.A. list of requirements detailing the Notice of Intent procedure to gain discharge authorization under (what will be) a renewed CSWGP. Ecology must surely be intending to reference WAC 173-226-130(5). Subsection -130(5) outlines the process and information content for an applicant seeking discharge authorization under a general permit for new or expanded discharges. (Weyerhaeuser)

Response: See response to Comment 112; SWPPPs are not subject to public review during the public comment period. Also, the list of NOI requirements [including the erroneous reference to WAC 173-226-130(4)] has been deleted to reduce redundancy.

122. S2 A 9: This section conflicts with S9.B, in which a SWPPP is not required to be" prepared and fully implemented" until initial soil disturbance. However, S2.A.9requires a certification at application that "an adequate [SWPPP] has been developed". The wording should be changed to: "A certification by the applicant that an adequate [SWPPP] ***will*** be developed in accordance with this permit." If the public notice timeline is to be extended for SWPPP completion before a permit is granted and soil disturbed, then there needs to be a baseline adequacy determination and allowance for adaptive modifications. Otherwise, the public will be able to endlessly delay unwanted (but legal) projects on the extensive, prescriptive requirements of S9 (See further discussion in Section IV, *infra,* regarding federal cases addressing the issue of requiring submission of SWPPPs with Permit applications and Washington law pertaining to general permits.) (BIAW)

Response: See response to Comment 1112. The NOI will contain the following language:
Stormwater Pollution Prevention Plan (SWPPP)
Has a SWPPP been developed that includes a narrative and drawings? Yes No If NO, will a plan be developed prior to the start of construction? Yes No A permit cannot be issued unless the permittee indicates that the SWPPP is completed or certifies that it will be developed prior to the commencement of the construction activity.

123. S2.A.9, page 7, conflicts with S9.B.1, page 26. S9.B.1 states that a SWPPP is not required to be prepared and fully implemented until initial soil disturbance. However, S2.A.9 requires certification that a SWPPP has been developed at time of application. The Permit should be written so that there can be no apparent conflict in interpretation. (CWHBA1)

Response: Please see response to Comment 112.

124. CWHBA is concerned that the provisions to extend the public comment period one additional day for each day after the applicant is notified of the need to submit the SWPPP will cause unnecessary administrative delays in the permitting process. CWHBA believes there should be provisions for modifications to the SWPPP without extending the public comment period. (CWHBA1)

    Response: Please see response to Comment 112.

125. Condition S2 A 9 states that a Stormwater Pollution Prevention Program (SWPPP) is not needed for permit application to be "complete" yet states "the public comment periods will be extended one additional day for each day after the applicant is notified of the need to submit a SWPPP, until Ecology receives a copy " As completing the public comment period is a prerequisite for a permit, this condition makes completed SWPPPs necessary for a permit application to be considered complete anytime anyone asks for a copy of the SWPPP Likewise, how would conflicting public comments reflecting personal opinions on the adequacy of SWPPPs or BMP selection decision be addressed? (WSDOT)

    Response: Please see response to Comment 112.

126. Replace – "A complete application contains:" with – "A complete application form (NOI) contains:" (King Co)

    Response: Language has been changed to "a complete and accurate permit application form [Notice of Intent (NOI)]…"

127. **A.– "Applicants that discharge stormwater associated with construction activity to a storm drain operated by Seattle, King County, Snohomish County, Tacoma, Pierce County, or Clark County shall also submit a copy of the application to the appropriate jurisdiction "** *Change to* - "discharges to a municipal separate storm sewer (MS3) system operated and maintained by a Phase I Municipal NPDES Permittee". (King Co)

    Response: Ecology does not agree with this change, and has chosen to list all the Phase I permittees (except WSDOT), because the typical permittee does not know which municipalities are Phase I Municipal NPDES Permittees.

128. **Except for construction activities that disturb less than 5 acres and are within the jurisdiction of a Qualified Local Program (S2.E), a** *Replace* - "less than 5" *with* - "between one and five acres" (King Co)

    Response: All Qualified Local Program provisions have been deleted.

129. S2.A, first paragraph, page 7 – It is a good idea to allow local agency which meets the guidelines of Qualified Local Program (QLP) an approval authority for small development and redevelopment projects less than 5 acres. Unfortunately, looking at the

requirements to be a QLP (see S2.E, page 9), makes it very onerous and difficult. (Yakima Co)

Response: All Qualified Local Program provisions have been deleted. See response to Comment 172.

130. Section **S2.A** contains requirements for applying for general permit coverage, but it is unclear how coverage is obtained by a homebuilder who purchases one or more lots from a developer who is already has general permit coverage for the area that includes those lots. We suggest the addition of the following clarifying language at the end of that section:
These steps also apply to a homebuilder who purchases one or more lots from an owner/developer who obtained coverage under this permit for a common plan of development or sale. The homebuilder is considered a new owner/operator and shall comply with the requirements listed above, including the development of a **SWPPP,** for its lot(s). Under these circumstances, the homebuilder is only responsible for compliance with the permit requirements as they apply to its lots. The developer remains responsible for common controls or discharges and must submit an NOT for the lots purchased by the homebuilder. If the homebuilder purchases the entire site covered by the developer's authorization under this permit, the homebuilder may obtain permit coverage for the entire site by transferring the developer's coverage in accordance with the requirements for transfers described in this permit. (Centex Homes)

Response: Ecology agrees conceptually with the suggestion, and has added permit transfer provisions to Conditions S2.A.2 and G9 to accommodate "common plan" scenarios, so that SWPPP and permit responsibility will be effectively transferred to the new operators within a common plan of development or sale.

131. **A.2 - The name and phone number of a contact person who has authority over the implementation of the Stormwater Pollution Prevention Plan (SWPPP)** Large projects have multiple staff implementing the Stormwater Pollution Prevention Plan (SWPPP) and the permit; therefore, the applicant should be able to include multiple contacts, including inspectors and environmental engineers with erosion control certification, within the agency that have authority over the implementation of the SWPPP and are available to respond to emergencies and inquiries or directives from Ecology. *Change* – "The name(s) and phone number(s) of a contact person(s)…" (King Co)

Response: The list of NOI requirements has been deleted from the permit to reduce redundancy. The suggestion will be incorporated into the new NOI form.

132. **A.5 – The name of the receiving water(s) (i.e. the water body that will receive stormwater runoff from the site); or if the discharge is to a storm sewer system…** *Replace* "storm sewer system" *with* "MS3 system" (King Co)

Response: The list of NOI requirements has been deleted from the permit to reduce redundancy. The NOI form will use the term "storm sewer system", which is more easily understood by the general public than "MS3".

133. A.9. through -12 - Certification by the applicant... What sort of "certification" is the applicant required to submit to show that the requirements are met? Would this be in the form of a letter signed in accordance with General Condition 2? *Add* – "Certification by the applicant in the form of a letter signed in accordance with General Condition 2." (King Co)

    Response: The list of NOI requirements has been deleted from the permit to reduce redundancy. The certification will be a set of Yes/No checkboxes on the NOI. The entire NOI is signed and certified for accuracy by the applicant.

134. A.10 - the public notice requirements have been met (see S2.B) *Add* - , Public Notice); (King Co)

    Response: The list of NOI requirements has been deleted from the permit to reduce redundancy.

135. **A.12. - Certification that the application is correct and accurate, signed by:** This section and General Condition G2 are not consistent. A department director would need to sign all permit applications. Defer this section to General Condition G2 and revise the language in General Condition G2 to reflect the requested changes for Section 12.D (below). *Replace* - "signed by:" to end of section A.12 (A-D); *with* - "signed in accordance with requirements listed in General Condition G2" (King Co)

    Response: The list of NOI requirements has been deleted from the permit to reduce redundancy.

136. **A.12.D. –** Please change this condition to: "in the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or duly authorized representative". (King Co)

    Response: The list of NOI requirements has been deleted from the permit to reduce redundancy.

137. **A. - When Ecology develops an internet-based electronic application form, applicants are encouraged to use the electronic application form to meet the requirements of Special Condition S2.** *Add* - (Application Requirements). (King Co)

    Response: S2 has been reorganized to improve clarity, and includes the following language regarding electronic NOIs: "Applicants are encouraged to use Ecology's internet-based electronic NOI to apply for permit coverage."

138. **S2.A** In the second paragraph, DOT is not mentioned, and they are a Phase 1 permittee that may both discharge and receive discharges from construction activity, just like the

rest of the Phase 1 permittees. Why were they left off of this list. Please add them. (Pierce Co)

Response: WSDOT has been excluded intentionally to reduce confusion. WSDOT is only a Phase I permittee in certain areas of the state which meet the Phase I population density threshold. Most WSDOT highways and storm drains are excluded from their Phase I permit. While it is theoretically possible for a construction site to discharge to a Phase I WSDOT storm drain, permit applicants may have a hard time determining which WSDOT storm drains are Phase I areas. No change to the permit.

139. Condition S2.A. should specify the individuals required to make the various permit application certifications required, instead of limiting such specification to S2.A.12. (Puget Soundkeeper)

Response: The list of NOI requirements has been deleted from the permit to reduce redundancy.

140. Must the certifications required in S2.A.9., 10., and 11. be made by the persons identified in S2.A.12.? (Puget Soundkeeper)

Response: Yes, the entire NOI, including certifications, must be signed by a person with signature authority (Condition G2). The SWPPP certification (S2.A.9) has been deleted from the NOI and has been replaced with the language from the NOI used during the previous permit cycle:

Stormwater Pollution Prevention Plan (SWPPP)
Has a SWPPP been developed that includes a narrative and drawings? Yes No
If NO, will a plan be developed prior to the start of construction? Yes No
A permit cannot be issued unless the permittee indicates that the SWPPP is completed or certifies that it will be developed prior to the commencement of the construction activity.

141. Condition S2.A. should explicitly state that the failure to provide accurate or complete information in an application for coverage constitutes an ongoing violation of permit conditions. (Puget Soundkeeper)

Response: The suggested change has not been made. Please see response to comment 142 below.

142. Is it a permit violation to provide inaccurate or incomplete information in an application for coverage? (Puget Soundkeeper)

Response: The failure to provide accurate and complete information in an application for coverage may not be a permit violation, but it is a basis to revoke permit coverage in accordance with WAC 173-226-240(1)(b) and excludes "permit shield" protections. Knowingly providing false or inaccurate information is also subject to a criminal perjury prosecution.

143. S2.A, page 7. It is not clear when or how a jurisdiction will become a Qualified Local Program. (CWHBA)

Response: All references to Qualified Local Programs have been deleted. See response to Comment 172.

144. S2 Application Requirements A 12 D page 8 This section requires either the principal executive officer or ranking elected official to sign the application for all construction permits applied for by a municipality. Similar permits such as the Joint Aquatic Resource Permit Application (State and Clean Water Act Permit) allow applications to be signed by lesser government officials than those stated in this draft permit. Having the top elected official or principal executive officer sign of each road construction project that disturbs greater than an acre of land adds unnecessary permit preparation time. A public works director, a county engineer, or a city engineer should have the authority necessary to sign such a permit. We recommend adding the phrase " or duly authorized employees" to this subsection. (Kitsap Co)

Response: Ecology recognizes that the application signature requirements add time to the process, but the present language is required by state and federal rules (WAC 173-220-040, 40 CFR 122.22); the application cannot be signed by a "duly authorized representative".
Note: The list of application requirements has been deleted by the permit to reduce redundancy. General Condition G2 contains the Signatory Requirements.

145. S2A and E. As permitting through qualified local programs will apply to a subset of projects, any and all instructions related to qualified local program should be covered in a single location, preferably a stand-alone condition. (WSDOT)

Response: All QLP language has been removed. See response to Comment 172.

146. Comment: S2A. Why not simply state that people must provide all information required on the permit application form? Duplicating all of the application information requirements in the permit adds 1 ½ pages to the permit. If necessary, instructions can be provided with the permit application. (WSDOT)

Response: Ecology agrees with the comment and has deleted the list of information required for a complete application.

147. S2.A.12D conflicts with G2B 2. As written, S-2A.12D would require the Secretary of Transportation to sign all permit certifications WSDOT suggests eliminating S-2A 12 .D and using G-2 B .2 only. (WSDOT)

Response: S2.A.12D does not conflict with G2.B.2. Condition G2.B.2, allows reports (and other information requested by the Department) to be signed by a "duly

authorized representative", but the permit application (NOI), must be signed according to Condition G2.A (based on WAC 173-220-040 and 40 CFR 122.22).

S2.B. Public Notice

148. S2B, S2E. The public needs more access to information in order to track construction projects effectively. An additional requirement of construction projects should be that they post the project name, name of the contractor, and Ecology permit number on-site. (RE Sources)

Response: Ecology believes that information regarding permitted construction sites is readily accessible to the public using existing requirements, and the suggestion to require on-site signs will not be incorporated into the permit at this time.

149. My area of concern with the new permit has to do with the required Public Notice (S2.B). The notice is similar to some aspects of the public notification for projects covered under the State's SEPA regulations.

While Section B does not specifically mention that the SEPA process must be completed prior to making application for the stormwater permit, it is indicated in section A, item 11 that the applicant must certify that the applicable SEPA requirements have been met.

If possible, I would like to see if the Public Notification for the Construction Stormwater General Permit could somehow be combined with the Public Notification for SEPA. This may in fact require that the application for the Stormwater Permit be allowed prior to the completion of the SEPA process.

Perhaps S2A, item 11, could be revised to read something like. "Certification by the applicant that an application has been made with an applicable Lead Agency in order to comply with SEPA requirements under Chapter 197-11 WAC."

A revision such as this could help prevent any lengthening of the overall project review process. I would appreciate your consideration in this matter. (City of Everett)

Response: Ecology acknowledges the apparent redundancy regarding the separate public notices required for SEPA and the general permit, and the impact this has on the overall project approval process. However, state regulations currently require applications for coverage under a general permit to include:

- certification by the applicant that the public notice requirements have been met; and
- certification by the applicant that the applicable SEPA requirements under chapter 197-11 WAC have been met

The specific public notice and SEPA requirements for the general permit applications are set forth in Chapter 173-226 WAC (RCW 90.48.170 also requires public notice for permit applications), and cannot be modified in the new general permit. Ecology

is always searching for ways to streamline permitting timelines and, if possible, may be able to address this issue through the rule-making process.

150. B. The applicant shall publish a public notice…….. The cost of this requirement both in time and funds is of concern to of King County. (King Co)

Response: Ecology acknowledges this concern and several years ago attempted to amend the RCW 90.48.170 to allow for alternative public notice methods, but the proposal did not move forward in the legislature. Currently, RCW 90.48.170 states:

> *"Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct."*

151. When the proposed discharge is to an impaired waterbody, the Condition S2.B. public notice provisions should require the applicant to note this fact. (Puget Soundkeeper)

Response: Ecology has considered the comment, but no change will be made. This information is not required by WAC or RCW. Discharges to impaired waterbodies are specifically addressed in Condition S8 to ensure that the discharge does not cause or contribute to a violation of water quality standards.

152. S2.B, page 8. The requirement to publish a Public Notice two times is an expensive burden for a small contractor. Ecology should reconsider and eliminate the second Public Notice requirement. (CWHBA)

Response: Please see response to Comment 150 – King Co

153. S2.B, Public Notice, page 8 – The requirement to publish a public notice in the newspaper at least one time each week for two consecutive weeks will require huge financial burden and unnecessary costs for each jurisdiction. Yakima County in 2005 is estimating approximately a thousand applications meeting this category. Therefore, this requirement will cost the County about $100,000 annually since the average cost for each newspaper ad is about $100. Can you imagine the cost statewide? You are talking millions of dollars additional costs. We feel that the intent of the notice will be satisfied by publishing it in the municipality's website. You have to realize that the project of this size would have gone through SEPA approval process already, and that the project would have been published in the newspaper. (Yakima Co)

Response: Please see response to Comment 150 – King Co

154. S2.B (Page 8 of 50) “The applicant shall publish a public notice at least one time each week for two consecutive weeks ...”. This section is onerous and costly to any local agency. Whether this is an existing WAC or not, Ecology should be backing the repeal of this costly addition to any permit. (City of Richland)

Response: Please see response to Comment 150 – King Co

155. S2 B (Page 8 of 50) "The applicant shall publish a public notice at least one time each week for two consecutive weeks , . " This section is onerous and costly to any local agency Whether this is an existing WAC or not, Ecology should be backing the repeal of this costly addition to any permit. (EWWA)

Response: Please see response to Comment 150 – King Co

156. S2 B (Page 8 of 50) "The applicant shall publish a public notice at least one time each week for two consecutive weeks , . " This section is onerous and costly to any local agency Whether this is an existing WAC or not, Ecology should be backing the repeal of this costly addition to any permit. (West Richland)

Response: Please see response to Comment 150 – King Co

S2.C. Permit Coverage Timeline

157. S2.C, page 9. The application is not to be submitted prior to the second public notice. If there is an inquiry to Ecology by a citizen after the first Public Notice, how will Ecology be able to respond since the application has yet to be submitted? (CWHBA)

Response: Ecology agrees with the comment and has revised the permit so that the application is submitted on, or before, the date of the first public notice.

158. 2. Public Notice Section S2.C provides the timeframe for submitting the application as between the time of the second public notice and 7 calendar days after the date of the second public notice. We believe that this timeframe is too narrow. We suggest the following revisions to that provision: In accordance with WAC 173-226-200(3)(f)(i), the application for permit coverage shall contain a certification that the public notice requirements of WAC 173-226-130(5) have been met. The application shall not be submitted to Ecology prior to the date of the d first public notice, but shall not be submitted later than 7 calendar days after the date of the second public notice. The thirty-day public comment period required by WAC 173-226-130(4) begins on the publication date of the second public notice. (Centex Homes)

Response: Please see response to Comment 157 (above)

159. S2.C (Page 9 of 50) “The application shall not be submitted to Ecology prior to the date of the second public notice, but shall not be submitted later that 7 calendar days after the date of the second public notice”. The public notice has been published in the local paper

and someone calls Ecology with questions. How is Ecology to respond when the application cannot be submitted until during the 7-day period following the second notice? How can they respond to the public when there is no application on file? (City of Richland)

Response: Please see response to Comment 157 (above)

160. S2 C (Page 9 of 50) "The application shall not be submitted to Ecology prior to the date of the second public notice, but shall not be submitted later that 7 calendar days after the date of the second public notice" The public notice has been published in the local paper and someone calls Ecology with questions How is Ecology to respond when the application cannot be submitted until during the 7-day period following the second notice? How can they respond to the public when there is no application on file? (EWWA)

Response: Please see response to Comment 157 (above)

161. S2 C (Page 9 of 50) "The application shall not be submitted to Ecology prior to the date of the second public notice, but shall not be submitted later that 7 calendar days after the date of the second public notice" The public notice has been published in the local paper and someone calls Ecology with questions How is Ecology to respond when the application cannot be submitted until during the 7-day period following the second notice? How can they respond to the public when there is no application on file? (West Richland)

Response: Please see response to Comment 157 (above)

162. Condition S2.C. appears to be inconsistent with RCW 90.48.170 because it allows for permit coverage on the thirty-first day after Ecology's receipt of an application while RCW 90.48.170 requires that "applications for permits shall be made at least sixty days prior to commencement of any proposed discharge …." The permit should require permit applications no less than sixty days before coverage can begin. (Puget Soundkeeper)

Response: The application form (NOI) and related guidance will require NOI submittal 60 days before the commencement of the discharge. The permit does not contain the 60 day requirement because it is not feasible to time an application deadline for the commencement of a stormwater discharge. It may not rain, or the site may not discharge, for weeks or months after permit coverage is granted. The application deadline will remain tied to the publication of the first public notice. To eliminate potential inconsistency with RCW 90.48.170, the "38 days prior to the start of construction" language has been deleted:
The NOI shall be submitted on or before the date of the first public notice (see section B below). ~~and at least 38 days prior to the start of construction activities~~.

163. **Question 11:** How are the provisions of the draft permit for the timing of permit coverage consistent with RCW 90.48.170? (Puget Soundkeeper)

Response: Please see the response to comment 162 above.

164. S2.C Permit Coverage Timeline, Second Paragraph (pg 9) I suggest that Ecology's application receipt date be easily found by permittees. It is an issue for project contracting when the possible start date is not known, especially when trying to complete work within certain windows (fish windows, erosivity waiver windows, etc.). (Otak)

    Response: Ecology plans to make information about pending and approved permit applications available to the public on the internet as soon as possible.

165. Will DOE comment on preliminary permit applications? If not, a developer is redesigning at the final engineering stage. This creates a problem, as property is usually bought based on the preliminary application, so the buyer will have to eat the cost or worse, not be able to build if the permit is denied. (Master Builders)

    Response: Ecology routinely provides technical assistance to applicants, before during the application process. Additional staff resources will be available to assist operators of 1-5 acre projects who may be unfamiliar with the permitting process.

166. **Permit Coverage Timeline** The timeline requirements allow for 30 days of comment period, and construction can commence on the thirty-first day if no substantial comments are received. The QLP section S2.E should include a requirement that the QLP establish reasonable timelines for permit issuance to provide predictability for applicants. QLPs should also be allowed to include in their programs a provision that allows an applicant to begin construction at the end of the comment period if no substantial comments are received. (King Co)

    Response: All references to QLPs have been deleted from the permit.

167. **Permit Coverage Timeline** This section should contain an emergency exemption clause. We suggest using the language found in the States Hydraulic Code, 77.55.100(5) (King Co)

    Response: WAC 173-226-200 does not have an emergency exemption clause, so no change will be made to the permit. Ecology will handle isolated emergency construction issues on a case-by-case basis rather than through the general permit.

168. C – Unless Ecology responds to the complete application in writing, based on public comments (e.g., public SWPPP requests per S2.19) or any other relevant factors… *Delete* – …"or any other relevant factors." (King Co)

    Response: WAC 173-226-200 does not have an emergency exemption clause, so no change will be made to the permit. Ecology will handle isolated emergency construction issues on a case-by-case basis rather than through the general permit.

169. **S2.C** The permit coverage timeline is buried in this section. It should also be covered in the Summary of Permit Report Submittals in the front of the permit. Changing the name to just Summary of Permit Submittals would broaden the table a bit, and give proponents a very handy timeline right up front.

    Also, why do you only need 30 days to do the initial submittal, but 180 days before expiration to submit the renewal? It makes more sense to have the renewal time frame shorter than the initial application, because all of the pertinent information is already in. The reapplication time frame should be shortened. (Pierce Co)

    Response: The permit coverage timeline has been reformatted to make it less "buried", but it has not been added to Summary of Report Submittals. The rationale is that operators will not have the permit document until after they have submitted the application and gotten permit coverage. The permit submittal timeline will be emphasized in related permit guidance and the application form (NOI).

    The 180 renewal language is required by state and federal regulations (WAC 173-220-180(2), and 40 CFR 122.21).

170. **S2.C. Permit Coverage Timeline** – The proposed permit erroneously makes reference to WAC 173-226-130(4). Consistent with the preceding comment the appropriate reference should be to WAC 173-226-130(5).

    Discussion – WAC 173-226-130(4) clearly is addressing the administrative process relating to the adoption of a general permit. The public is allowed a 30-day comment period following the last date of public notice publication of a Notice of Intent for coverage (see WAC 173-226-130(5)). (Weyerhaeuser)

    Response: This reference has been corrected:

    > The 30-day public comment period required by WAC 173-226-130(5) begins on the publication date of the second public notice.

S2.D. Permit Documentation Retained On-site

171. Comment: S2 D and S4 **A** 1 require that a SWPPP and log book be kept on site. Consider combining to remove duplication. (WSDOT)

    Response: Ecology agrees with the comment, and has moved S2.D (Permit Documentation Retained On-Site) to S5.G – Access to Plans and Records.

S2.E. Permit Coverage Under a Qualified Local Program

172. Qualified Local Programs (QLPs) are a valuable opportunity to eliminate local and state regulatory redundancy. However, jurisdictions may view this section as a regulatory burden without adequate funding. MBA is concerned that if a QLP is deemed

insufficient, then all projects covered under that program will have to apply to DOE for permit coverage and pay an additional permit fee. The general permit should prevent this duplicate process. We request that DOE initiate the efforts to work with local jurisdictions to create QLPs and assist them in making the process smooth and efficient. Doing this successfully would help to reduce the redundancy and duplication of the efforts that this new permit will surely create. For instance, King County has a Phase I permit that has requirements similar to those in Phase II; they have current programs in place to address stormwater pollutants. We request that when DOE reissues Phase I permits, that they provide the public an opportunity to comment. Jurisdictions such as King County should then be designated as QLP's automatically. In addition, small municipalities that have MS4 permits should also qualify as a QLP once they implement their Stormwater Management Plan. (Master Builders)

Response: Ecology recognizes the potential regulatory and environmental benefits that could be provided by Qualified Local Program (QLP) provisions. However, it has been determined that the draft permit conditions regarding QLPs are not consistent with the State Water Pollution Control Act. Specifically, RCW 90.48.170 requires discharge permit applications to be submitted directly to the Department of Ecology, with specific provisions for public notice, public comment, and opportunity for appeal. Ecology will continue to work with stakeholders on the legal and technical issues regarding QLPs.

173. We are aware that the provisions relating to Qualified Local Programs (QLP) were added late in the development of the draft permit and did not receive the same level of review as did other parts of the draft permit. We fully support Ecology's effort to authorize QLPs in this permit. QLPs will benefit applicants by reducing the duplication of obtaining both local and state permits for the same activity. QLPs will also benefit state and local regulators by reducing duplicative processes. QLPs will also allow for better environment protection through the local permitting and inspection process. The permit should be reviewed carefully to fully integrate the requirements for the QLP into the rule to ensure that the program is effective and achieve these benefits.

The permit should include a clear statement of the purpose of the QLP, to use local regulations and permit process as the mechanism to provide coverage under the Construction Stormwater Permit (CSP). The permit should also include the standards Ecology will use to evaluate whether a QLP should be approved. The standards need to assure permittees that the QLP process will have the same safeguards as does the general CSP. The standards also need to allow local governments administering the QLP the flexibility to implement the program in a way that allows integration into the local government permitting process.

The basic test for approval of a QLP should be whether the local codes and permits will provide protection for the environment that is at least equivalent to what will be achieved through the general CSP. The rule should clearly spell out the relative responsibilities of the permittee, Ecology, and the QLP. (King Co)

Response: See response to comment 172.

174. S2.E. Permit Coverage Under a Qualified Local Program: If we understand this correctly, prior to a local agency becoming a Qualified Local Program, all of the inspection, monitoring and reporting are to be done by the permittee (owner/contractor) and submitted to Ecology. Once a Qualified Local Program is in place, the permittee (for lack of a better term) inspects, monitors and reports to the local agency. Additional (redundant?) inspection, monitoring and reporting will be required by local agency staff/consultants to be submitted to Ecology. The public and developers/contractors will not support this added layer of bureaucracy. Why couldn't a "Qualified" Local Program just review the information submitted by the owner as an "agent" of Ecology? Ecology could request copies of this information at any time. (City of Yakima)

Response: See response to comment 172

175. S2.E Coverage Under a Qualified Local Program (pg 9) Comment #4: The permit (and fact sheet) should describe if the permittee still pays a permit fee to Ecology, and if so whether on not the fee will be reduced if one is still required when working through a qualified local program. (Otak)

Response: See response to comment 172.

176. All construction projects greater than 1 acre should be listed with Ecology. If these are handled by a Qualified Local Program- that information must be made available. If these projects believe they are exempt, they should still be required to register with Ecology and list the reason they believe they are exempt. (RE Sources)

Response: See response to comment 172.

177. How does a QLP become certified? Would a QLP hold a construction project to the same standards as Ecology? How would that be ascertained. Additionally , the QLP must ensure that notification to the public occurs, just as it would occur under Ecology guidelines. (RE Sources)

Response: See response to comment 172.

178. **E**. - The requirements triggered by being permitted by a QLP are scattered throughout the permit and would be better served in a separate Special Condition. This section is inadequate to support the QLP program. The fact sheet doesn't provide the regulatory enforcement needed for this permit. (King Co)

Response: See response to comment 172.

179. **E.1 – Applicable Sections: For sites covered by a Qualified Local Program, all conditions apply except for Condition S2.A, S2.B, S2.C, S2.D.1 and 2, and G8.** Add - This section exempts the applicant from the following permit requirements: S2.A -

Application Form; S2.B - Public Notice; S2.C - Permit Coverage Timeline; S2.D.1 – General Permit Retained Onsite; S2.D.2 – Notice of Authorization Letter Retained Onsite; S6 - Permit Fees and; G8 – Duty to Reapply. It should be stated that although a site with less than 5 acres of soil disturbance is within the jurisdiction of a QLP, that similar conditions will still need to be in force and that an application still must be prepared and submitted to the QLP for approval. (King Co)

Response: See response to comment 172.

180. **E.5. - Full Permit Applicability:** This section indicates that Ecology may require any permittee within the jurisdiction of a QLP to apply for coverage under the "full requirements of this permit." The permit provides no criteria that Ecology would use to make this determination. This provision creates a high degree of uncertainty for permit applicants in QLP jurisdictions who can never be sure whether they will be required to also apply to Ecology for coverage under the general permit, even though they may have already received coverage from the QLP. In addition, it suggests that Ecology can make a determination, with no standards, that a QLP's program is not adequate. Finally, the phrase "full requirements of this permit" is not defined. The assumption should be that coverage under a QLP meets all of the requirements of the permit.

This section should be moved to Special Condition S1.D. If Ecology wishes to retain the ability to require an individual permit in some cases, Special Condition S1.D should be modified to apply in the case of a QLP. The permit should also include provisions governing the standards and procedure for Ecology to revoke the authority of a QLP. (King Co)

Response: See response to comment 172.

181. We are aware that the provisions relating to qualified local programs (QLP) were added late in the development of the draft permit and did not receive the same level of review as did other parts of the draft permit. The permit should be reviewed carefully to fully integrate the requirements for the QLP into the rule to ensure that the program is effective and meets the objective of reducing duplicative permitting requirements while maintaining environmental standards. The intent of the Qualified Local Program (QLP) is to reduce duplicative permitting at state and local municipal levels. This program is designed to use local codes and regulations as the process by which the permittees are afforded coverage under the Construction Stormwater Permit (CSP) and this is not clearly stated in the permit.

This permit lacks detailed information regarding QLP processes to meet Ecology's CSP requirements. This lack of guidance and definition of roles and strictures with the permit which leads to a degree of uncertainty and concern on a number of issues that needs to be addressed within the body of the permit. The draft permit needs to include guidelines for QLPs to ensure that QLPs address permit fees, application requirements, permit conditions, review timelines, and public notice to ensure that the QLP provides both applicants and the public a process that is fair and consistent and that provides

safeguards similar to those included in the program administered by Ecology. As currently drafted, the draft permit does not give permit applicants this assurance.

The basic test for approval of a QLP should be whether the local codes and permits will provide protection for the environment that is at least equivalent to what will be achieved through the general permit administered by Ecology; and reduces the costs, in both time and money, for the applicant. The permit should provide the procedures and standards by which a QLP would delineate its implementation of the CSP. This lack of guidance and definition of roles and strictures within the permit leads to a degree of uncertainty and concern on a number of issues that need to be addressed within the body of the permit. A QLP should be required to demonstrate that its program is equivalent to, not superior to, the general permit administered by Ecology. Additional review will need to be done if requirements are brought into the permit from the fact sheets to ensure that undue burdens are not placed on the QLP or the permittees.

Once a QLP is approved, the rule should clearly spell out the relative responsibilities of the permittee, Ecology, and the QLP. Once a QLP is approved, the main interaction by the permittee should be with the QLP. Permittees should be required to interact with Ecology and the QLP only in exceptional circumstances.

This permit does not detail the local jurisdiction application to Ecology for equivalency to requirements of the Construction Stormwater Permit (CSP). It does not describe the process by which Ecology reviews local requirements to determine if local codes and permits can be used as a CSP equivalent. It does not state in the permit that the requirements of the CSP will be administered through the existing local regulations in lieu of an additional CSP process. In order to become a QLP, there must be local requirements in place that are determined by Ecology to be equivalent.

Special Condition S2.E .1 provides that the permit timelines condition does not apply to a QLP. While it is appropriate to allow a QLP to establish timelines that differ from those in the permit, the permit should require that the QLP establish permit processing timelines. In addition, the permit should allow a QLP to adopt a procedure similar to that included in the CSP administered by Ecology to allow an applicant to begin construction under the QLP after an appropriate period for review and public comment

The fact sheet contains sections on minimum requirements for qualified local programs which include permits and codes that are equivalent to the CSP; an inspection and enforcement program; a final stabilization; a record keeping and reporting section; a training program; and, revocation procedures. These issues should be brought into the permit. The draft permit needs to include language on QLP programs that address issues such as permit fees, permit requirements, review timeline, and default issuance for QLPs that provides surety and clarity for applicants and permittees. Move section S2.E to this special condition. (King Co)

Response: See response to comment 172.

182. It seems that any Phase I municipal permittee in good standing with their NPDES permit would automatically qualify as a Qualified Local Program, and it should say that in this permit. We are aware that you cannot delegate this program as you can with Pretreatment in the wastewater arena, but you should make it easier for us to take this program if we so desire. Another round of paperwork just uses up everyone's valuable time. At a minimum, we should be able to permit our own projects under our Phase 1 permit without having to apply for this additional permit. (Pierce Co)

Response: See response to comment 172.

183. **Comment 12:** The provisions for "permit coverage under a qualified local program" in Condition S2.E. are very problematic and ill-conceived and should be scrapped. This condition purports to authorize permit coverage, subject to the substantive conditions of the permit, without requiring any permit application. This would appear to make it impossible for Ecology to keep track of even basic information about such permittees, including required reporting, and, as a result, would make it very difficult for the public to track this information as well. In addition, state law requires permit applications be submitted to Ecology, as well as opportunities for public notice, hearings, comment, and appeal of permit coverage. RCW 90.48.160 ("Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into waters of the state … shall procure a permit from … the department …"); WAC 173-226-030(5), -150(3), -190(2), -200(1) ("all dischargers who desire to be covered under the general permit shall notify the department of that fact …"); WAC 173-220-040(2) ("Any person proposing to commence a discharge of pollutants to surface waters of the state must file an application with the department on a form prescribed by the department …"), -050(4) and (5); -080(1). (Puget Soundkeeper)

Response: See response to comment 172.

184. **Question 12.1:** How will Ecology track information about permittees, including DMRs, noncompliance notifications, and high turbidity/transparency phone reporting, for permittees covered under S2.E.? (Puget Soundkeeper)

Response: See response to comment 172.

185. **Question 12.2:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of RCW 90.48.160? (Puget Soundkeeper)

Response: See response to comment 172.

186. **Question 12.3:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of WAC 173-226-030(5)? (Puget Soundkeeper)

Response: See response to comment 172.

187. **Question 12.4:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of WAC 173-226-150(3)? (Puget Soundkeeper)

Response: See response to comment 172.

188. **Question 12.5:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of WAC 173-226-190(2)? (Puget Soundkeeper)

Response: See response to comment 172.

189. **Question 12.6:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of WAC 173-226-200(1)? (Puget Soundkeeper)

Response: See response to comment 172.

190. **Question 12.7:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of WAC 173-220-040(2)? (Puget Soundkeeper)

Response: See response to comment 172.

191. **Question 12.8:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of WAC 173-220-050(4) and (5)? (Puget Soundkeeper)

Response: See response to comment 172.

192. **Question 12.9:** How do the provisions for permit coverage under a qualified local program satisfy the requirements of WAC 173-220-080(1)? (Puget Soundkeeper)

Response: See response to comment 172.

193. While this draft permit provides for the possibility of a QLP in S2.E., the performance criteria listed in the Fact Sheet are likely to de-motivate eligible local jurisdictions. If this proves to be the case, it will be unfortunate and should be recognized as a failure of this permit development effort. EPA provides for QLP's in 40 CFR 122.44(s). Other states have facilitated a working and effective QLP option. The benefits of a reasonable and practical QLP, to both permittees and the government, warrant a continuing leadership effort by Ecology to create a program which attracts participation. (Weyerhaeuser)

Response: See response to comment 172.

194. S2E: QLPs ate a valuable opportunity lo eliminate local and state regulatory redundancy, however, most jurisdictions will see this section as a regulatory burden without adequate funding. BIAW is concerned that if a QI,P is deemed insufficient, then all projects covered under that program will have to apply to DOE for permit coverage (and presumably pay a second permit fee). The general permit should prevent this duplicative process. (BIAW)

Response: See response to comment 172.

195. S4 E (Page 7 Of 50) "Qualified Local Program" A Qualified Local Program may be the way to go for local agencies until you look at the requirements in Appendix E The requirements are so onerous no local agency will have the time or money to develop the program (EWWA)

Response: See response to comment 172.

196. S4.E (Page 7 0f 50) "Qualified Local Program" A Qualified Local Program may be the way to go for local agencies until you look at the requirements in Appendix E. The requirements are so onerous no local agency will have the time or money to develop the program. (City of Richland)

Response: See response to comment 172.

197. S4 E (Page 7 Of 50) "Qualified Local Program" A Qualified Local Program may be the way to go for local agencies until you look at the requirements in Appendix E The requirements are so onerous no local agency will have the time or money to develop the program (West Richland)

Response: See response to comment 172.

198. S2.E5, page 10. Ecology should enumerate the conditions that "may require any owner or, operator within the jurisdiction of a Qualified Local Program to obtain coverage under the full requirements" of the Permit. (CWHBA1)

Response: See response to comment 172.

199. Comment: Condition S2 E 5 What is the point for a permittee to get coverage under a qualified local program permit if Ecology may require any permittee to also apply for this permit? As unpredictability in permitting is unacceptable, what criteria would be used to trigger such double coverage and when would permittees be notified of the requirement?(WSDOT)

Response: See response to comment 172.

200. The failure to make reasonable allowance for qualified local programs. The permit does not include express provisions for a qualified local program as allowed under 40 CFR § 122.44(s). The conditions for allowing a qualified local program discussed in the fact sheet far exceed the requirements for qualification under the EPA rule and potentially violate rule-making requirements under the state Administrative Procedures Act.

If qualified local programs are to be included in this permit, provisions of the local program should be incorporated by specific reference so that it is clear what local requirements are permit conditions. (AGC)

Response: See response to comment 172.

S2.F. Low Rainfall Erosivity Waiver

201. This waiver should be eliminated from the permit. Significant summer rainstorms occur in all parts of Washington State and due to global warming, we may encounter even more summer rainfall. This waiver language is confusing. Also, it would require that work be completed within the window – what happens if the work gets delayed? At a minimum, the waiver determination should factor in the distance from a waterbody. (People For Puget Sound)

Response: This waiver is not an authorization to discharge, but an attempt to reduce administrative burden for activities that occur in a time with a low probability of discharge. Any project extending past the waiver period is required to obtain coverage.

202. The Clean Water Act prohibits the discharge of a pollutant from a point source, including discharges of stormwater from construction sites, to waters of the state without an NPDES permit. The "Low Rainfall Erosivity Waiver" provisions of Condition S2.F. purport to waive this fundamental requirement of the Clean Water Act in certain circumstances and is therefore patently illegal. In addition, it sets up dischargers who would take advantage of the waiver for Clean Water Act citizen suit liability in the event that they do have a discharge that reaches waters of the state. Furthermore, S2.F.9. leaves significant ambiguity in the process and compliance status of a discharger who is under the waiver but needs permit coverage when construction activity extends beyond the certified waiver time period. (Puget Soundkeeper)

Response: Please see response to comment 201.

203. A discharge of pollutants from a construction site of one acre or more in size that reaches surface waters of the state would be an illegal unpermitted discharge in violation of 33 U.S.C. § 1311(a) if the discharger is under a "Low Rainfall Erosivity Waiver" instead of permit coverage, correct? If not, why not? (Puget Soundkeeper)

Response: That is correct. Please see response to comment 201.

204. Is the one week period for submission of a complete erosivity waiver certification form before commencement of land disturbing activities provided in S2.F.4. a sufficient amount of time for Ecology to review such certification form and notify the discharger if the waiver is not available? (Puget Soundkeeper)

Response: This 7-day timeframe is consistent with general permits issued by EPA and other Western States. Based on a very straight-forward application form and EPA's on-line Erosivity Waiver Calculator that automatically performs the erosivity "R" value calculations, Ecology does not expect that operators will submit a waiver application for a time period which is not eligible for the waiver.

205. **S2.F** Requirement 1 states that the project must be located east of the Cascades. What about an area on the west side, like Sequim? They are in the Olympic rain shadow, have low rainfall, and with much of the conversion lands being flat, irrigated hay fields, the erosivity potential could be quite low. Provisions should be made for such cases on the West side. (Pierce Co)

    Response: Ecology agrees that parts of Western Washington have a relatively dry construction window in the summer. The erosivity waiver condition has been revised to allow sites in Western Washington to obtain the erosivity waiver if the project's rainfall erosivity factor (R Factor) is less than 5 during the period of construction, and the entire period of construction activity falls within June 15 – September 15.

206. S2.F Low Rainfall Erosivity Waiver. Low precipitation areas in Island, San Juan, Clallam, Jefferson and Skagit County should be eligible for consideration under this provision. S2.F.1 limits the application of this section to areas of Eastern Washington. (AGC)

    Response: Ecology agrees; please see response to comment 205 above.

207. S 2 F : Contractors and property owners should be allowed the low rainfall erosivity waiver without having to file a certification. Moreover, Eastern Washington should be granted a longer waiver period. Since the original draft, Ecology has shortened the window. This is unacceptable The Texas A&M University online rainfall erosivity calculator (http://ei.tamu.edu) or preferably, the Western Regional Climate Center, Washington Climate Summaries should be utilized without the window established for all Eastern Washington locations of June 16 through October 15 (See http://www.wrcc.dri.edu/summary.climsmwa.html). Also, the calculator should be used on a location basis only. Finally, construction that begins during this period should be allowed to finish without having to file for a general permit. (BIAW)

    Response: Ecology agrees with the Western Washington comment; please see response to comment 205 above. Consistent with EPA's general permit, and permits in other western States, construction that extends beyond the waiver period must obtain permit coverage; see response to comment 201.

208. Also, there should be a waiver for Western Washington Between June 15 and September 15, there is virtually no difference in rainfall between Western and Eastern Washington Western Washington is one of the driest places in the country during the summer months. Therefore, Ecology should allow for such a waiver for developers and builders in Western Washington. (BIAW)

Response: Ecology generally agrees; please see response to comment 205 above.

209. I have actually read much of the new Stormwater Management regulations, and I was very surprised to read about the Low Rainfall Erosivity Waiver that will be granted to eastern Washington small construction activities from June 15th to October 15th why not also offer the same waiver to western Washington as well during the summer? Between June 15th and September 15th, there is virtually little difference in rainfall between western and eastern Washington, not to mention the entire west coast and intermountain region The Pacific Northwest is extremely dry during the summer months, and western Washington itself is one of the driest places on the North American continent in summers, where it is not uncommon to see no rainfall for a month or more, Western Washington is California dry during the summers, something which is not well appreciated nor understood People understand western Washington to be exceptionally rainy because the rainy season is fairly intense from October to May, but it significantly peters out for the summers This is precisely why we have a burn ban right now until October 15th, and also why Governor Gregoire posted draught warnings back in March after a very dry winter because she well understood that it is almost impossible for western Washington to make up rainfall totals during the summer Nay, in July and August, even Phoenix, Arizona receives more rainfall than either Seattle or Olympia In a typical summer, the Puget Sound basin receives less than two inches of rain during July and August, very similar to eastern Washington While June and September would tip the rainfall scales up a bit in western Washington, if you consider that most of the rain that falls in June occurs before the 15th, and most of the rain that falls in September falls after the 151h, you would wind up with a summer rainfall total of about three inches for the Puget Sound Basin, very paltry indeed, and not much above eastern Washington's rainfall totals for the same time period Compare this to Dallas, Texas which receives 10 inches of rainfall during that same time period, or anywhere in the midwest, or the middle eastern states, or along the entire east coast which generally receives 10-20 inches of rain during the summer months Moreover, these rainfall totals are much higher than ours because of powerful thunderstorms which make stormwater runoff in western Washington look like nothing more than a heavy dew on the grass in the early morning With regard to powerful thunderstorms and the potential stormwater runoff rates that they create, even eastern Washington outdoes western Washington easy, which seldom receives thunderstorms worthy of note. Even in winter, our rains have been traditionally characterized as the "Oregon drizzle," a very true stereotype which does not conjure up stormwater runoff nightmares that one regularly sees in California winters, or in the southwest during the monsoon season (the Colorado River was red and muddy long before the European settler came upon the scene and - by the way - millions of buffalo in the plains coupled with powerful thunderstorms did not do any favors to the banks of the Missouri river either and the turbidity levels of the Carbon River coming off of Mt Rainer would most certainly be off the charts), much less throughout the entire eastern United States which consistently receives about the same amount of rainfall each and every month As such, western Washington should be paradise for builders in the summer with regard to stormwater runoff and soil erosion, and considering our Oregon drizzle, not all that bad in winter either As such, why not offer Western Washington the same Low Rainfall

Erosivity Waiver from June 15th to September 15th as Eastern Washington receives from June 15th to October 15th? The weather facts of the Puget Sound Basin should stand on their own After all, the bluest skies you have ever seen are in Seattle. (Mark Musser)

Response: Please see response to comment 205 above.

210. S2.F. Low Rainfall Erosivity Waiver: Ecology should not establish a Waiver Window for Eastern Washington. The EPA approved RUSLE should be allowed as it is sufficiently accurate for areas in Eastern Washington. On page 23 of the Draft Fact Sheet, Ecology states, "While results were logical for some locations and timing, they were obviously flawed at other times. The most significant problem was that the EPA calculator allowed longer construction seasons during the winter at most locations." Why is this a problem in Eastern Washington? Although more than half of the annual precipitation in Eastern Washington occurs between the months of November and February, the ground is generally frozen. On page 24 of the Draft Fact Sheet, it states that the spring showers in May/June are missed by the EPA's R calculator. We disagree, at least for the Central Basin. The biggest jump in R-values occurs between the beginning and end of June. Over a two-month stretch, the biggest R-value jump occurs between the end of April and the beginning of July. (City of Yakima)

Response: Ecology has decided to expand the applicability of the erosivity waiver to allow sites in Eastern Washington to obtain the erosivity waiver if the project's rainfall erosivity factor (R Factor) is less than 5 during the period of construction, and the entire period of construction activity falls within the following windows:

- For sites east of the Cascades Crest, excluding the Central Basin: June 15 – October 15; or
- For sites east of the Cascades Crest, within the Central Basin: no additional timeframe restrictions apply.

211. Rainfall Erosivity Waiver Window. The Waiver Window does not reflect rainfall conditions in the Central Basin [Region 2]. The attached Monthly Total Precipitation of the principal cities in the Central Basin clearly demonstrates that the Waiver Window is far too restrictive for the Central Basin..
The Monthly Total Precipitation data in the attachment includes the spring showers of May/June that Ecology indicated was not included in the rainfall erosivity calculator. [The data in the attachment is from the Western Regional Climate Center-Washington Climate Summaries].

The CWHBA is concerned that the rainfall map was eliminated "because it was too complicated to fit into a doable application process." We believe that the EPA approved RUSLE should be allowed and is sufficiently accurate for the Central Basin.

Ecology should not attempt to establish a Waiver Window for the entire area East of the Cascades crest. (CWHBA1)

Response: Please see response to comment 210 above.

212. S4 F 2 (Page 10 of 50) Waiver Window: The project must initiate earth disturbance after June 16 and final soil stabilization must be completed by October 15 of the same year" Ecology should not attempt to establish a Waiver Window for all of eastern Washington. This Window DOES NOT reflect conditions in the Central Basin in eastern Washington and is too restrictive The EPA approved RUSLE should be allowed as it is sufficiently accurate for areas in eastern Washington. Going through this process will again be costly to the local agencies and it appears to conflict with the Eastern Washington Stormwater Manual? (EWWA)

    Response: Please see response to comment 210 above.

213. S4 F 2 (Page 10 of 50) "Waiver Window: The project must initiate earth disturbance after June 16 and final soil stabilization must be completed by October 15 of the same year" Ecology should not attempt to establish a Waiver Window for all of eastern Washington. This Window DOES NOT reflect conditions in the Central Basin in eastern Washington and is too restrictive The EPA approved RUSLE should be allowed as it is sufficiently accurate for areas in eastern Washington. Going through this process will again be costly to the local agencies and it appears to conflict with the Eastern Washington Stormwater Manual? (West Richland)

    Response: Please see response to comment 210 above.

214. S4.F.2 (Page 10 of 50) "Waiver Window: The project must initiate earth disturbance after June 16 and final soil stabilization must be completed by October 15 of the same year..." Ecology should not attempt to establish a Waiver Window for all of eastern Washington. This Window DOES NOT reflect conditions in the Central Basin in eastern Washington and is too restrictive. The EPA approved RUSLE should be allowed as it is sufficiently accurate for areas in eastern Washington. Going through this process will again be costly to the local agencies and it appears to conflict with the Eastern Washington Stormwater Manual? (City of Richland)

    Response: Please see response to comment 210 above.

215. Section S2.F Low Rainfall Erosivity Waiver – the waiver window is unrealistically narrow for an arid climate, such as the Columbia Basin. A more reasonable window for our area would be March 15th to November 15th. The waiver window cannot be the same for all of Eastern Washington. During the development of the Eastern Washington Storm Water Manual, Ecology recognized that there were four distinct regions with regard to rainfall. This same approach should be used to define the waiver windows. Also, consideration should be given to applying this waiver to projects over 5-acres that can demonstrate that all construction will be completed within this window. (City of Kennewick)

    Response: Please see response to comment 210 above. Ecology cannot allow the waiver for sites which will disturb 5 acres or larger; EPA's Phase II Rule only allows it for sites under 5 acres.

216. S2.F.2 Erosivity Waiver Window (pg 10) It seems that Erosivity Waivers are only allowed if the entire project can be completed within the available window (requires "final" stabilization by October 15 of the same year. The permit should allow erosivity waivers to be used when the SWPPP requires "temporary stabilization" techniques to be used and in place by the end of the window, and the site remains "inactive" until the beginning of the next erosivity waiver window. This is actually a possibility with smaller sites. Periodic inspections of the temporary stabilization should occur during the wet season though. (Otak)

    Response: This proposed suggestion is not consistent with the erosivity waiver provisions in EPA's Phase II and cannot be implemented in this general permit without a risk of unpermitted discharges during the wet season.

217. F. - Operators of small construction activities may submit a certification in accordance with S2.F.1-9 that they qualify for waiver from the requirements of this permit if they meet all of the conditions below: *Add* -, Low Rainfall Erosivity Waiver *after* - S2.F.1-9 (King Co)

    Response: <u>This sentence has been reworded to improve clarity: "Operators may qualify for a waiver from the permit if the following conditions are met: "</u>

218. F.6. - This waiver is not available for facilities declared a significant contributor of pollutants per S1.E or excluded from coverage under this permit per S1.D. *Add* – (Coverage for Significant Contributors of Pollutants) *Add* - (Limitations of Coverage) (King Co)

    Response: S2.F.4 (previously S2.F.6) been revised: "This waiver is not available for facilities declared a significant contributor of pollutants per S1.B.1.c."

219. F.8. - "Non-storm water discharges (examples include, but are not limited to, construction site dewatering, wash waters and hydrostatic test waters) are not waived from the requirement for authorization by this section. Non-storm water discharges must be covered under an NPDES discharge permit." *Replace*– "NPDES discharge permit" *with* –"NPDES State Waste Discharge Permit" (King Co)

    Response: S2.F.5 (previously S2.F.8) been revised: "This waiver does not apply to construction activity which includes non-stormwater discharges listed in S1.C.3."

220. S2.F.8 Erosivity Waiver & Non stormwater Discharges (pg 11) Ecology should not require NPDES permit coverage for incidental nonstormwater discharges at sites otherwise eligible for an erosivity waiver, and instead should require that the "certification form" include listing of expected non-stormwater discharges and a certification by the person seeking the waiver that appropriate BMPs will be used to protect water quality. (Otak)

Response: The technical basis for granting the waiver is the fact that the project is being conducted during a period of time with a low probability of a discharge-producing rainfall event. If non-stormwater (dewatering water, etc.) cannot be retained on-site (infiltrated, land applied, etc.) and will be discharged to surface waters of the state, state and federal law requires the discharge to be covered under an NPDES permit, such as the general permit. No change to the permit.

221. The discussion of non-stormwater discharges is not clear. Ecology should discuss the legal reasons why short term incidental non-stormwater discharges associated with construction activity requires an NPDES permit, and how they would be permitted for a site that attempts to utilize an erosivity waiver. If this is simply a way to limit the usefulness of the erosivity waiver and Ecology is going to require full Construction Permit coverage when needing to discharge dewatering water, etc., then you should just say so right at the beginning of section S2.F. (Otak)

Response: Please see response to comment 220 above.

222. Under S2.F.9., by what date must a discharger submit a notice of intent for permit coverage when construction activity extends beyond the certified waiver time period? (Puget Soundkeeper)

Response: The language below has been added to address construction activity which extends beyond the certified waiver period. Some projects may be able to amend their waiver certification (if they still qualify); if they do not, they need to submit an NOI to Ecology before the end of the certified waiver period. This is consistent with EPA's general permit. The waiver certification for and applicable guidance will direct operators to ensure that they submit the NOI in time for permit coverage to be granted prior to the expiration of the erosivity waiver. Discharges that occur after a waiver expires, and before permit coverage is granted are not authorized by the permit.

If construction activity extends beyond the certified waiver period for any reason, the operator must either:

c. Recalculate the rainfall erosivity R factor using the original start date and a new projected ending date and, if the R factor is still under 5 <u>and</u> the entire project falls within the applicable regional timeframe in S2.D.2.b, complete and submit an amended waiver certification form before the original waiver expires; or

d. Submit a complete permit application to Ecology in accordance with Condition S2.A&B before the end of the certified waiver period.

223. F.9. - A construction stormwater permit is required and the operator must submit a notice of intent for permit coverage per conditions S2.A-C if construction activity extends beyond the certified waiver time period in S2.F.2. *Add* - (Application Requirements - Application Form, Public Notice, Permit Timeline Coverage) A*dd* - (Waiver Window). (King Co)

Response: This section reformatted and does not require the additional language.

224. We suggest that there be a waiver provision for construction projects that are being designed and constructed to Leadership in Energy and Environmental Design (LEED) standards. LEED requires construction stormwater control as a prerequisite for LEED certification. Any building designed and constructed for LEED certification in Washington will have to meet the new general permit requirements for construction stormwater under the LEED prerequisite. This LEED requirement provides the same level of environmental protection for a particular construction project as the general permit. As an incentive to using LEED, Ecology could waive the acquisition of the permit-clearly perceived as a "plus" to a project proponent- and still provide for the same level of protective BMPs, sampling, and reporting. This would help to make LEED a more attractive option for new construction, thereby helping the state move a little closer to its overall sustainability goals. Following is the language contained in the LEED Reference Guide for New Construction, Version 2.1, regarding Erosion and Sedimentation Control:
Intent *Control erosion to reduce negative impacts on water and air quality.*
Requirements *Design a sediment and erosion control plan, speczjk to the site, that conforms to united State Environmental Protection Agency (EPE) Document No. EPA 832/R-92-005 (September 1992), Storm Water Management for Construction Activities, Chapter 3, OR local erosion and sedimentation control standards and codes, whichever is more stringent. The plan shall have the following objectives: Prevent loss of soil during construction by stormwater runoff and/or wind erosion, including protecting topsoil by stockpiling for reuse. Prevent sedimentation of storm sewer or receiving streams Prevent polluting the air with dust and particulate matter.*
Submittals *Provide the LEED Letter Template, signed by the civil engineer or responsible party, declaring whether the project follows local erosion and sedimentation control standards or the referenced EPA standard. Provide a brief list of the measures implemented. If local standards and codes are followed, describe how they meet or exceed the referenced EPA standard.* In addition, LEED includes several site selection goals such as minimizing the building footprint, avoiding development of inappropriate sites, avoiding environmentally sensitive areas, enhancing development density in urban areas, protection of green space, protection of wildlife habitat and natural resources, limitation of site disturbance, and restoration of damaged areas. LEED also gives credit for the use of building materials that have recycled content, use of green roofs, water efficiency, optimized energy performance, avoidance of ozone depleting materials, recycling of construction waste, use of building materials harvested or manufactured locally, enhanced indoor air quality, and better use of daylight in interior spaces. Providing an "incentive" in this way by reducing administrative requirements to encourage the use of LEED will provide for a number of environmental benefits, because LEED addresses a broad range of sustainable elements. The proposed waiver would not relieve the operator from compliance with any of the substantive portions of the general permit. The waiver would only waive the requirement to submit an application to Ecology for coverage under the permit. Suggested language for inclusion in Section S2. Application Requirements is provided as follows:
S2. G. LEED New Construction Waiver

If a construction site greater than one acre of soil disturbance is part of construction of a new building or major renovation that is a registered Leadership in Energy and Environmental Design (LEED) project, the operator of the construction activity is authorized to discharge stormwater associated with construction activity under this permit without the submittal of an application to Ecology. The following conditions apply:
1. The project must be registered with the United States Green Building Council prior to commencement of soil disturbing activities. '
2. The project must complete the process of LEED certification at the minimum certzj5cation level or higher.
3. All conditions of this permit apply except for conditions S2.A, S2.B, S2.C, S2.D.I and 2, and G8.
4. This waiver does not preempt or supersede the authority of local agencies to prohibit, restrict, or control discharges of stormwater to storm drain systems or other water courses within their jurisdiction.
5. When the site soils have been finally stabilized, coverage under this permit is automatically terminated.
6. Ecology may require any owner or operator who is exercising the LEED waiver to apply for and obtain coverage under the full requirements of this permit. The operator will be notified in writing that an application for full permit coverage is required. (Dept. of Corrections)

Response: EPA's Phase II Stormwater Rule does not allow state programs to waive NPDES permit coverage for projects with LEED certification. No change to the permit.

S3. Compliance with Standards

Point of Discharge/Point of Compliance

225. The permit needs to clearly state that the point of compliance for water quality standards is at the receiving water. (City of Kennewick)

Response: The permit, Condition S4, requires sampling of all discharge points where stormwater (or authorized non-stormwater) is discharged off-site. The purpose of such sampling is to evaluate the performance of BMPs on site using benchmarks and is not intended to conclusively show compliance with surface water quality standards. When discharges off site are at or below benchmarks, however, Ecology presumes that such discharges, will be in compliance with water quality standards.

To verify compliance with water quality standards, it is necessary for an Ecology inspector an/or a permittee to conduct a site specific analysis of background conditions and the water being discharged off site as described below.

The permit provides two options to determine where the point of compliance for water quality standards is located.

Option 1 - For discharges to impaired waterbodies only. Permit condition S8.B1 states:

A. Discharges to waterbodies on the 303(d) list for turbidity, fine sediment, or phosphorus

A. Permittees which discharge to waterbodies on the 303(d) list for turbidity, fine sediment, or phosphorus shall conduct turbidity sampling at the following locations to evaluate compliance with the water quality standard for turbidity:

- Background turbidity shall be measured in the 303(d) listed receiving water immediately upstream (upgradient) or outside the area of influence of the discharge; and

- Discharge turbidity shall be measured at the point of discharge into the 303(d) listed receiving waterbody, inside the area of influence of the discharge; **or**

Alternatively, discharge turbidity may be measured at the point where the discharge leaves the construction site, rather than in the receiving waterbody.

Option 2 - For discharges that do not enter impaired waterbodies. Permit condition S3.A and waters of the state definition in Appendix A state, respectively:

A. Discharges shall not cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), sediment management standards (Chapter 173-204 WAC), and human health based criteria in the National Toxics Rule (40 CFR Part 131.36). Discharges that are not in compliance with these standards are not authorized.

Waters of the State includes those waters as defined as "waters of the United States" in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State and "waters of the state" as defined in Chapter 90.48 RCW which include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington.

According to these criteria, the location for determining compliance with water quality standards is the point where the discharge leaves the construction site and enters waters of the state. Accordingly, at this described location the turbidity standard (i.e. the discharge turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10% increase in turbidity when the background turbidity is more than 50 NTU) applies.

226. Condition S3.A. should specify that the "point of discharge" is the "point of discharge from the site," where monitoring takes place. (Puget Soundkeeper)

Response: Please see response to comment 225 above.

227. Special Condition S3: The permit now contains a requirement to meet water quality standards at the end of the pipe, without any dilution. We believe that dilution should be authorized for discharges that implement best management practices from Ecology's manual or that meet the demonstrative approach outlined in the manual. The permittee could be required to calculate the dilution factor based on 173-201A and to include that dilution factor as a part of its Stormwater Pollution Prevention Plan. Moreover; compliance with water quality standards is presumed unless monitoring data or other site-specific information demonstrates otherwise and the permittee is compliance with non-water quality provisions. Linking compliance with water quality standards to non-water quality provisions in the permit does not seem reasonable and will expose permittees to multiple violations for the same action For example, under the current permit language, if a permittee fails to comply with recordkeeping requirements, that action violates water quality standards. We do not believe that Ecology intends that result and, therefore, suggest that Ecology revise the language. (Sound Transit)

Response: Please see response to comment 225 above.

228. The proposed permit language referring to the "point of discharge" simply creates confusion. The WAC 173-201A numeric criteria for both turbidity and pH allow for an incremental change in down-gradient receiving water quality compared to up-gradient receiving water quality. If there is to be a numeric effluent limitation equal to the applicable water quality standard, then the suggestion of a compliance assessment "at the point of discharge" is misleading. We will note that Ecology has already addressed this issue. An Ecology response to comment in the January 2005 issuance of the Sand and Gravel General Permit stated

"In response the (sic) comment regarding compliance with WAC 173-201A-030(1)(c)(vi) and related turbidity provisions, Ecology interprets the turbidity criteria to be an ambient "in-water" parameter, applied to various class (sic) of surface waters in the State of Washington, and not directly applied to point source discharges." Response to Comment 28, Question 2.

Response: Please see response to comment 225 above.

229. The water quality criterion for pH is similarly configured and thus should be evaluated in the same fashion. (Weyerhaeuser)

Response: Ecology has modified the permit to clarify the sampling requirements and effluent limitations for discharges to impaired waterbodies: Permittees which discharge to waterbodies on the 303(d) list for turbidity, fine sediment, or phosphorus shall conduct turbidity sampling at the following locations to demonstrate compliance with the water quality standard for turbidity:

a. Background turbidity shall be measured in the 303(d) listed receiving water immediately upstream (upgradient) or outside the area of influence of the discharge; and

b. Discharge turbidity shall be measured at the point of discharge into the 303(d) listed receiving waterbody, inside the area of influence of the discharge; **or**

Alternatively, discharge turbidity shall be measured at the point where the discharge leaves the construction site, rather than in the receiving waterbody.

3. Permittees which discharge to waterbodies on the 303(d) list for high pH shall conduct sampling either of the following locations to demonstrate compliance with the water quality standard for pH:

a. pH shall be measured at the point of discharge into the 303(d) listed waterbody, inside the area of influence of the discharge; or

Alternatively, pH may be measured at the point where the discharge leaves the construction site, rather than in the receiving water.

230. S3.D.1: An overwhelming number of project sites under five acres will be deemed non-compliant because they will not understand the scope or be able to meet the demands of planning, sampling, monitoring, reporting, and recordkeeping. It is unreasonable to expect builders and property owners of sites less than five acres to learn a new regulatory process and satisfy intensive paperwork requirements. They are already staggering under a sea of confusing and often redundant regulations. In essence, you are setting the less than five acres applicants up for failure. (BIAW)

Response: Ecology has modified the permit (S4.B3 and S4.C) to allow more time for project sites under five acres to adjust to and meet the new demands of planning, sampling, monitoring, reporting, and recordkeeping. See language below. Ecology also intends to make available other technical assistance resources (e.g. sampling video and written guidance document, SWPPP software wizard) via its website and to hold several workshops on sampling, monitoring, recordkeeping and reporting to help permittees comply with this permit

D. Turbidity/Transparency Sampling – General Requirements

1. Sampling Methods/Effective Dates

a. Beginning October 1, 2006, if construction activity will involve the disturbance of 5 acres or more, the Permittee shall conduct turbidity sampling per S4.C.

b. Beginning October 1, 2008, if construction activity will involve greater than or equal to 1 acre, but less than 5 acres of soil disturbance, the Permittee shall conduct transparency sampling **or** turbidity sampling per S4.C.

231. **Comment:** S3 (introduction), and G-1 and other locations in the permit include statements that violations of standards are not allowed. Could this point be stated thoroughly in just one location? (WSDOT)

    Response: The permit contains "violations of standards" language multiple times because it is the main focus of the permit.

303(d)/TMDLs

232. From the permit and fact sheet, it appears that discharges to a 303d listed water bodies and water bodies with a TMDL must comply with numeric water quality limits. It also appears that discharges to non-listed water bodies are supposed to comply with water quality standards, but do not necessarily have to comply with numeric limits. This appears to be giving a de facto mixing zone. Please explain. (RE Sources)

    Response: The permit does not grant a mixing zone, and does not authorize discharges which violate the water quality standards. Numeric limitations are applied to certain discharges to impaired waterbodies or waterbodies with TMDLs; these provisions have been clarified in Condition S8. However, for discharges to non-listed waterbodies, the permit applies a narrative effluent limitation, which requires 1) the implementation of Ecology approved best management practices (designed to satisfy the technology and water quality-based requirements of the federal clean water act, 33 U.S.C. Sec. 1251 et seq.); 2) adaptive management based on inspections and sampling; and 3) compliance with water quality standards. This approach is consistent with RCW 90.48.555(5), (6), & (8).

233. S3 A states that discharges must meet water quality standards at the point of discharge when discharging to water bodies on the 303D list and water bodies with TMDLs. This performance standard is in excess of the state water quality standard and beyond the capabilities of the treatment technologies available to most projects. None of the temporary erosion control BMPs have performance goals for phosphorus treatment in the Ecology stormwater manuals. As such, there is no way to assure that projects can meet the standards at the point of discharge for phosphorus. See also S4G 2 and 3 because they require projects to meet TMDL load allocations which may not be feasible with the available treatment technologies. As written, many permittees will find themselves in the awkward position of being out of compliance even when they are faithfully executing all of the prescriptive conditions in the permit. Does the 25 NTU benchmark assumption of BMP effectiveness and compliance with standards also apply to discharges to 303d listed waters? (WSDOT)

    Response: Numeric limitations are only applied to certain discharges to impaired waterbodies or waterbodies with TMDLs; these provisions have been clarified in Condition S8. When applicable, these numeric limitations are not in excess of the water quality standards, rather they are equal to the turbidity and pH water quality criterion. Federal water quality law requires that permits be conditioned to require compliance with water quality based limitations, even if the resulting limitation is more stringent than technology-based limitations based upon treatment technologies

available to "most projects". Ecology has recognized that it is inappropriate to require end-of-pipe compliance with phosphorus criteria which has been established for various classes of lakes; the total phosphorus concentrations established are ambient in-water lake criterion, not readily applied to point sources. In recognition of this, Ecology has determined that the surface water quality criterion for turbidity is appropriate surrogate parameter for discharges to phosphorus listed waters. Attainment of the 25 NTU benchmark has not been determined to be adequate assurance that a discharge to an impaired waterbody is not causing a violation of water quality standards, therefore, these sites must comply with the following:

Permittees which discharge to waterbodies on the 303(d) list for turbidity, fine sediment, or phosphorus shall conduct turbidity sampling at the following locations to evaluate compliance with the water quality standard for turbidity:

- Background turbidity shall be measured in the 303(d)-listed *receiving water* immediately upstream (upgradient) or outside the area of influence of the discharge; and

- Discharge turbidity shall be measured at the point of discharge into the 303(d) listed receiving waterbody, inside the area of influence of the discharge; **or**

  Alternatively, discharge turbidity may be measured at the point where the discharge leaves the construction site, rather than in the receiving waterbody.

Based on sampling, if the discharge turbidity exceeds the water quality standard for turbidity (more than 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a 10% increase in turbidity when the background turbidity is more than 50 NTU), all future discharges shall comply with a numeric effluent limit which is equal to the water quality standard for turbidity.

If a future discharge exceeds the water quality standard for turbidity, the Permittee shall:

- Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge that exceeded the standard;

- Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the standard;

- Document BMP implementation and maintenance in the site log book;

- Notify the appropriate Ecology Regional Office by phone within 24 hours of analysis;

- Continue to sample daily until discharge turbidity meets the water quality standard for turbidity.

234. S3.A Compliance With Standards, 303(d) Listed Waters and Effluent Limits (pg 11) This section (and many others) places special restrictions and requirements on sites that discharge to water bodies/reaches listed on the 303(d) list. However, I think that Ecology should discuss the states classification systems for water bodies and clarify that the 303(d) list is only composed of those listings under Class 5 – Needs TMDL (Otak)

Response: Prior to permit coverage being granted, dischargers can determine whether 303(d)-related requirements apply by calling Ecology, or by visiting the following website, which lists all the waterbodies which are listed for turbidity, fine sediment, high pH, or phosphorus. This website includes only Class 5 listings: http://www.ecy.wa.gov/programs/wq/stormwater/construction/const_stay.html

235. I am always concerned when a 303(d) listing is assumed to be valid and then used by Ecology to require TMDL-like controls in advance of a TMDL. I'm convinced that the law was set-up to require that a TMDL be prepared to assess the causes of pollution and who needs to implement controls, and that it is not supportable to require stormwater controls when there is no certainty that: (1) the listing is currently valid, or (2) stormwater is a significant contributor to the cause of impairment in that water body. It appears that permittees are being punished because Ecology has not been able to complete TMDLs in a timely fashion – so now Ecology is skipping the TMDL step and instead higher regulatory controls are going to be required "just in case" stormwater is a significant part of the problem. I'm sure there are many cases where stormwater is contributing to a valid 303(d) listing, but I'm also sure there are many cases where it is not. The relationship between 303(d) listings and effluent standards and monitoring requirements should be stricken from the permit and all permittees should only be subject to the baseline requirements until such time as Ecology completes a TMDL that definitively illustrates that stormwater controls are needed (or such a TMDL is already in place). "Baseline" as used in these comments refers to the discharge standards, effluent limits, and monitoring requirements in the Draft Construction Stormwater Permit for non 303(d) listed and TMDL waters. (Otak)

Response: The suggestion to strike the language regarding 303(d) listings and effluent limitations is not consistent with federal requirements and Pollution Control Hearings Board (PCHB) decision (case No. 00-173).

In this case, the PCHB found that the Clean Water Act prohibits permits for discharges that cause or contribute to an exceedence of water quality standards. 33 U.S.C. §1311(b)(1)(c); 40 C.F.R. 122.44(d); 40 C.F.R. 122.4; See also**,** RCW 90.48.520; WAC 173-226-070. The § 303(d) listing process, by definition, identifies bodies of water that currently fail to meet applicable water quality standards for specified pollutants. It follows that allowing new or additional discharges of an identified pollutant to an impaired water body would necessarily cause or contribute to the existing violation of water quality standards. Such an action is contrary to state and federal law and would cause harm to the receiving water that is not easily repaired. The PCHB Order for this case may be accessed at:

http://www.ecy.wa.gov/programs/wq/stormwater/P%2000-173%20Order%20Granting%20Partial%20Stay.pdf

The 303(d)/effluent limitation language (Condition S8) has been modified, as described in the response to comment 233 above.

236. I'm also concerned that while some past 303(d) listings were removed from the list (moved to other classifications) when preparing the 2004 303(d) list, there is still an immense amount of uncertainty about whether or not the reach is actually impaired. Often times the listing was based on very few data points taken long ago, which in my mind should result in a classification other than "Class 5 – Needs TMDL", perhaps a "needs further data to verify" classification. For instance, Wide Hollow Creek is on the 2004 303(d) list for Dieldrin based on "*3 excursions beyond National Toxics Rule (40 CFR Part 131) criterion at USGS station 12500445 in 1988 and 1989*". It does not seem appropriate to designate the stream as impaired and needing a TMDL in 2004 based on very limited data that is now 17 years old. While Dieldrin may or may not be one of those "other applicable parameters" that Ecology uses to implement higher discharge standards and monitoring requirements, my point here is that there is a high potential for costly and unnecessary standards to be applied based on ancient data that may or may not have been accurate at the time. Ecology should be sure of the validity of the listing before ramping up standards and requirements under the construction NPDES permit (or other NPDES permits). I do not believe that a few old data points, which for all we know were taken during extenuating circumstances, provides the necessary certainty that construction stormwater regulation needs to be increased above the baseline. In many areas changes have been made over the years that could easily result in no longer needing a TMDL, for instance: irrigation conservation measures, changes in land use, application of BMPs by businesses and local governments, changes in chemical usage, implementation of no-spray buffers under ESA, and so on. If the 303(d) portions are of the permit are retained, then Ecology should perform a formal evaluation of the validity of the 303(d) listing data before implementing the higher standards and monitoring requirements, this evaluation should be noted in the letter to the permittee regarding monitoring and effluent limitations, and the permittee should be given an opportunity to review Ecology's determination process if they choose to take the time to do so. Not taking this kind of approach is likely to result in lots of individual permit applications. (Otak)

Response: Ecology's assessment of which waters to place on the 303(d) list is conditioned by Section 303(d) of the federal Clean Water Act, Washington State surface water quality standards, and the state's 303(d) policy. This policy (Policy 1-11) describes how the standards are applied, requirements for the data used, and how to prioritize TMDLs, among other issues. The goal is to make the best possible decisions on whether each body of water is impaired by pollutants, to ensure that all impaired waters are identified and that no waters are mistakenly identified.

Section 303(d) of the federal Clean Water Act requires states to develop a list of polluted water bodies every two years. If new information is presented during each two year period about the current condition of a listed waterbody, Ecology will gladly

accept and review such data and then make a determination of impairment or non-impairment. If there is no 'newer' data to review, Ecology will continue to use data more than ten years old. Although Ecology does not have the resources to collect representative (spatial and temporal) samples of every listed waterbody in Washington State every two years, we have been doing some focused sampling in reaches where the data has some element of uncertainty.

When waterbodies are added or retained on the 303(d) list, Ecology performs an evaluation of the validity of the 303(d) listing data by submitting such information for review internally by staff and then, externally, via public comment and then for final review and approval by the EPA. A detailed summary of this review process can be found at the following Ecology website: http://www.ecy.wa.gov/pubs/0310040.pdf

Also, please see the response to comment 233 and 235 above.

237. Setting "numeric effluent limitations equal to the applicable water quality standard at the point of discharge" needs to be supported by analyses and reports illustrating that the technology exists to readily allow the numeric standard to be met, otherwise narrative or technology based standards need to be used. Setting standards that you do not know for sure can be met places an undue and uncontrollable amount of liability on permittees. Ecology should provide references to such analyses, reports, and guidance documents and clearly describe how permittees can meet the numeric standard, otherwise, as suggested earlier, strike all 303(d) listing impacts on discharge standards and monitoring from the permit. (Otak)

Response: Please see responses to comments 233, 235 and 236 above.

238. S3.B.1 Compliance With Standards, Discharges to TMDL Waters (pg 12) I'm concerned with the wording here. Ecology should clearly state whether or not you intend to place additional stormwater controls, monitoring, and standards above the baseline on discharges to TMDL water bodies in instances where stormwater was not considered a relevant enough contributor to be addressed in the TMDL.

Construction stormwater controls above the baseline should only be required when specifically addressed in the TMDL – that seems consistent with the law. If stormwater was not considered to be a significant contributor to the TMDL pollutant and therefore was not addressed then my opinion is that, until such time as the TMDL is revised, the existing TMDL serves as a *water quality plan that illustrates that stormwater controls on that pollutant are not required* (certainly not above normal BMP levels). To use the TMDL in the opposite way, and require higher construction stormwater controls when it was not addressed in the TMDL, would certainly be questionable. (Otak)

Response: Ecology has clarified the requirements for TMDLs which do not set a specific waste load allocation for discharges from construction activity (Condition S8):

E. Sampling & Limitations – For Sites Discharging to TMDLs

2. Discharges to a waterbodies subject to an applicable Total Maximum Daily Load (TMDL) for turbidity, fine sediment, high pH, or phosphorus, shall be consistent with the assumptions and requirements of the TMDL.

e. Where an applicable TMDL sets specific waste load allocations or requirements for discharges covered by this permit, discharges shall be consistent with any specific waste load allocations or requirements established by the applicable TMDL.

iii. Discharges shall be sampled weekly, or as otherwise specified by the TMDL, to evaluate compliance with the specific waste load allocations or requirements.

iv. Analytical methods used to meet the monitoring requirements shall conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 CFR Part 136.

f. Where an applicable TMDL has established a general waste load allocation for construction stormwater discharges, but no specific requirements have been identified, compliance with Conditions S4 (Monitoring) and S9 (SWPPPs) will be assumed to be consistent with the approved TMDL.

g. Where an applicable TMDL has not specified a waste load allocation for construction stormwater discharges, but has not excluded these discharges, compliance with Conditions S4 (Monitoring) and S9 (SWPPPs) will be assumed to be consistent with the approved TMDL.

h. Where an applicable TMDL specifically precludes or prohibits discharges from construction activity, the operator is not eligible for coverage under this permit.

239. Special Condition S3: When a waterbody is listed as "impaired" on the 303(d) list, the permittee must meet the water quality standard for the impaired parameter at the end of the pipe, even if the discharge is to a roadside ditch that ultimately reaches the 303(d) listed waterbody. We are concerned with regulating this far upstream from the 303(d) waterway because it does not appear to be supported by Section 303(d) of the CWA or federal or state water quality regulations. From a practical standpoint, it is not clear where the dividing line is between the 303(d) listed waterway and "upstream" from that waterway. We suggest that a better approach is to impose the end of the pipe requirement only for the actual 303(d) listed waterway. Additionally, there is no timeframe in the permit for Ecology to notify the applicant when permit coverage is granted. Because applicants must be able to plan for their construction projects, it is reasonable for Ecology to set forth a date by which a coverage determination will be made. (Sound Transit)

Response: The effluent limitations and monitoring requirements related to 303(d) listed waters has been clarified. Please see response to Comment 233.

Sampling may occur either at the point where the discharge enters the 303(d) listed segment (directly or a the stormwater conveyance system) or end-or-pipe. Prior to

submitting a permit application, dischargers can determine whether 303(d)-related requirements apply by calling Ecology, or by visiting the following website, which lists all the waterbodies which are listed for turbidity, fine sediment, high pH, or phosphorus:
http://www.ecy.wa.gov/programs/wq/stormwater/construction/const_stay.html .

240. Special Condition S3: The permit now contains a requirement to meet water quality standards at the end of the pipe, without any dilution. Dilution should be authorized for discharges that implement best management practices from Ecology's manual or that meet the demonstrative approach outlined in the manual. The permittee could be required to calculate the dilution factor based on 173-201A and to include that dilution factor as a part of its Stormwater Pollution Prevention Plan. Moreover, compliance with water quality standards is presumed unless monitoring data or other site-specific information demonstrates otherwise and the permittee is compliance with non-water quality provisions. Linking compliance with water quality standards to non-water quality provisions in the permit is not reasonable and serves only to expose permittees to multiple violations for the same action. For example, if a permittee has failed to comply with recordkeeping requirements, it could violate water quality standards according to this permit language. (Costco)

Response: Ecology has decided not to include mixing zones within this permit. The substantive procedural requirements for authorizing mixing zones cannot be accommodated within the context of a general permit. The suggestion for allowing the permittee to incorporate a dilution factor into the SWPPP is not consistent with applicable mixing zone regulations. However, mixing zones can be authorized under an individual NPDES permit if necessary. Regarding failure to meet recordkeeping requirements, the permit does not link compliance with "non-water quality" provisions in the permit to compliance with water quality standards. For example, failure to comply with recordkeeping requirements does not constitute a violation of water quality standards, but it does constitute a violation of the permit.

241. The statement in the Fact Sheet at page 16 with regard to "no grandfathering" of water quality standards is an incorrect interpretation of "comp1iance" under the CWA. In fact, if a discharge is existing at the time of the permit issuance, there is nothing to preclude Ecology from granting a compliance schedule to meet new water quality standards, which is a reasonable approach. (Costco)

Response: The numeric criteria under revision in the Surface Water Quality Standards are temperature and bacteria. Neither of these revisions affect the monitoring or limitations contained in the permit. The criteria germane to construction activity (turbidity, phosphorus, and pH) are not being revised.

242. Special Condition S3: When a waterbody is merely listed as "impaired" on the 303(d) list, the permittee must meet the water quality standard for the impaired parameter at the end of the pipe, even if the discharge is to a roadside ditch that ultimately reaches the 303(d) listed waterbody. This approach of regulating far upstream from the 303(d) waterway is not supported by Section 303(d) of the CWA or federal 01 state water quality

regulations. Moreover, there is no time frame within the permit for Ecology to notify the applicant when permit coverage is granted. Because applicants must be able to plan for their construction projects, it is reasonable for Ecology to set forth a date by which a coverage determination will be made. (Costco)

Response: The effluent limitations and monitoring requirements related to 303(d) listed waters has been clarified. Please see response to Comment 233.

Sampling may occur either at the point where the discharge enters the 303(d) listed segment (directly or at the stormwater conveyance system) or end-or-pipe. Prior to submitting a permit application, dischargers can determine whether 303(d)-related requirements apply by calling Ecology, or by visiting the following website, which lists all the waterbodies which are listed for turbidity, fine sediment, high pH, or phosphorus:
http://www.ecy.wa.gov/programs/wq/stormwater/construction/const_stay.html .

243. The TMDL and 303(d) issues should be moved out of this section to their own Special Condition as has been done in the Municipal NPDES permit. This also applies to 303(d) sections in S.1.D.5 & S.1.D.6, and S.4.G..(King Co)

Response: Ecology agrees and has moved 303(d)/TMDL requirements to a separate section (Condition S8).

244. "Discharges shall not cause or contribute to a violation of surface…" Contribution to a violation should only be applicable when discharging to a 303(d) or TMDL water body. If a discharge from a construction site meets surface water quality, etc. standards then the discharge is not in violation of this permit. *Delete* – "or contribute to" (King Co)

Response: Ecology has decided to retain the "or contribute to" language. However, this is only applicable for discharges to 303(d) listed or TMDL waterbodies.

245. - Move to 303(d) & TMDL Special Condition as found in the Municipal NPDES permit. (King Co)

Response: Ecology agrees and has moved 303(d)/TMDL requirements to a separate section (Condition S8).

246. A.1. – "Effluent limitations apply to direct discharges to listed waterbodies as well as indirect discharges via a stormwater conveyance system." Phase II municipalities have not begun mapping their MS4 system. Is this section achievable, following indirect discharges through multi-jurisdictional stormwater systems that have not yet been mapped? Is this indirect discharge requirement also applicable to TMDL streams? (King Co)

Response: Ecology acknowledges the difficulty in sampling at the outlet of stormwater conveyance systems and has added language to also allow permittees to demonstrate compliance where water leaves their site (prior to entering a storm

drain). The "indirect discharge" requirements also apply to applicable TMDL waterbodies. Sampling may occur either at the point where the discharge enters the applicable TMDL segment (directly or at the stormwater conveyance system) or end-or-pipe.

247. A.2 and B.1 - An applicant should know what numeric effluent limitations may be expected before submitting an application, or early in the submission process, for projects that discharge to Section 303(d) listed water bodies or water bodies with TMDLs. The applicant should be directed to the Section 303(d) listing or TMDL listing as a requirement of the application. Not being notified of numeric discharge limits until after the permit is granted can have significant cost impacts to the SWPPP program. (King Co)

Response: As part of the permit application process, applicants are required to determine if they will discharge to a 303(d) listed waterbody or a waterbody with an applicable TMDL. This information may be obtained from the following website, which lists all the waterbodies which are listed for turbidity, fine sediment, high pH, or phosphorus: http://www.ecy.wa.gov/programs/wq/stormwater/construction/const_stay.html .

248. -This is listed as "A" in the draft document. Move to 303(d) & TMDL Special Condition as found in the Municipal NPDES permit. (King Co)

Response: Ecology agrees and has moved 303(d)/TMDL requirements to a separate section.

249. **& D. –** Assume the following facts: A permitted site is applying AKART to MEP and the BMPs have been properly designed, constructed, maintained, and operated. Inspectors have found the permittee to be fully implementing stormwater BMPs contained in stormwater technical manuals approved by Ecology. Stormwater discharge from this site is violating water quality standards. The permit gives no guidance on what Ecology will do in this circumstance. (King Co)

Response: Permit Condition S3.D and S3.A address this hypothetical case:

D. Compliance with water quality standards shall be presumed, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the Permittee is:

1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions; and

2. Fully implementing stormwater BMPs contained in stormwater technical manuals approved by Ecology, or practices that are "demonstrably equivalent" to practices contained in stormwater technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs for on-site pollution control.

Under this hypothetical case, however, it has been shown that the discharge is in violation of water quality standards. Therefore, S3.A applies:

A. Discharges shall not cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), sediment management standards (Chapter 173-204 WAC), and human health based criteria in the National Toxics Rule (40 CFR Part 131.36). Discharges that are not in compliance with these standards are not authorized.

The permit is not guidance, it is regulation. If this hypothetical case were to occur, Ecology would determine the permittee to be in violation of Permit Condition S3, and then, in response, issue an appropriate informal and/or formal enforcement action to prevent further violations and pollution of state waters.

250. **- Compliance with water quality standards shall be presumed, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the Permittee is:** *Delete* – "or contributes" This would apply in a 303(d) listed water body. (King Co)

Response: Since the permit authorizes discharges to 303(d) listed waterbodies, this language [from RCW 90.48.555(6)] must be retained in the permit.

251. **S3.A. Discharges to waters listed as impaired** – The proposed permit language over-reaches and is ambiguous. This proposed permit requirement is arguably inconsistent with RCW 90.48.555. The entire paragraph S3.A. needs to be re-drafted. (Weyerhaeuser)

Response: See response to comment 257.

252. The triggering event for the requirements of this permit section will be a 303(d) listing. There are no waterbodies listed for "sediment" or "other applicable parameters." To avoid confusion, this terminology should not appear in the paragraph. (Weyerhaeuser)

Response: The parameters which trigger additional 303(d)-related requirements are limited to turbidity, fine sediment, high pH, and phosphorus; "sediment" and "other applicable parameters" have been deleted.

253. WAC 173-201A does not include numeric water quality criteria for "fine sediment," "other applicable parameters," or "phosphorous" (except in certain lakes). As such, the proposed requirement that CSWGP dischargers will be subject to a "numeric limitation equal to the water quality standard" cannot be satisfied. The references to these parameters should be removed. (Weyerhaeuser)

Response: Ecology has determined that construction sites without adequate controls have the potential to cause or contribute to water quality violations in waterbodies

that are 303(d) listed for fine sediment or phosphorus. However, water quality standards do not have numeric criterion for "fine sediment". Settleable solids may be the most suitable test to assess whether a discharge can contribute to a "fine sediment" problem, but the standards do not have numeric criterion for settleable solids. Furthermore, the numeric criterion for total phosphorus, which applies to ambient concentrations in various classes of lakes, should not be directly applied to point source discharges from construction sites. Ecology has determined that, if turbidity levels do not violate the surface water quality criterion for turbidity, then the discharge should not cause or contribute to the "fine sediment" or "phosphorus" problem which resulted in the 303(d) listing in the receiving water. Therefore, turbidity will be used as a surrogate parameter for discharges to fine sediment or phosphorus listed waters; i.e., if the receiving water is listed for turbidity, fine sediment or phosphorus, the discharger must demonstrate that the discharge is not violating the turbidity criterion in the receiving water.

254. Phosphorous should be removed as a trigger parameter for the special requirements facing CSWGP discharges into 303(d) listed waterbodies. The Fact Sheet acknowledges that phosphorous is associated with soil particles. There is no claim that phosphorous is somehow imparted to stormwater in a typical construction project. (Weyerhaeuser)

Response: Ecology disagrees with the suggestion to remove phosphorus as a trigger parameter for 303(d) requirements. However, based upon the relationship between suspended sediment (soil particles) and phosphorus, and the recognized inappropriateness of applying ambient lake criterion for total phosphorus directly to stormwater discharges; Ecology has decided to use turbidity as a surrogate for phosphorus; i.e., compliance with the turbidity criterion, would sufficiently demonstrate that the discharge is not contributing to a water quality violation in a phosphorus-listed waterbody.

This decision is supported by the following excerpt from EPA's Phase II Stormwater Final Rule, pp. 68728:

> "Water quality impairment results, in part, because a number of pollutants are preferentially absorbed onto mineral or organic particles found in fine sediment.
>
> The interconnected process of erosion (detachment of the soil particles), sediment transport, and delivery is the primary pathway for introducing key pollutants, such as nutrients (particularly phosphorus), metals, and organic compounds into aquatic systems (Novotny, V. and G. Chesters. 1989. ''Delivery of Sediment and Pollutants from Nonpoint Sources: A Water Quality Perspective.'' *Journal of Soil and Water Conservation,* 44(6):568–76).
>
> Estimates indicate that 80 percent of the phosphorus and 73 percent of the Kjeldahl nitrogen in streams is associated with eroded sediment (U.S. Department of Agriculture. 1989. ''The Second RCA Appraisal, Soil, Water and Related Resources on Nonfederal Land in the United States, Analysis of Condition and Trends.'' Cited in Fennessey, L.A.J., and A.R. Jarrett. 1994. ''The Dirt in a Hole:

a Review of Sedimentation Basins for Urban Areas and Construction Sites.'' *Journal of Soil and Water Conservation,* 49(4):317–23)."

255. While Ecology inexplicably asserts that turbidity is a viable surrogate parameter for "sediment" and "fine sediment," it can be noted that sediment and fine sediment represent solids that have settled, and turbidity is more appropriately an indicator of suspended solids. The criteria to assign a waterbody to the 303(d) list are spelled out in Water Quality Program Guidance No. 1-11. For the purposes of this permit the agency should not effectively broaden the list by assuming the parameters described as sediment, fine sediment, total suspended solids and turbidity are the same. (Weyerhaeuser)

Response: Ecology does not assume that sediment, fine sediment, total suspended solids and turbidity are the same. However, relationships do exist among these parameters. Since there currently are no waterbodies listed for sediment and total suspended solids, references to these parameters were deleted. While Ecology does not entirely disagree with the comments regarding the distinction between turbidity and fine sediment, Ecology believes that a waterbody listed for fine sediment was very likely to have been subjected to high levels of both settleable solids and turbidity – most likely levels of turbidity which exceeded the water quality criterion, and upon settling in the waterbody causing the degraded streambed condition (sedimentation) which resulting in the 303(d) listing for fine sediment.

This decision is supported by the following excerpt from EPA's Phase II Stormwater Final Rule:

"In watersheds experiencing intensive construction activity, the localized impacts of water quality may be severe because of high pollutant loads, primarily sediments.

Siltation is the largest cause of impaired water quality in rivers and the third largest cause of impaired water quality in lakes (U.S. EPA, 1998). The 1996 305(b) report also found that construction site discharges were a source of pollution in: 6 percent of impaired rivers; 11 percent of impaired lakes, ponds, and reservoirs; and 11 percent of impaired estuaries. Introduction of coarse sediment (coarse sand or larger) or a large amount of fine sediment is also a concern because of the potential of filling lakes and reservoirs (along with the associated remediation costs for dredging), as well as clogging stream channels (e.g., Paterson, R.G., M.I. Luger, E.J. Burby, E.J. Kaiser, H.R. Malcolm, and A.C. Beard. 1993. ''Costs and Benefits of Urban Erosion and Sediment Control: North Carolina Experience.'' *Environmental Management* 17(2):167– 78).

Studies have shown that stream reaches affected by construction activities often extend well downstream of the construction site. For example, between 4.8 and 5.6 kilometers of stream below construction sites in the Patuxent River watershed were observed to be impacted by sediment inputs (Fox, H.L. 1974. ''Effects of Urbanization on the Patuxent River, with Special Emphasis on Sediment

Transport, Storage, and Migration.'' Ph.D. dissertation. Johns Hopkins University, Baltimore, MD. As Cited in Klein, R.D. 1979. ''Urbanization and Stream Quality Impairment.'' *Water Resources Bulletin* 15(4): 948–63).

Excess sediment can cause a number of other problems for waterbodies. It is associated with increased turbidity and reduced light penetration in the water column, as well as more long-term effects associated with habitat destruction and increased difficulty in filtering drinking water.

Numerous studies have examined the effect that excess sediment has on aquatic ecosystems. For example, sediment from road construction activity in Northern Virginia reduced aquatic insect and fish communities by up to 85 percent and 40 percent, respectively (Reed, J.R. 1997. ''Stream Community Responses to Road Construction Sediments.'' Bulletin No.97. Virginia Water Resources Research Center, Virginia Polytechnic Institute, Blacksburg, VA. As cited in Klein, R.D. 1990. *A Survey of Quality of Erosion and Sediment Control and Storm Water Management in the Chesapeake Bay Watershed.* Annapolis, MD: Chesapeake Bay Foundation).

Other studies have shown that fine sediment (fine sand or smaller) adversely affects aquatic ecosystems by reducing light penetration, impeding sight-feeding, smothering benthic organisms, abrading gills and other sensitive structures, reducing habitat by clogging interstitial spaces within a streambed, and reducing the intergravel dissolved oxygen by reducing the permeability of the bed material (Everest, F.H., J.C. Beschta, K.V. Scrivener, J.R. Koski, J.R. Sedell, and C.J. Cederholm. 1987. ''Fine Sediment and Salmonid Production: A Paradox.'' *Streamside Management: Forestry and Fishery Interactions,* Contract No. 57, Institute of Forest Resources, University of Washington, Seattle, WA). For example, 4.8 and 5.6 kilometers of stream below construction sites in the Patuxent River watershed in Maryland were found to have fine sediment amounts 15 times greater than normal (Fox, 1974. As cited in Klein, 1979). Benthic organisms in the streambed can be smothered by sediment deposits, causing changes in aquatic flora and fauna, such as fish species composition (Wolman and Schick, 1967)."

256. Support for an in-water assessment is also found in the Pollution Control Hearings Board's 2002 Order granting a partial stay prohibiting any new coverage under the CSWGP for a discharge into a Section 303(d) listed water unless it could be documented that no water quality standard violation will occur. A requirement to sample stormwater at the point of discharge will not provide relevant information for assessing compliance with the turbidity or pH water quality standards. (Weyerhaeuser)

Response: Ecology has modified the permit to clarify the sampling requirements and effluent limitations for discharges to impaired waterbodies. This modification will provide relevant information for assessing compliance with the turbidity or pH water quality standards for discharges to impaired waterbodies:

Discharges to waterbodies on the 303(d) list for turbidity, fine sediment, or phosphorus

Permittees which discharge to waterbodies on the 303(d) list for turbidity, fine sediment, or phosphorus shall conduct turbidity sampling at the following locations to evaluate compliance with the water quality standard for turbidity:

- Background turbidity shall be measured in the 303(d) listed receiving water immediately upstream (upgradient) or outside the area of influence of the discharge; and
- Discharge turbidity shall be measured at the point of discharge into the 303(d) listed receiving waterbody, inside the area of influence of the discharge; **or**

Alternatively, discharge turbidity may be measured at the point where the discharge leaves the construction site, rather than in the receiving waterbody.

Based on sampling, if the discharge turbidity exceeds the water quality standard for turbidity (more than 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a 10% increase in turbidity when the background turbidity is more than 50 NTU), all future discharges shall comply with a numeric effluent limit which is equal to the water quality standard for turbidity. If a future discharge exceeds the water quality standard for turbidity, the permittee shall:

- Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days;
- Implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but no later than 10 days from SWPPP revision;
- Document BMP implementation and maintenance in the site log book;
- Notify Ecology by phone in accordance with Condition S5.A.;
- Continue to sample daily until discharge turbidity meets the water quality standard for turbidity.

Discharges to waterbodies on the 303(d) list for High pH

Permittees which discharge to waterbodies on the 303(d) list for high pH shall conduct sampling one of the following locations to evaluate compliance with the water quality standard for pH (in the range of 6.5 – 8.5):

- pH shall be measured at the point of discharge into the 303(d) listed waterbody, inside the area of influence of the discharge; or
- Alternatively, pH may be measured at the point where the discharge leaves the construction site, rather than in the receiving water.

Based on sampling, if the pH exceeds the water quality standard for pH (in the range of 6.5 – 8.5), all future discharges shall comply with a numeric effluent limit which is equal to the water quality standard for pH.

If a future discharge exceeds the water quality standard for pH, the Permittee shall:

- Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge that exceeded the water quality standard;
- Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the standards;
- Document BMP implementation and maintenance in the site log book;
- Notify the appropriate Ecology Regional Office by phone within 24 hours of analysis; and
- Continue to sample daily until discharge meets the water quality standard for pH (in the range of 6.5 – 8.5) or the discharge stops or is eliminated.

257. Ecology's proposal to establish an effluent limitation on CSWGP dischargers to listed 303(d) waters is premature. Until May 2009, Ecology is directed by RCW 90.48.555(5) to rely on narrative effluent limitations, and by the language of RCW 90.48.555(6) to presume attainment of water quality standards. If the agency insists upon effluent limitations in this permit, an analysis of the factors listed in RCW 90.48.555(3) and (4) must be performed and presented. Ecology has not attempted this demonstration and, more broadly, has offered no rationale why an important statutory directive is being ignored. (Weyerhaeuser)

Response: Ecology has modified the permit to clarify the sampling requirements and effluent limitations for discharges to impaired waterbodies (see revised language in response to comment 248 above). This revision is consistent with the requirements of RCW 90.48.555(3-8). The revised language requires sampling (to determine compliance with water quality standards) and a narrative effluent limit approach. If a sample indicates turbidity and pH water quality standards are violated, the permit requires that all future discharges to the impaired waterbody shall meet a numeric effluent limitation (equal to the applicable water quality criteria) and appropriate adaptive management, documentation and reporting actions.

The factors for establishing 303(d)-related effluent limitations as required by RCW 90.48.55(3) and (4) have been analyzed and summarized below:

(3) The department must condition storm water general permits for industrial and construction activities issued under the national pollutant discharge elimination system of the federal clean water act to require compliance with numeric effluent discharge limits when such discharges are subject to:

(d) A determination by the department that:

(i) The discharges covered under either the construction or industrial storm water general permits have a reasonable potential to cause or contribute to violation of state water quality standards; and

Determination: Ecology has determined that stormwater discharges generated from construction activities can cause an array of physical, chemical, and biological water quality impacts, including violation of water quality standards. Stormwater discharge quality is highly variable from site to site. Variability is a primarily a function of site conditions (soils, topography, construction phase, etc.), climate (antecedent storm events, storm intensity/duration, snow melt, etc.) and combination of erosion and sediment control best management practices. Impacts of stormwater discharges on receiving waters are also highly variable based on the receiving water characteristics (flow, background concentrations, etc.), beneficial uses, and timing/season. Since 303(d) waterbodies fail to meet water quality standards, it can be assumed that no dilution is available in the receiving water, which infers that numeric criteria must be attained at the point of discharge without any consideration of mixing or dilution. In consideration of RCW 90.48.555(4)(b)&(c), discharges covered under the general permit have the reasonable potential to cause violations of the state water quality standards in 303(d) listed waterbodies when a Permittee's sampling indicates a violation of water quality standards.

The potential water quality impacts from construction stormwater discharges is discussed in additional detail in EPA's Phase II Stormwater Rule, Federal Register/Vol. 64, No. 235/Wednesday, Dec. 8, 1999; Construction Site Runoff, pp. 68728-68731.

Additional documentation includes the results of recent research conducted by Ecology's Environmental Assessment Program and summarized in *Stormwater Quality Survey of Western Washington Construction Sites, 2003-2005* www.ecy.wa.gov/biblio/0503028.html. During the survey, six of the 44 permitted sites sampled discharged directly to receiving waters when the site was visited. Receiving waters were sampled both upstream and at two points downstream of the discharge for turbidity, transparency, and total suspended solids (TSS). Two of the six sites with documented discharges (33%) caused violations of the state numeric water quality criterion for turbidity (5 NTU over background turbidity, when background is 50 NTU or less).

The other factors for establishing 303(d)-related effluent limitations as required by RCW 90.48.55(3) and (4) have been analyzed and summarized below:

(3) The department must condition storm water general permits for industrial and construction activities issued under the national pollutant discharge elimination

system of the federal clean water act to require compliance with numeric effluent discharge limits when such discharges are subject to:

(d) A determination by the department that:

(ii) Effluent limitations based on nonnumeric best management practices are not effective in achieving compliance with state water quality standards.

Determination: In consideration of RCW 90.48.555(4)(a), Ecology has determined that when an initial sample collected at a construction site that discharges to a 303(d) listed waterbody indicates that (narrative) effluent limitations based on nonnumeric best management practices are not effective in achieving compliance with state water quality standards in 303(d) listed waterbodies, numeric effluent limitations are then necessary to prevent further impairment of that listed waterbody. Therefore, when a permittee's sampling demonstrates a violation of water quality standards, all subsequent discharges are subject to a numeric effluent limitation equal to the applicable water quality criterion.

258. Ecology should consider the following proposed re-draft of S3.A. Discharges to waters listed as impaired by the State under Section 303(d) of the Clean Water Act for turbidity or high pH shall not cause or contribute to an excursion of the State's water quality criteria for these pollutants. (Weyerhaeuser)

Response: Ecology has considered the proposed language and has taken a different approach, which also addresses phosphorus and fine sediment 303(d) listings. Please see the response to comments 251-257.

TMDLs/303(d) - Impaired Water Bodies

259. The following requirements apply if an applicable Total Maximum Daily Load (TMDL) is approved for stormwater discharges from a site operated by the Permittee. Applicable TMDLs or applicable TMDL requirements are TMDLs which that have been approved by the EPA and for which a Detailed Implementation Plan (DIP) has been adopted by Ecology on or before the issuance date of this permit, or which have been approved by EPA prior to the date that the Permittee's application is received by Ecology, which ever is later. All Permittees must be in compliance with applicable TMDL requirements. A TMDL may not be specific enough to allocate loads for construction. Recommendations to reduce pollutant inputs from construction are more commonly identified in the DIP. Although a DIP is a component of the TMDL, it should be specifically mentioned that implementation of the DIP is required or that a DIP can trigger additional pollutant controls and/or monitoring. Construction Stormwater was not identified in an approved TMDL for phosphorus, and we expect that the upcoming DIP will include the specific recommendation to control sediment and phosphorus from construction. If the DIP is not specifically mentioned in the NPDES construction stormwater permit, the permit will not contain requirements to limit discharges and/or require additional monitoring. Compliance with TMDLs is required in several places throughout the draft permit. Wherever TMDLs are mentioned, include reference to DIPs. This Special Condition

should include the following sections: S1.D.5 & 6, S3.A. & B., S4 Table 3, Footnote 2, S4.G (King Co)

Response: A Detailed Implementation Plan (DIP) is a component of a TMDL. Accordingly, when the permit mentions a TMDL, this includes the DIP for that TMDL. The requirements for discharges to waterbodies with applicable TMDLs has been revised; see response to comment 238.

260. **S3.B. Discharges to Waters with an EPA-Approved TMDL** (Note – This section is erroneously listed as S3.A. in the draft permit) – This permit section should be expanded to address CSWGP discharges where the TMDL has 1) established a general waste load allocation for construction stormwater discharges, but no specific requirements have been identified, or 2) where the TMDL has not specified a waste load allocation for construction stormwater discharges, but has not excluded these discharges. Addressing these situations with appropriate permit language will facilitate consistent and reasonable implementation of this permit.

Discussion – In both of these situations, it should be stated that adherence to a SWPPP that meets the requirements of the CSWGP will be assumed as consistent with the approved TMDL. This approach is consistent with EPA's *NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities* (permit effective July 1, 2003; modified January 21, 2005). (Weyerhaeuser)

Response: Ecology generally agrees with the suggested change and has revised the permit; see response to comment 238.

261. S3.A page 11. CWHBA believes that a Developer or redeveloper should be vested once a Permit has been granted. Our concern relates to the status of a project should the numeric effluent limitations change and/or the Section 303(d) listing change once a Permit has been approved. (CWHBA)

Response: Ecology has determined that Washington State's vesting law does not supersede Clean Water Act requirements which are implemented in the general permit.

All references and requirements associated with Section 303(d) of the Clean Water Act mean the most current listing by Ecology of impaired waters that exists on November 16, 2005, or the date when the operator's complete permit application is received by Ecology, whichever is later.

TMDL-related requirements are applicable to a Permittee only if the TMDL is completed and approved by EPA prior to November 16, 2005, or prior to the date the operator's complete permit application is received by Ecology, whichever is later. TMDLs completed after the operator's complete permit application is received by Ecology become applicable to the Permittee only if they are imposed through an administrative order by Ecology, or through a modification of permit coverage; both of which are appealable actions.

262. S3: BIAW would like to know whether DOE finds that state vesting law applies to numeric effluent limits on 303(d) listed water bodies and TMDLs created after permit issuance. If an applicant is legally operating under a general permit, will his or her permit be revoked or significantly modified if numeric effluent limits are changed or TMDLs created? (BIAW)

Response: Ecology has determined that Washington State's vesting law does not supersede Clean Water Act requirements which are implemented in the general permit.

All references and requirements associated with Section 303(d) of the Clean Water Act mean the most current listing by Ecology of impaired waters that exists on November 16, 2005, or the date when the operator's complete permit application is received by Ecology, whichever is later.

TMDL requirements are only if the TMDL is completed and approved by EPA prior to November 16, 2005, or prior to the date the operator's complete permit application is received by Ecology, whichever is later. TMDLs completed after the operator's complete permit application is received by Ecology become applicable to the Permittee only if they are imposed through an administrative order by Ecology, or through a modification of permit coverage; both of which are appealable actions.

According to Condition G4 and Chapter 173-226 WAC, grounds for modification [of permit coverage], revocation, or termination includes: "When a water quality management plan [TMDL] containing requirements [waste load allocations] applicable to the category of dischargers covered under this permit is approved [by EPA]. In a practical sense, this type of modification would very rarely, if ever, be implemented since TMDLs typically do not set waste load allocations for construction stormwater discharges.

263. S3 could be greatly reduced in length and complexity without weakening content by moving 303d list and TMDL information to a separate special condition. (WSDOT)

Response: Ecology agrees and has moved 303(d)/TMDL requirements to a separate section (Condition S8).

S3.C. BMPs/Treatment Systems shall be properly designed, etc.

264. Page 12, S3.C1: Water quantity should be considered for protection because it directly correlates to water quality in many situations. (WDFW)

Response: Excessive flows are considered a type of water pollution which can degrade aquatic habitat. The permit does protect downstream waterways from erosion related to increases in the velocity and peak volumetric flow rate of stormwater runoff from construction sites (Condition S9.D.3). The sedimentation pond BMP requires the use of a discharge device that regulates flows (see figure 4.26,

Volume IV, Stormwater Management Manual for Western WA). While it does not provide the same level of control as a discharge device designed to meet Ecology's flow duration standard, it does provide a significant level of control for most storms that would occur during a 2-year construction site life or less. Also, at construction sites that must comply with a flow control requirement for the developed site condition, it is not unusual for the detention pond and flow release structure to be built early in the construction phase where it is used as the sedimentation pond during construction. In those cases, the construction site does have effective flow control.

265. S3 could be greatly reduced in length and complexity without weakening content by
    - The second paragraph of introduction and S-3 C 2 could be merged as they both define All known, available, reasonable methods of prevention, control and treatment (AKART)
    - Reference the demonstration approach in Ecology's stormwater manuals rather than describe it in the permit Note: Similar redundant text is included in S-9 C 4, WSDOT)

    Response: S3.C2 has been deleted to reduce redundancy; AKART and BMP requirements are covered elsewhere. The language regarding the demonstration approach is required by 90.48.555(6) and will be retained.

S3.D. Presumptive Approach

266. S3D : How will Ecology determine, based on "discharge monitoring data" that a discharge "contributes to" a water quality violation? This is an extremely broad standard in which every project site could be deemed a contributor because of cumulative impacts. (BIAW)

    Response: The "…or contributes to a water quality violation" language is required RCW 90.48.555(6) and applies to discharges to 303(d) listed waterbodies which do not attain numeric water quality criteria. Discharges to impaired waterbodies will be required to demonstrate compliance with turbidity standards. Other dischargers will only monitor discharges end-of-pipe, and compare the results to the turbidity benchmark of 25 NTU. Attainment of 25 NTU or better would typically indicate that the discharge is not causing a violation of water quality standards; and discharges above 25 NTU *may* indicate a violation of standards, but a receiving water assessment (including measurement of background turbidity) is required to make a conclusive determination that a violation has been caused. If Ecology takes site specific measurements during a discharge event which clearly shows a violation of the applicable water quality standard for turbidity, the "presumptive approach" does not apply and enforcement action may be taken on a case by case basis.

267. S3 D 2 and S9 C 4 a both describe the concept of equivalent BMPs but are inconsistent in their descriptions Equivalency should only be described in one location or the permit should refer to the Ecology's stormwater manuals that describe equivalency in greater detail. (WSDOT)

Response: It is necessary to discuss equivalency in both sections.

268. Page 12, D2 - language regarding use of manuals is somewhat confusing as it states that permittees must use BMPs from a department-approved manual, or one that is demonstrably equivalent. Notably missing from the current language is a statement that permittees can use BMPs from one of the manuals developed by the department (e g : the Stormwater Management Manual for Western Washington) We recommend adding language that clarifies that permittees, in order to be presumed to be in compliance with water quality standards, shall use BMPs from: "I) the appropriate regional Department of Ecology stormwater manual; 2) a manual approved by the department as being technically equivalent; or 3) practices that are demonstrably equivalent to practices contained in stormwater technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs for on-site pollution~ control " (Part of this language is drawn from S9 C, page 27) (PSAT)

    Response: This language from RCW 90.48.555(6) has been modified to include to make it clear that this includes the Stormwater Manuals published by Ecology, i.e., "…technical manuals published or approved by Ecology".

269. Assume the following facts:
    - A permitted site is applying AKART to MEP and the BMPs have been properly designed, constructed, maintained, and operated.
    - Inspectors have found the permittee to be fully implementing stormwater BMPs contained in stormwater technical manuals approved by Ecology.
    - Stormwater discharge from this site is violating water quality standards.

    The permit gives no guidance on what Ecology will do in this circumstance. (King Co)

    Response: Ecology's response to violations of water quality standards will vary depending on the site specific circumstances and cannot be specified in a general permit. Ecology's response to violations will always be consistent with Ecology's Enforcement Policy.

Typos in Condition S3

270. There are two "S3.A."'s – the second should be "S3.B." (Puget Soundkeeper)

    Response: S3 formatting has been fixed and all language regarding 303(d)/TMDL waterbodies have been consolidated in Condition S8.

271. Page 11, S3: 2nd "A" section should be "B" section. (WDFW)

    Response: See response to Comment 270.

272. Page 11, S3 -- last paragraph should be "B", not A. (PSAT)

Response: See response to Comment 270.

273. S3.B The subheading on this section should be “B” rather than “A”. (AGC)

Response: See response to Comment 270.

Antidegradation

274. The draft permit intends to control physical and chemical pollutants through the use of BMPs (best management practices) and AKART (all known, available, and reasonable technology) In that respect the permit appears to follow Volume II of the 2005 Stormwater Manual For Western Washington (Ecology 2005) However, it is less clear how the draft permit will prevent further loss of biological integrity, The draft permit equates compliance with *numeric water quality criteria* with meeting water quality *standards* While concern with specific pollutants is warranted, there should be an equal concern with pollution, defined in part as "contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state." (RCW 90 48 020) The water quality standards protect biological integrity by designating uses, setting appropriate criteria, and implementing an antidegradation policy that protects both water quality and uses The section describing how the draft permit complies with the antidegradation policy (Fact Sheet, p 13) implies that the policy's sole intent is to prevent violations of numeric water quality criteria There is no mention of the need for a discharge to protect existing beneficial uses Washington's water quality standards were adopted in 1997, with extensive revisions made in 2003, although only those revisions approved by EPA are in force The 1997 version of the antidegradation policy is still in force, but it clearly protects "existing beneficial uses" (WAC 1'73-201A-070(1)), not just water quality, The 2003 standards revisions include a change to the classification system from a "class-based" system to a waterbody specific "use-based" system In the section introducing the concept of "uses," the standards state that "it is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below" (WAC 173-201A-200 (1)) We note that this level of aquatic life protection is identical to that in EPA's Water Quality Standards Handbook (1994), which states "non-aberrational resident species must be protected, even if not prevalent in number or importance" If all indigenous species are not protected, then the uses are not being maintained, a violation of' Tier I of the antidegradation policy (WAC 173-201A-310 (1)) The revised standards state that "Tier I is used to ensure existing and designated uses are maintained and protected and *applies to all waters and all sources of pollution"* (emphasis added) (WAC 173-201A-300(2)(e)(i)), and also outline Ecology's duty in the event of elimination of existing uses: "for waters that do not meet assigned criteria, or protect existing or designated uses, the department will take appropriate and definitive steps to bring the water quality back into compliance with the water quality standards" (WAC 1'73-201A-310 (2)). Existing uses are defined as those attained on or after November 28, 1975 (WAC 173-201A-020) The Fact Sheet notes (pp 15-16) "Ecology has the authority and responsibility to periodically update the water quality standards, 90 48 035 RCW In accordance with WAC 1'73-226-230(1) (b), a general permit may be modified when the state water quality standards have been modified

through formal process " Ecology may believe that the subject permit will need to be modified once EPA approves the revisions to the antidegradation policy Washington Trout believes that as well, but we also believe that the draft permit does not comply with the present antidegradation policy, and thus should not be issued as drafted Compliance with the mandate to protect existing uses is not simply a procedural or "paper" issue Unfortunately, elimination of existing uses has been occurring, and Volume I of the Stormwater Manual For Western Washington (Ecology 2005) attributes considerable *pollution* (in addition to the discharge of pollutants) to stormwater due to urbanization: The hydrologic and water quality changes result in changes to the biological systems that were supported by the natural hydrologic system In particular, aquatic life is greatly affected by urbanization Habitats are drastically altered when a stream changes its physical configuration and substrate due to increased flows Natural riffles, pools, gravel bars and other areas are altered or destroyed. These and other alterations produce a habitat structure that is very different from the one in which the resident aquatic life evolved For example, spawning areas, particularly those of salmonids, are lost Fine sediments imbed stream gravels and suffocate salmon redds The complex food web is destroyed and is replaced by a biological system that can tolerate the changes However, that biological community is typically not as complex, is less desirable, and is unstable due to the ongoing rapid changes in the new hydrologic regime Significant and detectable changes in the biological community of Puget Sound lowland streams begin early in the urbanization process May *et a1* (1997 *)* reported changes in the 5-10% total impervious area range of a watershed Figure 13 from May *et a1* (1997) shows the relationship observed between the Benthic Index of Biotic Integrity (B-IBI) developed by Kleindl(1995) and Karr (1991), and the extent of watershed urbanization as estimated by the percentage of total impervious area (% I I A) Also shown in the figure is the correlation between the abundance ratio of juvenile coho salmon to cutthroat trout (Lucchetti and Fuerstenberg 1993) and the extent of urbanization (citations in original),,

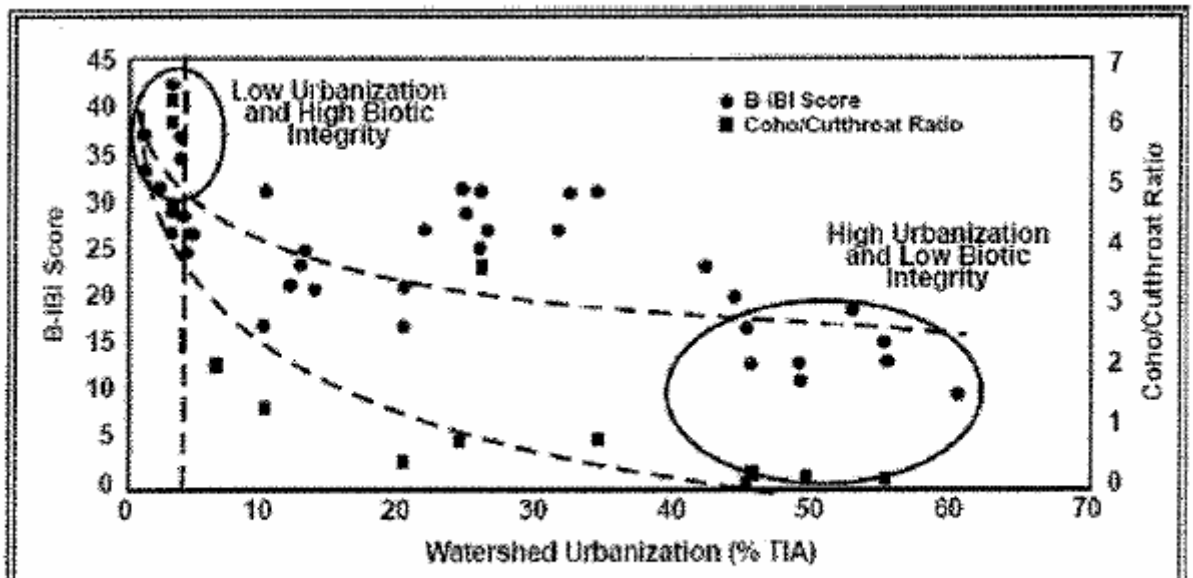

Figure 1.3 – Relationship Between Basin Development and Biotic integrity in Puget Sound Lowland Streams

The discussion in Ecology (2005) goes on to say that The manual can provide site development strategies to reduce the pollutants generated and the hydrologic disruptions caused by development ...Ecology understands that **despite the application of appropriate practices and technologies identified in this manual, some degradation of' urban and suburban receiving waters will continue, and some beneficial uses will continue to be impaired or lost due to new development..** This is because land development, as practiced today, is incompatible with the achievement of' sustainable ecosystems Unless development methods are adopted that cause significantly less disruption of the hydrologic cycle, the cycle of new development followed by beneficial use impairments will continue (emphasis added) In effect, Ecology believes that compliance with the Manual will not always comply with Tier I antidegradation Even though Ecology (2005) states "the manual does not intend to delve deeply into site development standards or where development should be allowed," it is clear that issuance of stormwater NPDES permits facilitates development that may not meet water quality standards How then, could a statewide general permit, with greatly reduced oversight by Ecology, comply with water quality standards? Washington Trout is in the process of analyzing the level of protection afforded to aquatic resources by the state's Growth Management Act (GMA) We believe that even though the GMA directs cities and counties to protect "waters of the state" (one of eight "fish and wildlife conservation areas," which in turn, are one of five "critical areas"), the protection is not as great as that afforded by the Clean Water Act, the Water Pollution Control Act, and Washington's water quality standards So while the stormwater manual does not address "where development should be allowed," Ecology nonetheless has a duty to ensure that the activities that it permits do not cause pollution The Fact Sheet (page '7) states that Ecology may require any discharger to apply for an individual permit if there is a reasonable potential for the project to cause or contribute to a violation of' water quality standards " Because the effects of urbanization on biological integrity and the anticipated loss of existing uses by the facilitated development has not been considered in this draft permit, Washington Trout believes that a general NPDES permit for construction stormwater, because it will facilitate further development, is not appropriate in any watershed with over 5% total impervious area, as those watersheds have likely already lost existing uses, or are at risk. (Washington Trout)

Response: This permit puts specific conditions on how construction activities are conducted (e.g., best management practices, monitoring, adaptive management mechanisms, reporting and record keeping). These conditions will prevent stormwater discharges which cause or contribute to violation of numeric water quality criteria and also to prevent further degradation of existing beneficial uses during the active phase of construction.

When a discharge from a construction meets benchmark criteria (i.e., 25 NTU turbidity), and all other monitoring, adaptive management actions, record keeping and reporting are implemented, Ecology will, as defined in RCW 90.48.555(6), presume compliance with water quality standards. Ecology expects that discharges will not further degrade existing beneficial uses.

This stormwater general permit cannot regulate land use or development zoning or density. Rather, it is written with specific conditions to (1) prevent and control construction site stormwater pollutants from entering waters of the state; (2) to ensure that construction sites manage stormwater in compliance with the federal Clean Water Act and Washington State's Water Pollution Control Act.

S4. Monitoring Requirements

Monitoring - General

275. Special Condition S4: The monitoring requirements appear to he excessive for many projects - especially for those that fully implement Ecology's manual. The BMPs selected from the manual were chosen because they are presumed to comply with water quality standards. Implementation of the manual should only require visual inspection of BMPs. (Costco)

    Response: RCW 90.48.555 (8)(a) requires the general permit to contain an enforceable adaptive management mechanism including monitoring and reporting. Ecology has determined that visual monitoring alone, without an objective and analytical measurement of water quality (e.g. turbidity or transparency sampling), would not satisfy this new requirement of state law.

276. Special Condition S4: The monitoring requirements appear to be excessive - especially for projects that fully implement Ecology's manual The BMPs selected from the manual were chosen because they are presumed to comply with water quality standards Implementation of the manual should only require visual inspection of BMPs, provided that the BMPs are properly maintained. (Sound Transit)

    Response: Please see response to comment 275 above**.**

277. Monitoring and sampling requirements are proposed in the draft permit, however federal law does not require sampling and we therefore request that the sampling requirements be removed. If they are not removed, they should be used only for informative and research purposes to determine necessity of limits being set. Further, if sampling and daily inspections are required, then SWPPPs should not be required. Another alternative would be to require SWPPPs with reduced requirements and remove sampling and daily inspections. The layers of requirements being proposed in the draft permit are drifting away from the intended purpose of a general permit towards an individual permit. (Master Builders)

    Response: Please see response to comment 275 above**.**

Timing/Phasing of Monitoring Requirements

278. ESSB 6415 mandated a study to examine methods to improve the effectiveness of monitoring requirements in construction and industrial stormwater general permits. The legislature recognized the importance of defining practical and cost-efficient monitoring approaches, and would presumably encourage the optimal monitoring package be included in these stormwater permits. This Ecology-sponsored study is now underway and is to be complete by December 31, 2006.

It is perplexing that neither this proposed permit nor its Fact Sheet acknowledge the 6415 monitoring effectiveness study, let alone address how its results might be integrated into the permit. Ecology has an opportunity to set a strategy and to begin its implementation in this renewal CSWGP. Relevant considerations would include:

- Strategy and Timing - The planned effective date of this CSWGP is December 2005. With the monitoring study final by the end of 2006, Ecology should articulate how the recommendations of the monitoring study will be incorporated into the CSWGP. It would not seem acceptable to wait until this 2005 renewal permit expires (presumably in December 2010) to then begin consideration of the "effective monitoring" outcomes. Ecology should add a specific permit re-opener clause to amend the permit in 2007. The Fact Sheet should describe the strategy.

- Progression of Monitoring Requirements – The proposed permit details a very robust monitoring program, which includes routine sampling/analysis and comparison to Benchmark Values as a means to inform on necessary BMP adjustments. Eleven permit pages are dedicated to describing these requirements. By comparison, the current CSWGP (issued in 2002) specifies reliance on well-defined BMPs and outcomes from routine visual monitoring as a performance feedback mechanism. The results of the 6415 monitoring study are obviously unknown but presumably will be "better" and should be favored by both Ecology and permittees. The agency should consider renewing this CSWGP with a continuation of the current visual monitoring approach. Once the better monitoring program is defined the permit can be amended. This approach would avoid the confusion and administrative chaff of multiple monitoring program changes within a permit cycle.

- Statutory Conformance – RCW 90.48.555(8)(a) requires an "enforceable adaptive management mechanism that includes appropriate monitoring, evaluation, and reporting." Ecology has discretion and, in fact, has chosen to design a lawful interim monitoring program <u>based on visual monitoring and reporting</u>; i.e., Special Condition S4 Monitoring of this proposed CSWGP specifies a visual monitoring regime for an expected ten month period from adoption until October 1, 2006, at which time discharge sampling requirements become effective. <u>An efficient and reasonable decision would have Ecology extending the sampling start date a few additional months to allow incorporation of the monitoring effectiveness study outcomes</u>. (Weyerhaeuser)

Response: Please see response to comment 275 above. This comment presupposes an outcome ("multiple monitoring program changes") to a study that is in progress Ecology has determined that sampling requirements should not be deferred until the

outcome of the SB 6415 monitoring effectiveness study. Until the study is complete and accepted, Ecology believes the current monitoring requirements are appropriate. However, Ecology agrees that the study mandated by SB 6415 may affect stormwater monitoring requirements in future permit actions. The discussion of the monitoring study is now included in this fact sheet as comment and response to comment.

279. PSA objects to the postponement of sampling requirements in S4.C., S4.D.1., S4.E.1., and S4.F. to October 1, 2006. There is no reason to postpone the effectiveness of sampling requirements to that date, particularly since the sampling requirements are not onerous and the draft permit has been out – effectively putting permittees on notice of sampling requirements – since June 2005. (Puget Soundkeeper)

Response: Ecology has determined that it is appropriate to allow permittees a period of time to understand and comply with the new sampling and reporting requirements. The rationale for postponing sampling and reporting includes, but is not limited to:

- Ecology believes that industry, as a whole, is unaware of the upcoming sampling requirements, despite the issuance of the draft permit in June 2005. This may be especially true of operators of 1-5 acre sites.
- Ecology plans to conduct education and outreach to ensure that operators understand the new requirements and properly collect, analyze and submit accurate discharge monitoring data.
- Additional employee staffing, training, planning and equipment acquisition may be necessary before permittees are able comply with the new requirements.
- Ecology data management systems need to be upgraded to deal with the new Discharge Monitoring Report requirements of the permit.

280. What is the basis for postponing the effectiveness of sampling requirements until October 1, 2006? (Puget Soundkeeper)

Response: Please see response to comment 279 above.

Table 3. Summary of Monitoring Requirements

281. Section S.4 – Table 3 – Monitoring requirements for the 1 to 5-acre sites should be eliminated. This is an unrealistic burden to place on small developers/contractors. These smaller businesses do not have the wherewithal to comply and many will simply ignore the requirement. It is doubtful that Ecology has adequate staff to enforce the requirement. It makes more sense to focus on simple structural controls that can inexpensively be installed and maintained, rather than filling a file cabinet with testing data that will likely never be read, or tempting small businesses to operate in a state of non-compliance. (City of Kennewick)

Response: Ecology acknowledges the basis for the comment, but RCW 90.48.555(8)(a) requires the general permit to contain an enforceable adaptive

management mechanism including monitoring and reporting; and no provisions are available to categorically exclude 1-5 acre sites from this requirement. Ecology has determined that visual monitoring alone, without an objective and analytical measurement of water quality (e.g. turbidity or transparency sampling), would not satisfy this new requirement of state law. Small developers/contractors who want to be in compliance will use BMPs and monitor.

282. Table 3 – Some text is missing in "all sites greater which disturb 1 acre, but less than 5 acres". Replace – "All sites which will disturb greater than 1 acre, but less than 5 acres" (King Co)

Response: Table has been revised to prevent confusion.

283. S4 Table 3. Summary of Monitoring Requirements, page 13. The first enumerated Type of Construction Activity in Table 3 that reads "or development or sale which disturb 1 acre or greater" is not clear when compared with the next Activity in Table 3 which reads: "All sites greater which disturb 1 acre, but less than 5 acres." (CWHBA)

Response: Table has been revised to prevent confusion.

284. S4 Table 3 (Page 13 of 50) Type of Construction Activity - The first Type of Construction Activity reads " or development or sale which disturbs 1 acre or greater" is not clear when the next Type of Construction Activity reads "All sites greater which disturb I acre, but less than **5** acres" A site greater than 1 acre but less than **5** acres could require both monitoring requirements. (EWWA)

Response: Table has been revised to prevent confusion.

285. S4 Table 3 (Page 13 of 50) Type of Construction Activity - The first Type of Construction Activity reads " or development or sale which disturbs 1 acre or greater" is not clear when the next Type of Construction Activity reads "All sites greater which disturb I acre, but less than **5** acres" A site greater than 1 acre but less than **5** acres could require both monitoring requirements. (West Richland)

Response: Table has been revised to prevent confusion.

286. S4 Table 3 (Page 13 of 50) Type of Construction Activity - The first Type of Construction Activity reads "...or development or sale which disturbs 1 acre or greater" is not clear when the next Type of Construction Activity reads "All sites greater which disturb 1 acre, but less that 5 acres". A site greater than 1 acre but less than 5 acres could require both monitoring requirements. (City of Richland)

Response: Table has been revised to prevent confusion.

287. Table 3, footnote 2- Move to Special Condition for 303(d) listed and TMDL water bodies. Delete - etc. " (King Co)

Response: All special conditions have been consolidated in S8, but Ecology has determined that this footnote is necessary to permittees are aware that special monitoring requirements apply to 303(d) listed and TMDL waterbodies. "etc." has been deleted.

288. S4 Monitoring Requirements, Summary Table, Footnote #2 (pg 13) Comment # 14: Regarding footnote #2 on 303(d) and TMDL waters, I repeat my comments #9, 10, 13. (Otak)

Response: See responses to these related comments: 235, 236 and 238

289. S4 In Table 3, the first cell under type of construction activity, the word "or" after "plan" should be "of." (AGC)

Response: This cell (and the table) have been revised.

S4.A. Site Log Book

290. Conditions S4.D.4.a.iv. and S4.E.4.a.iv. should require an "evaluation of reasons for changes in turbidity" to be included in the Site Log Book. (Puget Soundkeeper)

Response: The adaptive management steps for turbidity or transparency have been revised.

S4.B. Site Inspections

291. S4 B This section contains redundant language and could be written more succinctly (WSDOT)

Response: Comment noted.

292. S4 B (Page 14 of 50) "Site Inspections" This section is extensive and costly to any local agency, specifically in eastern Washington where the rainfall that produces stormwater is significantly reduced than that of western Washington. (EWWA)

Response: Inspections are required by state and federal requirements and are not substantially different from the inspection requirements in the previous permit cycles. The Stormwater Management Manual for Eastern Washington also requires weekly site inspections, conducted by a Certified Erosion and Sediment Control Lead.

293. S4 B (Page 14 of 50) "Site Inspections" This section is extensive and costly to any local agency, specifically in eastern Washington where the rainfall that produces stormwater is significantly reduced than that of western Washington. (West Richland)

Response: Inspections are required by state and federal requirements and are not substantially different from the inspection requirements in the previous permit cycles. The Stormwater Management Manual for Eastern Washington also requires weekly site inspections, conducted by a Certified Erosion and Sediment Control Lead.

294. S4.B (Page 14 of 50) "Site Inspections" This section is extensive and costly to any local agency, specifically in eastern Washington where the rainfall that produces stormwater is significantly reduced than that of western Washington. (City of Richland)

Response: Please see response to comment 293 above.

295. Comment: S4.B.7 and S5.F. Please clearly define when discharges are/are not "a threat to human health and the environment" as it is the trigger for Noncompliance Notification. It is important for permittees to clearly understand when notification is required. Does turbidity over 250 NTU per S4 D 4 b i (which triggers reporting) meet the "threat to human health and the environment" trigger? (WSDOT)

Response: The noncompliance notification language is taken from federal law. In a statewide general permit "threat to human health and the environment" cannot be more clearly defined; it is fact-specific and site-specific, so no change will be made to the language. A stormwater discharge with turbidity over 250 NTU may constitute a "threat to the environment", depending on the receiving water characteristics, volume and duration of discharge, and other relevant factors. Contact Ecology regional inspection staff when you have doubts about whether a stormwater discharge may be a threat to the environment.

296. Inspections (S4.B). Inspections to determine how well the site BMPs are functioning are vital to the goal of keeping excess sediment and pollution out of our waters. Requiring digital photos of the BMPs, especially these that retain sediments, would be a good method of ensuring that adequate and timely inspections occur. Digital photos are inexpensive to obtain and could easily be submitted to Ecology. (People For Puget Sound)

Response: Ecology agrees that digital photos could be an effective method of documenting BMP performance. However, Ecology has determined that the current inspection requirements (inspector training/certification, site log book, and inspection report signature/certification, etc.) provide adequate documentation. At this time, digital photographs of site inspections will not be added as a permit requirement.

297. Section **S4.B.l** requires that all BMPs be inspected, maintained, and repaired as needed to assure proper continued performance. But the requirement is unclear how quickly a structural control must be repaired after it has been identified as damaged. Furthermore, the general permit should be revised to clarify that a violation only occurs after 1) the damage has been discovered, and 2) the permittee fails to make the repairs after a reasonable time. In other words, the need for a BMP repair is not, by itself, a violation.

The violation occurs only after the permittee fails to address the problem within the framework established in the general permit (i.e., procedures for conducting inspections and addressing deficiencies). We suggest the following language to address that issue: All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance of their intended function. A violation occurs if the permittee fails to conduct a BMP repair within a reasonable time after the need for the repair is discovered. (Centex Homes)

Response: Failure to comply with any applicable permit condition with a "shall" statement is a permit violation. Also, "reasonable" is not enforceable within the context of RCW 90.48.555(8)(a). Therefore, Ecology has determined that the suggested change is not necessary.

Revised Condition S9.B.2 (cross referenced in S4.B.1) has required timeframes for SWPPP revision (7 days) and BMP installation/repair (10 days):
The Permittee shall modify the SWPPP if, during inspections or investigations conducted by the owner/operator, or the applicable local or state regulatory authority, it is determined that the SWPPP is, or would be, ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The Permittee shall take the following actions:

d. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the inspection or investigation;

e. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but no later than 10 days from the inspection or investigation; and

f. Document BMP implementation and maintenance in the site log book.

The need for BMP maintenance, by itself, is not a violation of the permit, as long as the permittee addresses the maintenance issue according to Conditions S4 and S9. For example:

- During a weekly inspection, the inspector determines that a BMP needs maintenance;
- The specific problem is documented in inspection report/site log book;
- The SWPPP is reviewed/updated (as necessary); and the BMP repaired or maintained according to the SWPPP and applicable technical manual.
- All repairs/maintenance documented in the site log book.

Ecology has determined that the permit does not state or imply that "the need for BMP maintenance" is not a permit violation; it is a trigger for specific actions that must be taken by the permittee within set timeframes. However, the failure to identify the problem and take care of it (in accordance with S4 and S9) would constitute a violation. No change to permit language.

298. S4.B.2 The word "by" is missing before the word "person" in the sentence "Site inspections shall be conducted a person…" (AGC)

Response: S4.B.2 has been corrected according to the suggestion.

S4.B 3 Certified Erosion and Sediment Control Lead

299. S4 B : Requiring a Certified Erosion and Sediment Control Lead (CESCL) on sites less than five acres is costly and unnecessary. CESCL training will be approximately two days at a cost of $600 or more This is a hefty expense for small builders or property owners, particularly those with circulating, seasonal workers. If builders or property owners choose to hire an engineer instead, they will have to bear the cost of out-of-house visits, sampling, inspections, and reports. Not to mention the costs associated with materials, labor, maintenance and management of the SWPPP. (BIAW)

Response: Ecology believes the cost of training is directly offset by cost-savings to the permittee. For example, CESCLs will represent savings to the company by acquiring the skills and knowledge to effectively select, install, maintain and repair appropriate BMPs. CECSLs who properly install and maintain BMPs will prevent permit violations, and illegal discharges, which can potentially lead to large penalties and expensive "after-the-fact" engineering solutions. CESCLs will be less likely to waste money on unnecessary, inappropriate, or improperly installed or maintained BMPs.

The CESCL requirements are based on Washington State Law (RCW 90.48) which requires stormwater dischargers to implement AKART prior to discharge. RCW 90.48.555 requires an enforceable adaptive management mechanism, including monitoring, evaluation and reporting; CESCL requirements are an integral part of the permit's compliance with this legislative mandate. Federal regulations identify BMPs as BAT (Best Available Technology) for stormwater discharges. CESCL (BMP C160) has been a requirement in Western Washington since the mid-1990's, in Eastern Washington since 2002; this BMP is now considered part of AKART and BAT for stormwater discharges.

Ecology has determined that CESCL is an appropriate requirement for sites one acre and larger. This is based, in part, on EPA's Phase II rule, which concluded that, acre for acre, 1-5 acre sites discharge more sediment to waters of the US than sites over 5 acres. Small sites don't necessarily need a full time CESCL. One contract CESCL could cover a dozen small sites.

Additional legal and technical basis for CESCL is related to the state and federal signatory requirements of discharge permits. Specifically, state and federal law requires reports (Discharge Monitoring Reports, inspection reports, non-compliance notification, etc.) to be prepared "*in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted*".

Ecology believes that CESCL certification will help ensure that all permit-related reports (S4, S5, S9, G2) are accurate and based on the findings of qualified personnel.

300. Applicants will need to hire a Certified Erosion and Sediment Control Lead. DOE has placed this requirement in the permit, however, it is not required by federal law. This is a great expense for small builders or property owners, particularly those with seasonal workers. This is an expense they will likely have to pass on to homebuyers. Builders will also have to prepare a SWPPP, which will likely require hiring an engineer. In addition, applicants will need to maintain daily log books over the life of the permit. This is another requirement set by DOE that is not federally required. Not only do these requirements create additional costs, they will cause the application and SWPPP to be treated more like an individual permit application, defeating the purpose of having a general permit, as mentioned above. We request that the changes proposed by DOE that are not federally mandated be removed from the permit. (Master Builders)

Response: For CESCL comment, see response to comment 299 above.

SWPPPs are a requirement of state and federal law; and common to all general permits in the United States.

Site log book requirements are consistent with the Phase II rule; are required in EPA's Construction Stormwater General Permit; and are an integral part of the permit's adaptive management requirements, consistent with RCW 90.48.555.

No changes to permit based on comment.

301. We believe that this permit is onerous and puts undue burdens on small developers, especially with regard to sites between 1 and 5 acres for monitoring, the requirement for a Certified Erosion and Sediment Control Lead (CESCL) to be on-site or on-call at all times and the reporting and record keeping requirements. For these smaller projects, development of a Storm Water Pollution Prevention Plan (SWPPP) and maintenance of the erosion and sediment controls will be burdensome enough, and will accomplish the goal of reducing water quality impacts associated with storm water runoff. (City of Kennewick)

Response: Ecology acknowledges the burdens this permit places on small (1-5 acre) developers and has attempted to balance the cost and complexity of the permit with the state and federal requirements. New provisions to State Law (RCW 90.48.555) require monitoring, evaluation and reporting for all sites under the permit, regardless of acreage. Provisions for 1-5 acre sites have been implemented to minimize the regulatory burden on 1-5 acre sites, while meeting state and federal requirements. Examples include:

- Erosivity waiver for 1-5 acre sites.
- Relatively inexpensive/simple transparency tube sampling for 1-5 acre sites; transparency tube sampling suspended until Oct 2008.
- Suspension of CESCL requirements for 1-5 acre sites until Oct 2006.

302. Section S.4.B.3 Site Inspections – This should be revised to apply to sites 5-acres and larger. As written, this would require virtually every developer/contractor to have a CESCL permanently on staff. As with the monitoring requirement, this is a significant burden to small businesses and an item that Ecology is not staffed to enforce. (City of Kennewick)

Response: Please see response to comment 299 above.

303. DOE will now require that we have to hire a certified erosion and sediment control lead which will be costly and not provide substantive environmental benefits Further, this requirement will increase either the cost of hiring and training new employees responsible for field operations or will lead to increased consultant costs. (Barclays North)

Response: Please see response to comment 299 above

304. S4.B.3 Monitoring Requirements, CESCL Requirements (pg 14) Comment #15: While the need for initial and ongoing certification training will place a burden on smaller local governments and small construction site operators, who will likely need to contract for services like CESCL and Monitoring support, the need for some type of consistently trained inspector is real. If not done already, Ecology should provide free training and certification sessions at multiple locations each year to assist local governments, contractors, and small site owners. (Otak)

Response: Ecology appreciates the commentor's recognition that the need for CESCL requirements is real, despite the burden to small governments and small operators. Rather than getting directly involved in the actual training and certification process, Ecology will continue to work with various training and certification providers in the private sector to deliver high quality CESCL training opportunities around the state. A list of approved training providers is listed on Ecology's website: http://www.ecy.wa.gov/programs/wq/stormwater/construction/

305. S4.B Certified Erosion and Control Lead (CESCL), page 14 – The requirement for CESCL "on-site or on-call at all times" appears to be an unnecessary requirement for small development and redevelopment projects. Suggest that you eliminate this requirement or if necessary, just require "on-call status". (Yakima Co)

Response: The legal and technical basis for CESCL requirements is given in response to comment 299. Ecology considered dropping "on-site" requirement, and just requiring "on-call status"; but since the current language is "on-site or on-call", permittees can use either approach. No change to permit.

306. S4.B.3 CESCL, page 14. The requirement for a Certified Erosion and Sediment Control Lead to be "on-site or on-call at all times" is an unreasonable cost for small development

and redevelopment projects in an arid region and when construction is during a Waiver Window. (CWHBA)

Response: The legal and technical basis for Certified Erosion and Sediment Control Lead (CESCL) is provided in comments 299, 301, and 305. The Stormwater Management Manual for Eastern Washington lists CESCL as a requirement for all NPDES permitted sites (BMP C160). Sites with an Erosivity Waiver do not require a Certified Erosion and Sediment Control Lead.

307. S4.B 3 (Page 14 of 50) "The CESCL shall be identified in the SWPPP and shall be on-site or on-call at all times" This requirement is costly and many local agencies and construction firms may not be able to comply We all run short staffs with the current economic climate in the state and our inspectors or construction firms are responsible for more than one project They move from project to project and are unable to be on-site at all times Eliminate this requirement or change it to on-call only. Who will pay to have the training required? Any construction firm will say that is a construction cost and include it in their bids on projects The local agencies will see increased bids to cover not only the cost of training but also the cost of the extensive inspecting, monitoring, sampling and recording (EWWA)

Response: Legal and technical basis for CESCL provided in comments 299, 301, and 305. Ecology acknowledges the comment regarding increased costs and bids, but believes that CESCL is a cost-effective BMP, and RCW 90.48.555(8)(a) requires the general permit to contain an enforceable adaptive management mechanism including monitoring, evaluation and reporting; CESCL is an integral element to meet this new legislative mandate.

308. S4.B 3 (Page 14 of 50) "The CESCL shall be identified in the SWPPP and shall be on-site or on-call at all times" This requirement is costly and many local agencies and construction firms may not be able to comply We all run short staffs with the current economic climate in the state and our inspectors or construction firms are responsible for more than one project They move from project to project and are unable to be on-site at all times Eliminate this requirement or change it to on-call only. Who will pay to have the training required? Any construction firm will say that is a construction cost and include it in their bids on projects The local agencies will see increased bids to cover not only the cost of training but also the cost of the extensive inspecting, monitoring, sampling and recording (West Richland)

Response: Please see response to comment 307 above.

309. S4.B.3 (Page 14 of 50) “The CESCL shall be identified in the SWPPP and shall be on-site or on-call at all times”. This requirement is costly and many local agencies and construction firms may not be able to comply. We all run short staffs with the current economic climate in the state and our inspectors or construction firms are responsible for more than one project. They move from project to project and are unable to be on-site at all times. Eliminate this requirement or change it to on-call only. Who will pay to have

the training required? Any construction firm will say that is a construction cost and include it in their bids on projects. The local agencies will see increased bids to cover not only the cost of training but also the cost of the extensive inspecting, monitoring, sampling and recording. (City of Richland)

Response: Please see response to comment 307 above.

310. Special Condition S4B3: The requirement to have a Certified Erosion and Sediment Control Lead conduct inspections should be deleted. Construction projects are constructed by professional engineers that are hired to implement the permit requirements. Additional certification is unnecessary. (Costco)

Response: Many projects require a professional engineer for project design and the installation of designed structures (ponds, etc.), but typical construction projects do use an engineer to perform routine site inspections throughout the life the project. No change to the permit.

311. Page 14, S4.B. We support the mandatory inspections of BMPs, and the requirement that for sites 1 acre or larger inspections must be conducted by a Certified Erosion and Sediment Control Lead. (PSAT)

Response: Ecology appreciates the support.

312. B.5 – Stormwater shall be examined for the presence of suspended sediment, turbidity, discoloration, and oil sheen. Add – 'visually' prior to the text 'examined for the presence'. " (King Co)

Response: Permit has been revised; "visually" added prior to "examined for the presence".

313. In the case of NPDES permits, Ecology has the power to suspend the license of a wastewater treatment plant operator in the event of serious performance issues, which has a significant impact on the individual's career. License suspension acts as a significant deterrent to poor plant operator performance. In contrast, the threat of de-certification of a Certified Erosion and Sediment Control Lead (CESCL) carries little punch. Practically speaking, a CESCL would probably function in that role as a very small fraction of his/her overall job activities. It would therefore seem prudent to develop a sanction that more directly impacts the construction site superintendent. (Dept. of Corrections)

Response: Ecology appreciates the suggestion, but is not going include a specific permit conditions for license suspensions for CESCLs or sanctions against construction site superintendent. Existing enforcement provisions in G14, which could apply to a site superintendent, are deemed appropriate at this time:

G14. PENALTIES FOR VIOLATING PERMIT CONDITIONS

Any person who is found guilty of willfully violating the terms and conditions of this permit shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars ($10,000) and costs of prosecution, or by imprisonment in the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

Any person who violates the terms and conditions of a waste discharge permit shall incur, in addition to any other penalty as provided by law, a civil penalty in the amount of up to ten thousand dollars ($10,000) for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be deemed to be a separate and distinct violation.

S4.B.4 Inspection Frequency

314. S4.B.1 states that inspections shall be performed as needed but S4.B.4 states that they shall be inspected weekly and within 24 hours of storm event WSDOT suggests deleting S4.B.1 and putting S4.B.4 in its place. (WSDOT)

    Response: Ecology has accepted suggestion and deleted S4.B.1; language from S4.B.4 moved up to S4.B.1.

315. Condition S4.B.4. would allow site inspections only once a month for "temporarily stabilized, inactive sites." This inspection frequency is too little for construction sites that have not been permanently stabilized. It seems probable that some "temporarily stabilized" sites will have BMP failures warranting correction that would go undetected for days or weeks if inspections are required only once a month. (Puget Soundkeeper)

    Response: Ecology has considered the suggestion, but no revision will be made. The monthly frequency for "temporarily stabilized, inactive sites" is consistent with the EPA Construction Stormwater General Permit. Ecology believes that most operators will continue to perform weekly inspections of inactive sites during wet weather or after major storms to ensure that temporary stabilization BMPs are effectively preventing erosion and sediment control problems.

316. Inspection of temporarily stabilized sites (S4.B.4). Inspection of temporarily stabilized, inactive sites should occur more frequently than once a month, at least during the wet weather season or after major storms. I observed an inactive site last winter in which the sediment barriers were completely destroyed during a moderate storm. (People For Puget Sound)

    Response: Please see response to comment 315 above.

317. S4.B.4. Site Inspections: This section requires too much inspection for Eastern Washington. The inspections should only be required monthly due to the low number of storms that actually create runoff. (City of Yakima)

Response: The permit has required weekly inspections of all permitted sites around the state since 1992. The Stormwater Management Manual for Eastern Washington also sets a weekly inspection frequency. No change to the permit.

318. S4.B.4 Monitoring Requirements, Site Inspection Frequency (pg 14) Comment #16: Ecology should allow a less frequent normal inspection frequency than once per week for sites in arid/semi arid climates. I suggest that Ecology use a reduced frequency in the midst of the dry season in parts of eastern Washington. The inspection frequency can "decelerate" as the spring wet season is left, and "accelerate" as the fall wet season approaches with a low frequency in between (perhaps as long as 3 weeks with the requirement to inspect before any forecasted wet weather events). (Otak)

Response: Please see response to comment 317 above.

319. S4.B.4. Site Inspections – The requirement to conduct a site inspection "within 24-hrs following any rainfall event that causes a discharge from the site" is too intensive for most Western Washington construction sites. Site inspections once per week and/or when stormwater sampling is required will constitute a sufficient level of over-sight of erosion and sediment control measures.

Discussion – Surface drainage patterns, groundwater conditions, soils types, precipitation patterns, etc., might result in a continuous or semi-continuous stormwater discharge(s) from a construction site. There would be little value in demanding daily inspections of the erosion and sediment control BMPs. A requirement to inspect once per week when a discharge is occurring, or perhaps following a ¼" or ½" rain event for a 24-hour period, is much more reasonable. (Weyerhaeuser)

Response: Ecology has decided not to implement the suggestion in favor of inspections conducted daily when there is a discharge from the site. The decision is based on the following considerations:

- The permit authorizes several types of non-stormwater discharges (e.g., dewatering water, etc); these discharges can occur independent of storm events, and BMPs and outfalls should be inspected each day these discharges occur.
- It is difficult in a statewide general permit to set a single rainfall event (e.g., 0.5"/24-hr) that could result in soil erosion, BMP failure, or a discharge with excessive turbidity or oil sheen.
- In Eastern Washington, inspections triggered by "significant" rainfall event could miss problems related to snow melt, or certain "rain on snow" events.
- The focus on discharge events, rather than rainfall amounts, will require operators to observe their outfalls on a more regular basis and this could result in greater awareness and may detect problems that may have otherwise gone undetected.

320. Section **S4.B.4** requires that site inspections be conducted at least once every calendar week and within 24 hours following any rainfall event that causes a discharge from the site. In the Puget Sound area, permittees could be required to conduct inspections every day during the wet season. The current standard is that inspection be conducted within 24 hours of a rainfall event of 0.5 inches in a 24 hour period. We request that the following language be added to the provision to maintain the current standard: The site inspections shall be conducted at least once every calendar week and within 24 hrs **of any rainfall event of 0.5 inches in a 24 hour period** ~~**following any rainfall event that causes a discharge from the site.**~~ The inspection frequency for temporarily stabilized, inactive sites may be reduced to once every month. (Centex Homes)

Response: Please see response to comment 319 above.

321. Page 14, S4.B5: This inspection should also look for fish or aquatic wildlife in distress. (WDFW)

322. Condition S4.B.5. includes a meaningless subjective standard for evaluation of BMP effectiveness. There is no monitoring trigger to inform or objective basis for an inspector to "determine if it is necessary to install, maintain, or repair BMPs to improve the quality of stormwater discharges." PSA suggests that this condition be changed to state: "Inspectors shall evaluate the effectiveness of BMPs and determine if it is possible to install, maintain, or repair BMPs to improve the quality of stormwater discharges, and such improvements shall be made promptly." (Puget Soundkeeper)

Response: The permit contains two types of monitoring triggers to determine if it is necessary to install, maintain or repair BMPs to improve the quality of stormwater: 1) routine site inspections [of disturbed areas, BMPs and stormwater outfalls], and 2) discharge sampling with numeric benchmarks to trigger adaptive management. Discharge sampling (e.g., turbidity or transparency) is considered more objective (quantitative) compared to site inspections, which is generally qualitative. However, both inspections and sampling can provide valuable feedback on BMP performance.

Ecology has evaluated the suggestion to replace "necessary to install… BMPs" with "possible to install… BMPs", and has decided that necessary is more appropriate, since the inspectors must be qualified per Condition S4.B.3:

> Site inspections shall be conducted by a person who is knowledgeable in the principles and practices of erosion and sediment control. The inspector shall have the skills to:
>
> a. Assess the site conditions and construction activities that could impact the quality of stormwater, and
>
> b. Assess the effectiveness of erosion and sediment control measures used to control the quality of stormwater discharges.

Ecology has also evaluated the suggested language regarding the timing of remedial action *(…and such improvements shall be made promptly.)*. Ecology has decided to

use the same remedial action timeframes as S4.B.3 (turbidity/transparency benchmark actions); and S9.B.3 (SWPPP modification language):

a. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days from inspection; and

b. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but no later than 10 days from inspection; and

c. Document BMP implementation and maintenance in the site log book.

S4.B.6. Inspection Report/Checklist

324. S4.B.5 Monitoring Requirements, Stormwater Characteristics (pg 14) Comment #17: It is not clear how the inspector will make notes about stormwater runoff characteristics when it seems that no inspection is required during rainfall events. While it may not be possible to inspect during all rainfall events, it seems appropriate to require the inspector to attempt to make observations of stormwater runoff characteristics and BMP conditions during a storm event. Rainfall events can be short and far between in some areas of eastern Washington and have a funny (and irritating) habit of being on the weekends. Unless they are taking special care to visit sites during storms, permittees can easily end up missing all storms in a wet season. (Otak)

Response: Ecology has decided to address the timing of inspection in the following manner: "The site inspections shall be conducted at least once every calendar week and within 24 hrs of any discharge from the site." The "24 hour of any discharge" allowance is intended to reasonably accommodate the inherent difficulty in trying to time an inspection with a storm event which may be short duration or may occur after-hours (night-time, etc.). It also accommodate large sites, which may have multiple outfalls; and situations where a permittee's inspector needs to inspect multiple sites after a storm event. If an inspection is conducted within 24 hours of a discharge caused by a storm, and by the time the outfall is inspected, there is no discharge; the inspector should write down "No discharge" on the inspection report.

325. Comment 18: Condition S4.B.6. should specify that each inspection report or checklist and each inspection shall include the specified items. Also, there is no S4.B.6.a. (Puget Soundkeeper)

Response: The permit clearly specifies the contents of each inspection report:

"*The inspector shall summarize the results of each inspection in an inspection report or checklist and be entered into, or attached to, the site log book. At a minimum, each inspection report or checklist shall include:"*

The S4.B.6.a. typo has been corrected.

326. Excessive certification requirements for weekly inspections that call for complete evaluation of SWPPP adequacy and permit compliance. Condition S4.A.6 requires weekly certification that a construction site is in compliance or out of compliance with the terms and conditions of the SWPPP and the permit. Without qualification this requirement is too open-ended and far exceeds EPA requirements. EPA requires an annual inspection to inspect and evaluate the effectiveness of a SWPPP and permit compliance. 40 CFR § 122.44(i)(3)(i). The certification from weekly inspections should be limited to whether BMPs are implemented and working based on the visual inspection. (AGC)

Response: Ecology has considered the comment and has concluded that the main point of weekly site inspections, is to ensure that the site is in compliance with the permit and SWPPP. Since permit compliance is primarily based on the permittees SWPPP and BMPs, Ecology believes that the site inspector should be in a position to determine if the site is, or is not, in compliance with the permit and SWPPP. Furthermore, the current language includes a qualifier: "… in the judgment of the person conducting the site inspection, the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and the permit." Ecology recognizes that the inspector's certification is not absolute, but is based on best professional judgment; in most cases, this is more valuable than having some other less familiar person perform an annual "compliance inspection".

Ecology has decided to retain the current language and require the inspection certifications to be completed by the inspector to meet 40 CFR § 122.44(i)(3)(i).

327. Section S4.B.6.i specifies that the person conducting the site inspection must include a statement that the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and the permit. Most inspectors, particularly those they may be a consultant of the permittee, would not be able to make a statement regarding "compliance with the permit" and may not be able to make a definitive statement regarding all information contained in the SWPPP. The inspector could only provide a statement regarding conditions observed during the inspection. This would NOT include all compliance issues associated with the SWPPP or the permit. We suggest Section S4.B.6.i be revised as follows: "A statement that, in the judgment of the person conducting the site inspection, appropriate BMPs have or have not been implemented and maintained at the site. If the site inspection indicates that BMPs require repair, the inspection report shall include a summary of remedial actions required, as well as a schedule for implementation."

A similar issue was discussed during the comment period for the Industrial Stormwater General Permit and Ecology revised its draft language in the final permit to limit what an inspector can represent. (Kennedy-Jenks)

Response: Please see response to comment 326 above.

328. B.6. – There is no sub-section "a". Subsections start at (b). " (King Co)

Response: Typo has been corrected.

329. Page 14, S4.B6: It appears that an "a" subsection is missing. (WDFW)

Response: Typo has been corrected.

S4.B.7. "threat to human health or the environment"

330. B.7 and S5.F - In addition, if the noncompliance causes a threat to human health or the environment, The language "threat to human health or the environment" is too vague and open to interpretation. Permittees need to have clear guidance when notification is required. Add – "causes a threat to human health or the environment as defined in Special Condition S3," (King Co)

Response: Special Condition S3 does not contain a definition or description of noncompliance which "cause a threat to human health or the environment". Ecology has decided to retain the current language to remain consistent with 40 CFR 122.41 (l)(6)(i).

331. Page 15, S4.B7: The phrase "noncompliance causes a threat to human health or the environment" should be expanded to specifically include fish and wildlife. The DCSGP must make it clear that the term "environment" includes fish and wildlife. (WDFW)

Response: Ecology has decided not to expand the phrase to specifically include fish and wildlife, because "environment" is broadly interpreted by the public to include fish and wildlife, and other living things. A dictionary definition of environment is "*the complex of physical, chemical, and biotic factors (as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determine its form and survival*".

S4.C. Turbidity/Transparency Monitoring – General

332. Comment: S4 C restates information in Table 3 and references Section S4 D Consider eliminating this redundancy (WSDOT)

Response: Ecology has considered the comment and decided not to eliminate the redundancy. Since the table is a summary of requirements, it is intentionally redundant to help improve comprehension.

333. C –This section reiterates the information Table 3; Sections D, E, and F contain the monitoring details. Move - Table 3 to this section Eliminate – Section" (King Co)

Response: Since this table is an overview of monitoring requirements in Condition S4, it will remain at the beginning of the section.

S4.D. Turbidity Monitoring Requirements/Benchmark

334. Special Condition S4: The turbidity benchmarks and action items should be deleted. Turbidity is a highly variable parameter and imposing expensive treatment BMPs on an extremely short timeframe based on a few days of monitoring is inappropriate. The telephone notification of high turbidity should be deleted. (Costco)

    Response: RCW 90.48.555 requires the general permit to contain an enforceable adaptive management mechanism including monitoring and reporting. Ecology has determined that the use of benchmarks to trigger appropriate corrective actions is the best way to meet this legal requirement at this time. The adaptive management actions have been revised; and the possible solution to a turbidity problem may be a combination of source control and/or treatment BMPs; the actual solution will be determined on-site by the Certified Erosion and Sediment Control Lead. Ecology believes that the telephone notification of high turbidity (>250 NTU) is consistent with RCW 90.48.555, and will help Ecology prioritize field inspections.

335. Special Condition S4: The turbidity benchmarks and action items should be deleted. Turbidity is a highly variable parameter and imposing expensive treatment BMPs on an extremely short timeframe based on a few days of monitoring appears to impose significant cost without a corresponding environmental benefit The telephone notification of high turbidity should also be deleted, provided that the permittee takes action within a reasonable time to reduce turbidity (Sound Transit)

    Response: Please see response to comment 334 above.

336. How have the benchmark values been set and justified to the public? The benchmark value set by DOE for turbidity is 25 NTU but the state water quality standard is 50 NTU. We would like to know if DOE believes that the benchmark values set can be routinely met? (Master Builders)

    Response: The rationale for the benchmark values were included in the Draft Fact Sheet (pp. 29-30) which was released for public comment on July 6th. 25 NTU was established using Best Professional Judgment (technology-based) based on Ecology inspectors determination of achievable turbidity levels with BMPs in place was used to establish the 25 NTU turbidity benchmark is based on. The 25 NTU benchmark, if met, would not cause receiving water violations if a moderate amount of dilution was applied.

    The state water quality standard for turbidity is not 50 NTU; it is 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or 10% over background when the background turbidity is more than 50 NTU.

The benchmark values in the permit are not water quality criterion or a numeric effluent limits; rather the values are an adaptive management mechanism [RCW 90.48.555(8)(a)] and part of a narrative effluent limitation. Discharges from a construction site at or below the 25 NTU benchmark values will not cause a water quality violation if a moderate amount of dilution was applied.

Discharges at or below the turbidity benchmark typically, but not always, indicate that erosion and sediment control BMPs are functioning effectively to protect water quality and the beneficial uses in the receiving water (e.g., stream, wetland, river, lake, etc.).

337. S4.D.4 (Page 16 of 50) "...stormwater benchmark value for turbidity is 25 NTU." What is this benchmark value based on and where does it come from? (City of Richland)

Response: See response to comment 336 above.

338. S4 D 4 (Page 16 of 50) " stormwater benchmark value for turbidity is 25 NTU " What is this benchmark value based on and where does if come from? (EWWA)

Response: See response to comment 336 above.

339. S4 D 4 (Page 16 of 50) " stormwater benchmark value for turbidity is 25 NTU " What is this benchmark value based on and where does if come from? (West Richland)

Response: See response to comment 336 above.

340. Turbidity Testing Section S4.D.4.a.v. provides that if the turbidity of a discharge is more than 25 NTU, but less than 250 NTU, for three consecutive days, the permittee must initiate additional treatment BMPs within 24 hours of the third sampling event that exceeded 25 NTU. We believe that meeting that deadline will be extremely difficult, if not impossible. For example, it will take considerably more than 24 hours to make arrangements to either rent or purchase the necessary equipment (for example, Baker tanks) and to get the equipment delivered to the site and set up. For these reasons, we request the following changes to the language: If discharge turbidity is greater than 25 NTU, but less than 250 NTU, for three consecutive days, the Permittee shall initiate additional treatment BMPs (for example, off-site disposal, infiltration, sand filtration, chemical treatment, etc.) within ~~24 hours~~ seven days of the third sampling event that exceeded 25 NTU; (Centex Homes)

Response: This condition (renumbered S4.C.5.a.) has been revised to allow more time to correct problems detected during sampling (or rent/purchase equipment such as Baker Tanks):

Turbidity/Transparency Benchmark Values
The benchmark value for turbidity is 25 NTU (Nephelometric Turbidity Units); and the benchmark value for transparency is 31 cm.

- Turbidity 26 – 249 NTU, or Transparency 30 – 7 cm:

If discharge turbidity is greater than 25 NTU, but less than 250 NTU; or if discharge transparency is less than 31 cm, but greater than 6 cm, the CESCL shall:

iv. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge; and

v. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the benchmark; and

vi. Document BMP implementation and maintenance in the site log book.

341. S4.D.4 Monitoring Requirements, Increased Frequency When Benchmark Not Met (pg 17) Comment #18: Just a note that we rarely see multiple days of rainfall in many areas of eastern Washington, or even a full day of rain. Therefore criteria such as "greater than....NTU for three consecutive days" does not really fit our climate patterns. While this might work to the advantage of an eastern Washington permittee, I think it would be best to develop criteria specific to the different climactic zones on the east side of the Cascade Mountains, and I suggest that Ecology do so. (Otak)

Response: Ecology acknowledges the limitations with the "3 consecutive days" criteria, and has revised this condition to require action after a single sampling event. See response to comment 340 above, which contains the revised language.

342. S4 D 4(a-v) (Page 17 of 50) "If discharge turbidity is greater than 25 NTU, but less than 250 NTU , for three consecutive days " There are very few three-day discharge events in the Central Basin. This is neither applicable nor meaningful in our region in eastern Washington. (EWWA)

Response: Please response to comment 340 above, which contains revised language.

343. S4 D 4(a-v) (Page 17 of 50) "If discharge turbidity is greater than 25 NTU, but less than 250 NTU , for three consecutive days " There are very few three-day discharge events in the Central Basin. This is neither applicable nor meaningful in our region in eastern Washington. (West Richland)

Response: Please response to comment 340 above, which contains revised language.

344. S4.D.4(a-v) (Page 17 of 50) "If discharge turbidity is greater than 25 NTU, but less than 250 NTU , for three consecutive days." here are very few three-day discharge events in the Central Basin. This is neither applicable nor meaningful in our region in eastern Washington. (City of Richland)

Response: Please response to comment 340 above, which contains revised language.

345. Comment: S4.D.4a.v. Permittees should not necessarily wait for three consecutive days of high turbidity to initiate additional treatment actions. Consider rephrasing the condition so that no permittees assume that they have three days before they need to take action. (WSDOT)

Response: Please response to comment 340 above, which contains revised language.

346. S4.D&E. Monitoring Requirements: Many of the monitoring requirements don't match the conditions of Eastern Washington. Has it ever rained for three consecutive days in Eastern Washington? The NPDES Phase II permit has narrative standards that if you do, you are considered to be in compliance. A permittee should be considered to be in compliance with the Construction Stormwater General Permit if he is following the requirements of the SWPPP. No monitoring of the runoff should be required. Especially standards that are unobtainable (25NTU). More/different BMPs will need to be installed after every runoff-producing storm, since the runoff will be greater than 25 NTU. The Phase II permit recognizes that some runoff in the larger storms will not receive treatment. Why doesn't the Stormwater General Permit allow for this also? (City of Yakima)

Response: Yes, it has rained for three consecutive days in Eastern Washington, although it is a relatively rare occurrence in the Central Basin. To be in compliance with an NPDES Permit, the permittee must be in compliance with all permit conditions not just one (e.g., S9. Stormwater Pollution Prevention Plan). We do not believe that it would be legal to write the permit in the manner suggested. The 25 NTU benchmark is not a standard, and is not a violation if exceeded. It is simply a trigger for adaptive management (RCW 90.48.555(8)(a). The adaptive management actions in response to a benchmark exceedance have been revised and are contained in the response to comment 340 above. By specifically referencing the Stormwater Management Manuals for Eastern and Western Washington, this permit does recognize that BMPs (i.e. ponds, etc) will not provide full treatment for large storm events which exceed the design criteria for various BMPs.

347. S4.D.b.iv & v Monitoring Requirements, Turbidity Exceedances greater than 250 NTU (pg 17) Comment #19: It seems that iv and v conflict with each other. One says "initiate" additional treatment BMPs within 24 hours, and the other says "implement" them within 7 days. Please explain the difference. (Otak)

Response: Ecology acknowledges that the terms "initiate" and "implement" were confusing and this condition has been revised. See response to comment 340, which contains the revised language.

348. S4 D 3 (Page 16 of 50) " must be performed with a calibrated turbidmeter, either on-site or at an accredited lab " Will Ecology be providing funding for the additional equipment and training costs that will be incurred by the local agencies to meet these requirements (EWWA)

Response: Ecology will not be providing funding to local governments for additional equipment or training associated with permit requirements, but Ecology is available for technical assistance.

349. S4 D 3 (Page 16 of 50) " must be performed with a calibrated turbidmeter, either on-site or at an accredited lab " Will Ecology be providing funding for the additional equipment and training costs that will be incurred by the local agencies to meet these requirements (West Richland)

Response: Please see response to comment 348 above.

350. S4.D.3 (Page 16 of 50) "...must be performed with a calibrated turbidmeter, either on-site or at an accredited lab." Will Ecology be providing funding for the additional equipment and training costs that will be incurred by the local agencies to meet these requirements. (City of Richland)

Response: Please see response to comment 348 above.

351. S4.D.4 (Page 17 of 50) "Meeting the benchmark value...including the numeric criteria for turbidity in WAC 173-201A-030."

173-201A-030 General water use and criteria classes. [Statutory Authority: Chapter 90.48 RCW and 40 CFR 131. 97-23-064 (Order 94-19), § 173-201A-030, filed 11/18/97, effective 12/19/97. Statutory Authority: Chapter 90.48 RCW. 92-24-037 (Order 92-29), § 173-201A-030, filed 11/25/92, effective 12/26/92.] Repealed by 03-14-129 (Order 02-14), filed 7/1/03, effective 8/1/03. Statutory Authority: Chapters 90.48 and 90.54 RCW.

It appears this WAC was repealed in July 2003. If so, then what are the numeric criteria for turbidity? (City of Richland)

Response: Revised surface water quality standards for Washington were adopted on July 1, 2003; at the same time the old standards were repealed. The revised rule subsequently became effective under state law on August 2, 2003.

Before state water quality standards (for these revised sections) can be used as a basis for federal actions, the adopted changes must first be approved by EPA to assure that they comply with the Clean Water Act. Part of the approval process includes a consultation with the federal fish agencies (US Fish & Wildlife Service, NOAA Fisheries) to assure that the standards meet the intent of the Endangered Species Act (ESA). This is often referred to as an ESA Consultation. EPA also conducts its own consultation with tribes, and that process has already begun.

A formal approval package of the revised standards and supporting information was submitted to EPA on August 1, 2003. The adopted changes to the rules can not be

used for federal Clean Water Act actions, including NPDES permits, until the approval process is complete. Therefore, the (repealed) 1997 water quality standards and criteria must be used as a basis for decision-making until such time that EPA formally approves the newly adopted standards.

Since the revised (2003) numerical criteria for turbidity are identical to the repealed (1993) criterion, this is not a problem for implementation of this general permit. The numerical criteria for turbidity is: 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or 10% over background when the background turbidity is more than 50 NTU.

352. S4D4 (Page 17 of 50) "Meeting the benchmark value.. including the numeric criteria for turbidity in WAC 173-201A-030" 173-201A-030 General water use and criteria classes [Statutory Authority Chapter 90.48 RCW and 40 CFR 131 97-23-064 (Order 94-19), **5** 173-201A-030, filed 11/18/97, effective 12/19/97 Statutory Authonty Chapter 90 48 RCW 92-24-037 (Order 92-29), **5** 173-201A-030, filed 11/25/92, effective 12/26/92] Repealed by 03-14-129 (Order 02-14), filed 7/1/03, effective 8/1/03 Statutory Authority Chapters 90.48 and 90.54 RCW. It appears this WAC was repealed in July 2003 If so, then what are the numeric criteria for turbidity? (EWWA)

Response: See response to comment 351 above.

353. S4D4 (Page 17 of 50) "Meeting the benchmark value.. including the numeric criteria for turbidity in WAC 173-201A-030" 173-201A-030 General water use and criteria classes [Statutory Authority Chapter 90.48 RCW and 40 CFR 131 97-23-064 (Order 94-19), **5** 173-201A-030, filed 11/18/97, effective 12/19/97 Statutory Authonty Chapter 90 48 RCW 92-24-037 (Order 92-29), **5** 173-201A-030, filed 11/25/92, effective 12/26/92] Repealed by 03-14-129 (Order 02-14), filed 7/1/03, effective 8/1/03 Statutory Authority Chapters 90.48 and 90.54 RCW. It appears this WAC was repealed in July 2003 If so, then what are the numeric criteria for turbidity? (West Richland)

Response: See response to comment 351 above.

354. S4. Monitoring Requirements Section D. Turbidity Monitoring Requirements Subsection 4. Turbidity Benchmark Value and Section E. Transparency Monitoring Requirements Subsection 4. Transparency Benchmark Value

The reference to WAC 173-201A-030 in the above sections is no longer correct. Section -030 of the WAC is now omitted. Please revise the permit to reference the correct regulatory citation (from the 2003 version it would be -200 and -210). (Boeing)

Response: See response to comment 351 above.

355. Conditions S4.D.4.b.v. and S4.E.b.v. should require permittees to "fully implement additional treatment BMPs as soon as practicable …."(Puget Soundkeeper)

Response: These sections have been revised. Please response to comment 340, which contains revised language.

356. D4.b.iv & v. - The difference between these two sections is unclear. It can be assumed that section b.iv refers to immediate, temporary BMPs while section b.v refers to more permanent structures. Clarify the intent of these two sections. " (King Co)

Response: Ecology acknowledges that this language ("initiate" and "implement") was confusing and this condition has been revised. See response to comment 357, which contains the revised language.

357. Page 17 S4, D4b iv-v (also page 19 E4b iv-v) - current language is confusing, as permittees are expected to "initiate" additional treatment BMPs within 24 hours and "implement" additional treatment BMPs within 7 days of a grab sample showing very turbid runoff. We find it confusing as to whether action should be taken within 24 hours or 7 days, and therefore recommend clarifying that definitive action shall be taken by permittees within 24 hours of their discovery of extremely polluted runoff (PSAT)

Response: Ecology acknowledges that this language ("initiate" and "implement") was confusing. Also, while many solutions to high turbidity can be <u>fully</u> implemented on-site within 24 hours; other more complex solutions can take a week or more to fully implement (e.g., Baker Tanks, ponds, filters, chemical treatment, etc.). To accommodate the wide range of scenarios, the permit has been revised to include "as soon as possible, but no later than 10 days…". The full language is:

<u>If discharge turbidity is greater than or equal to 250 NTU; or if discharge transparency is less than or equal to 6 cm, the CESCL shall:</u>

vi. <u>Notify Ecology by phone in accordance with Condition S5.A.; and</u>

vii. <u>Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the discharge; and</u>

viii. <u>Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but within 10 days of the discharge that exceeded the benchmark;</u>

ix. <u>Document BMP implementation and maintenance in the site log book; and</u>

x. <u>Continue to sample discharges daily until:</u>

1. <u>turbidity is 25 NTU (or lower); or</u>
2. <u>transparency is 31 cm (or greater); or</u>
3. <u>the CESCL has demonstrated compliance with the water quality standard for turbidity:</u>
    a. <u>no more than 5 NTU over background turbidity, if background is less than 50 NTU, or</u>

b. no more than 10% over background turbidity, if background is 50 NTU or greater; or

4. or the discharge stops or is eliminated.

358. With the new "NPDES" permit, we as builders will now be required to maintain a 25 NTU discharge. A direct quote from you stated, "That almost all of the lakes and streams run at 3.5 to 3.7 NTUs", where did you get this information and what time of the year was it? From my experience and knowledge in the erosion field I have tested bottled water that is over 10 NTU, so to say that most lakes and streams run at 3 5 to 3.7, I find it very hard to believe. Most of the water ways that I have looked at even in the summer with no construction around or rain for months still run at a consistent 100+ NTU. If we just throw in 1 inch of rain over 24 hours, that same body of water just went off the charts. So it is my concern that 25 NTUs will be hard enough to comply with in the middle of the summer, let alone dead of winter. After all we do live in Washington where it tends to rain more often then not. In determining compliance Ecology will consider: Weather conditions as related to design storms for BMPs: **Available dilution and background conditions in the receiving water** if the SWPPP and its implementation are determined adequate; and other requirements of Chapters 173-200 WAC, 173-201A WAC, and 173-204 WAC as stated in our latest NPDES permit. Do these factors of determining compliance Ecology no longer exist? Even with the old policy of 5 over background it was tough to achieve, however, it was more realistic as to what could actually be done in this state. It is my belief that this new permit, in the long run will probably do more harm then good. It's going to cause companies to shut down in the winter, lose revenue, spend more and more money every time it rains and cause companies to look for a more chemical answer for the problem, which isn't always the best solution. The testing of turbid water brings up a couple mole concerns of mine "If discharge turbidity is greater than or equal to 250 NTU at any time, the Permittee shall notify Ecology by phone with in 24 hours", per section S5A of the new NPDES permit. My concern being, that just the dust on the paved roads, even after a sweeper truck will put us well over 250 NTU. Do we get a first rain window for dust control and street washing before a call needs to be made, even though we are over 250 NTU? If so how long and how often, every rain event? From my experience just construction foot traffic is enough to get over 250 NTU, with the first rain Another one of my concerns will be the actual testing of the turbid water. I have seen a difference of 200-300 NTU from one Turbidity meter to the next, with the same sample of water. Will there be a recommended type of or brand of meter, similar to the ones the DOE will be using? If not, which reading will be used, DOE or the builders? After reporting a leading of250 NTU or over, what measures of action does the DOE take, fines, red tags, etc ? Don't get me wrong, our company takes erosion control very seriously and is always prepared for what ever comes our way. However, if you think that a 25 NTU discharge is the new standard, we as builders might as well start looking for new careers, because that is impossible. (DR Horton, letter #1)

Response: During the public workshops, I illustrated the difference in turbidity between the 25 NTU benchmark, and 3.5 NTU; which I compared to what

background turbidity in a typical stream might be. This was based upon stream monitoring data collected by Ecology at 62 long term water quality monitoring stations around Washington State. Monitoring data suggest that most streams have very low levels of turbidity; typically lower than 5 NTU. Turbidity data from Ecology's sampling locations are available on Ecology's website: http://www.ecy.wa.gov/programs/eap/fw_riv/rv_main.html

Ecology acknowledges the background turbidity levels in Washington State can range from very clear (1 NTU) to very turbid (600+ NTU). Turbidity can be affected by the time of year, recent weather conditions, land use and hydrology (groundwater, glacial runoff, etc.) .

The 25 and 250 NTU benchmarks in the permit are not water quality standards or effluent limits; they are indicator values used to implement adaptive management (BMPs). The benchmark concept is consistent with new sections to State [RCW 90.48.555(8)(a)], and easier to implement in the general permit than in-stream sampling upstream and downstream of stormwater outfalls.

Discharges from a construction site at or below the 25 NTU benchmark will not cause a water quality standards violation (>5 NTU over background turbidity) in most discharge situations. Discharges at or below the turbidity benchmark typically, but not always, indicate that erosion and sediment control BMPs are functioning effectively to protect water quality.

Regarding the questions about 250 NTU phone reporting, the permit requires one sample per week. This one sample should be representative, or typical, of discharges that occur during that week. Ecology does not plan to use the phone reporting data for fines and red tags. Ecology plans to use the data to prioritize inspections and ensure that permittees are fully implementing BMPs to control erosion and off-site sedimentation which can cause violations of water quality standards.

Ecology also acknowledges the potential for turbidity meters to yield different results. Studies have shown that this variability increases as the level of turbidity increases. It is believed that fluctuations of 200-300 NTU would only occur if the sample itself was very turbid; certainly higher than 25 or 250 NTU.

Ecology recommends that permittees use a ratio-type portable turbidimeter, such as the Hach 2100P, which measures the ratio of scattered light to transmitted light from a 90˚ signal in Nephelometric Turbidity Units (NTU). Additional suggestions may be provided when Ecology's construction stormwater sampling guidance document is published.

359. D.2 and E.2, a and b – Sampling is required at all the discharge points where stormwater (or excavation dewatering water) is discharged off-site. All sampling points shall be identified on the SWPPP site map and be clearly marked in the field with a flag, tape, stake or other visible marker. Discharge locations are subject to change in the field once construction has started. Expected discharge locations can be identified in the original

SWPPP but will need to be modified throughout the project as discharge locations change. ” (King Co)

Response: Ecology acknowledges that the monitoring locations identified in the SWPPP and in the field may change throughout the life of the project. No change.

360. Comment 21: Instead of the permit’s relatively complicated scheme for adaptive management based on turbidity or transparency monitoring results, the permit should simply establish a numeric effluent limitation for turbidity at 25 NTU or some other appropriately-derived level. This would result in the same or greater site improvements as the proposed adaptive management scheme and be much easier to enforce. (Puget Soundkeeper)

Response: Ecology believes that the benchmark and revised adaptive management approach is appropriate at this time and consistent with the intent of RCW 90.45.555(8)(a). No change to the permit.

361. S4.D.4. Turbidity Monitoring Requirements and S4.E.4. Transparency Tube Monitoring Requirements – The benchmark values presented in these subsections are referred to as “narrative effluent limits.” The terminology should be changed to refer to benchmark values as “indicator values.

Discussion – The characterization of benchmark values as “narrative effluent limits” is curious. First, the benchmark values in the permit are numerical, not narrative. Second, the term “effluent limits” is associated with a specific and enforceable performance requirement (reference the definition of “effluent limitation” in WAC 173-226-030). Yet, the benchmark values in this CSWGP do not appear to function in that manner. Finally, Ecology has inexplicably deviated from the terminology recently used in a companion permit. The Industrial Stormwater General Permit describes benchmark values as “indicator values” (see S4.D.2. of the December 2004 permit). It would logically seem that benchmark values will have a common description and role in both the ISWGP and CSWGP given the origin in RCW 90.48.555. The change in terminology implies a different intended meaning and legal status. To add to the confusion, the CSWGP Fact Sheet (page 12) refers to a benchmark value as “an indicator value used to determine the effectiveness of BMPs on site.”

If Ecology chooses to retain the “narrative effluent limits” description, an explanation for the change in language should be presented in the permit Fact Sheet. (Weyerhaeuser)

Response: Benchmark values are a component of a narrative effluent limitation. When a benchmark is exceeded, the permittee is required to perform specific adaptive management actions when exceeded (SWPPP review/revision, BMPs, etc.). Monitoring results above the benchmark values are not a permit violation. However, failure to complete the required permit actions which are triggered when a benchmark is exceeded would constitute a permit violation. The intended meaning and legal

status of benchmarks are consistent with RCW 90.48.555 and the Industrial Stormwater General Permit.

The sentence describing what a benchmark value is, and is not, was deemed to be educational (more appropriate for the Fact Sheet) and has been deleted to keep the permit clear and concise.

362. Page 16, D 2a - there is a typo in this paragraph (PSAT)

Response: Typo has been corrected.

363. It is my opinion and experience that holding storm water runoff from construction sites at 25 NTU's is unrealistic and unnecessary It is also my opinion that the method of measuring turbidity, suggested at the August 9" public hearing, is sloppy and professionally inadequate In the past few weeks, I have been unable to find any background turbidity reading of less than 25 NTU (using a turbidity meter or the D. 0 E suggested method) These recent samples were taken in August, when streams should be running at their cleanest due to the low volume of storm water runoff. I acknowledge that significant efforts should be made to protect water quality down stream from constructions sites Enforcing the expectations that site discharges should not greatly impact the background turbidity readings should be observed I feel that holding storm water runoff from construction sites to 5 over. background is realistic and prudent. Background and runoff turbidity measurements can easily be taken with a turbidity meter to ensure compliance to a 5 over background requirement This method is accurate, fast, and realistic. Uniformly denying a 5 over background standard for all general permit situations must stem from motives other that creating effective, practical, and accurate means of turbidity control. We found that the method of measuring turbidity suggested at the public hearing August 9", using a clear tube filled with water to visually determine turbidity (JTU), to be significantly flawed Depending on who was looking at a sample and how much ambient light was present, the target extinction point greatly varied Using visual means to derive NTU measurements from the suggested JTU process is proven to be inaccurate and subjective, In researching turbidity measurements, I found the following quotes from a Department of Fish and Wildlife website (http://fire gov/ifcc/monitorl~efGuide/turbidity htm): "Visual turbidity measurements are made by observing the extinction of the image of a special candle as the amount of sample between the candle and the observer is increased (JTU) . . This method is imprecise because it is dependent on human judgment to determine the exact extinction point. Moreover, turbidities lower than 25 JTUs or caused by dark particles, such as charcoal, cannot be measured, and the method is insensitive to fine-particle suspensions,." "The nephelometer detects light scattered 90' from the incident light beam because a 90' angle is considered least sensitive to variations in particle size. This method is precise and sensitive.. Turbidities derived from nephelometric measurements are expressed in nephelometric turbidity units (NTU)… and are only approximately correlated with JTU." I believe that the Department of Ecology should require and enforce realistic storm water runoff standards for all construction permits (5 over background). I also believe that turbidity measurements should be taken seriously and should be determined in a

scientific, non-subjective, manor.

River	Location	Date	Time	Turbidity Reading
Puyallup	Levee Rd. Under 60th Ave. Bridge	8/17/2005	11:43 AM	370 NTU
		8/18/2005	12:00 PM	730 NTU
Wapato Creek	Under 70th Ave. Bridge	8/17/2005	12:00 PM	38 NTU
		8/18/2005	12:15 PM	50 NTU

Response: Ecology appreciates the comment, which is clearly based on a great deal of professional judgment and experience. The permit does not require routine background sampling for a number of reasons including: safety issues; trespass or property access issues; and problems measuring background in storm sewers or other systems where logistics prevent background sampling. Ecology has determined that sampling at the property boundary or discharge point is more feasible and appropriate for a statewide general permit.

In response to the comments regarding natural background turbidities over 25 NTU, please see response to comment 358 above.

The permit has been revised to allow sites under 5 acres to use the transparency tube, which is different than the Jackson Turbidity Unit (JTU) mentioned in the comment. Ecology understands the perception that this method is relatively sloppy and unprofessional, but a recent Ecology stormwater survey found a very high correlation between transparency and turbidity measurements, when turbidity is below 250 NTUs. The transparency benchmark has been corrected from 32 centimeters (cm) to 31cm. Data combined from Ecology's stormwater survey indicates that 25 NTU turbidity = 34 cm, with a standard deviation of 2.5 cm. As such, 34 cm – 2.5 cm = 30.5 cm (rounded up to 31 cm in the final permit). The full report, *Stormwater Quality Survey of Western Washington Construction Sites, 2003-2005*, can be downloaded from: http://www.ecy.wa.gov/pubs/0503028.pdf.

364. Comment: S4 D 1 a and b. Condition b can be eliminated. Monitoring is triggered by discharge events as stated in condition S 4 D l a. (WSDOT)

Response: Ecology believes that both a and b are helpful to ensure that this requirement is clear to all permittees. No change to permit.

365. Comment: S4 D 2 b and S9 E 9. There is no need to state in two different places that sampling points must be marked in the SWPPP map. Please choose one location. (WSDOT)

Response: This minor redundancy only adds 5 words to Condition S4, and may help improve compliance with the requirement. No change to permit.

366. Comment: S4 D 4 a v and S4 D 4 b iv We suggest not listing specific examples of BMPs that can be used As all BMPs should be considered, the wording in S4 D 4 b v is more appropriate (WSDOT)

Response: Language has been revised: "Fully implement and maintain appropriate source control and/or treatment BMPs…". No specific BMPs are listed.

S4.E. Transparency Monitoring Requirements

367. S4: If monitoring is to be required on sites less than five acres, BIAW supports a baseline requirement of a transparency tube with the turbidity meter as an option. Most individuals and companies building on sites less than five acres cannot afford the cost of a turbidity meter, nor can they afford the training or maintenance required. (BIAW)

Response: Ecology acknowledges the concerns regarding the cost and technical issues related to monitoring with turbidity meters on <5 acre sites.

368. Monitoring (S4). Turbidity meters are not expensive, especially within the budget of sites larger than 5 acres and considered over an equipment life of many years. These meters are easy to operate and should be required – rather than transparency tubes. We must have systematic and comparable monitoring performed at all sites. (People For Puget Sound)

Response: A recent Ecology study has found that a very high correlation between transparency and turbidity measurements, when turbidity is below 250 NTUs: http://www.ecy.wa.gov/pubs/0503028.pdf. The permit has been revised to allow the tube only for sites under 5 acres; sites 5 acres and larger will use a turbidimeter.

369. – See comments in the relevant sections of Section D. " (King Co)

Response: See response to comment 359.

370. E.3.a and b - It is unnecessary to include instructions on how to use transparency tubes: delete these sections. " (King Co)

Response: Transparency instructions have been deleted, but will be provided in separate guidance.

371. Condition S4. of the permit would allow sites of between one and twenty acres to conduct "transparency monitoring" instead of turbidity monitoring and this does not appear to satisfy AKART or the requirements of CWA section 308(a). State water quality criteria are in terms of turbidity, not transparency, and turbidity monitoring is necessary to determine whether discharges cause or contribute to violations of water quality standards

as required by CWA section 308(a). Ecology's study comparing turbidity and transparency monitoring indicates that the correlation between the two measurements breaks down at both high and low levels of turbidity, even recommending that low levels of transparency cannot be correlated to turbidity more precisely than to state turbidity is greater than 250 NTU. Since turbidity, not transparency, is what matters, turbidity monitoring is what should be required. Turbidity monitoring is appropriate to determine compliance with water quality standards and as the basis for the permit's adaptive management scheme. Transparency is a poor substitute. Use of transparency monitoring in lieu of turbidity monitoring is not AKART. The $700 to $800 cost for turbidity monitoring equipment estimated by Ecology is a reasonable expense to impose on construction projects, particularly for projects disturbing five acres or more. This is particularly important since, according to Ecology's September 2004 "Interim Report: Stormwater Quality Survey of Western Washington Construction Sites," "[t]he finding of considerable turbidity downstream at two sites suggests that turbidities downstream of construction site discharges may commonly be greater than the 5 NTU increase allowed by state water quality standards." Finally, transparency monitoring is less reliable and less accurate than turbidity monitoring because of the subjectivity inherent in transparency monitoring, presenting opportunities for permittees to partake in monitoring gamesmanship. (Puget Soundkeeper)

Response: A recent Ecology study has found that a very high correlation between transparency and turbidity measurements, when turbidity is below 250 NTUs: http://www.ecy.wa.gov/pubs/0503028.pdf

Transparency monitoring is consistent with the monitoring and adaptive management requirements of RCW 90.48.555. AKART as defined by the Attorney General and PCHB decisions is applicable to methods of pollutant control and not to sampling methods.

Both turbidity and transparency are estimates of suspended sediment concentration, and both have the advantage of being a relatively low cost field measurement. Sites smaller than 5 acres may be less able to absorb the higher costs associated with turbidity sampling. The permit has been revised to allow the transparency tube only for sites under 5 acres; sites 5 acres and larger will use a turbidimeter.

372. Question 20.1: What is the reason for permitting transparency monitoring instead of turbidity monitoring? (Puget Soundkeeper)

Response: Reasons include:

- Lower Cost
- High accuracy/correlation
- Low maintenance/calibration requirements
- Simple operation

373. Question 20.2: Considering the prominent role of monitoring results in the permit's adaptive management scheme to determine when additional controls are necessary, how

does allowing the use of transparency monitoring constitute AKART given that it is not as accurate or objective as turbidity monitoring? (Puget Soundkeeper)

Response: A recent Ecology study has found that a very high correlation between transparency and turbidity measurements, when turbidity is below 250 NTUs: http://www.ecy.wa.gov/pubs/0503028.pdf.

Transparency monitoring is consistent with the monitoring and adaptive management requirements of RCW 90.48.555. As noted above, AKART requirements do not apply to sampling methods.

374. Question 20.3: Can transparency monitoring be used to determine whether a discharge causes or contributes to a violation of turbidity water quality criteria? If so, how? (Puget Soundkeeper)

Response: Transparency can not be used for an enforcement action, but could be used to determine if a discharge is above or below the benchmark value, which typically indicates that the discharge will not cause a violation of turbidity criteria in the receiving water.

375. Question 20.4: Transparency tube monitoring, for which a person determines the level at which he can see an object through water, provides greater opportunities for subjective interpretation than does turbidity monitoring, for which a monitor gives a numeric readout of the turbidity level of a sample, correct? If not, why not? (Puget Soundkeeper)

Response: Transparency monitoring may vary slightly between different individuals, but is considered to be an accurate and objective measurement which results in a numerical value.

376. Comment 24: In Condition S4.E.3.c., the publication number for Ecology guidance on transparency sampling is missing. (Puget Soundkeeper)

Response: The sampling guidance will be published when the permit is issued.

377. S4.E. & H.: Assuming that most builders and property owners on projects less than five acres will use transparency monitoring, the process is cumbersome and fraught with liability, particularly because there is a lack of a "best effort" standard. In fact, S4.B.8 indicates the opposite, requiring the CESCL to certify "I am aware that there are significant penalties for submitting false information…" (BIAW)

Response: Ecology does not believe that transparency sampling increases liability to permittees who choose to use this sampling method. The following language has been deleted from the inspection certification: "I am aware that there are significant penalties for submitting false information". This is covered by Condition G14.

378. Comment: S4 E largely repeats what is in S4D. The only significant difference in the section compared to S4D is the method of taking the measurement (S4E.3 .) If all other information associated with these conditions were merged or summarized in a table, the permit could be reduced by 11/2 page in length. (WSDOT)

Response: Turbidity and transparency sampling requirements have been consolidated.

S4.F. pH Monitoring

379. The permit does not have a benchmark value for pH. Throughout the permit there are references to violations of "high pH". Based on Surface Water Quality Standards the intent is probably 8.5, but it should be stated somewhere in the body of the permit that high pH is in reference to the standard contained in Chapter 173-201A WAC. (King Co)

Response: The following language has been added to S4.E.5: "The benchmark value for pH is 8.5 standard units". This is based on the upper range of the surface water quality standard for pH (Chapter 173-201A WAC).

380. Regarding the pH monitoring requirements in Section **S4.F.1,** the general permit defines the term "significant concrete work" to be "greater than 1000 cubic yards poured concrete or recycled concrete." But the fact sheet defines the term as 40 cubic yards. We anticipate that the draft permit definition contains the correct amount. Also, for a large residential construction project, does the 1000 cubic yards limit pertain to individual pours or is it the cumulative amount of concrete work? If the latter is correct, we suggest making the limit per an area of land. For example, the following language could be added to the definition of "significant concrete work": "Significant concrete work" means greater than 1000 cubic yards poured concrete or recycled concrete **per one-quarter acre of land.** (Centex Homes)

Response: The reference to 40 cubic yards in the fact sheet is incorrect; the correct amount is 1000 cubic yards. The 1000 yard threshold applies to individual pours, and also applies when multiple concrete pours on a permitted site exceed 1000 cubic yards and are curing at the same time. Curing is typically complete less than 30 days after the pour.

The suggested "per one-quarter acre of land" language is not appropriate and has not been added. A one-acre pour, 6 inches thick, would be below the 1000 cubic yard threshold. It would be somewhat rare for a ¼ acre area to contain 1000 cubic yards of concrete which is exposed to precipitation, with runoff to waters of the state.

381. S4.F.4 (Page 20 of 50) "...stormwater pH is 8.5 or less." What is the problem identified by pH? This pH is more restrictive than the pH requirement for a wastewater plant. (City of Richland)

Response: A pH level around 7 (neutral) is typical for most watercourses, and this neutral pH is required for the survival of aquatic organisms. Should the pH rise or drop out of this range, fish and other aquatic organisms will become stressed and may die.

When water (including stormwater) is added to cement or concrete, including dust from drilling or grinding, the resultant slurry has a high concentration of hydroxyl ions (OH^-) that can result in a pH of 11 or higher. The actual pH will vary from mix to mix. High pH is caustic in much the same way as lye and is harmful to aquatic life. For example, Environment Canada has found that rainbow trout exposed to Portland Cement concentrations of 300, 500, and 1,000 milligrams/liter have 50% mortality times of 68, 45, and 29 minutes, respectively. Care must be taken to ensure that fresh cement, or stormwater runoff from fresh cement, does not contact waters where aquatic life may be harmed. Various state and federal regulations require the impoundment of concrete slurry and the exclusion of concrete-contaminated waters from surface water bodies. There may be times when the risk of contamination of streams by cement or concrete is high. This would include such tasks as grouting or repair of concrete bridge or culvert footings, or even projects adjacent to streams where large quantities of cement or concrete are going to be used. Accidents do happen and it is prudent to be prepared for spills with appropriate BMPs.

Wastewater treatment plants are issued individual NPDES permits which set numeric effluent limits, including pH limits, based on precise information about the wastewater discharge characteristics (pollutants, flow, etc.) and the receiving water characteristics (flow, mixing, background conditions, etc.). This site specific discharge and receiving water information cannot be analyzed for each discharger under a general permit. Ecology has decided that the benchmark of pH 8.5 (upper limit of the surface water quality standards) is appropriate for sites with large concrete pours or engineered soils, when the stormwater from the affected area drains to surface waters.

382. S4 F 4 (Page 20 of 50) " stormwater pH is 8 5 or less" What is the problem identified by pH? This pH is more restrictive than the pH requirement for a wastewater plant. (EWWA)

Response: See response to comment 381 above.

383. S4 F 4 (Page 20 of 50) " stormwater pH is 8 5 or less" What is the problem identified by pH? This pH is more restrictive than the pH requirement for a wastewater plant. (West Richland)

Response: See response to comment 381 above.

384. Special Condition S 4: Monitoring pH in the sediment trap or pond and imposing a requirement to meet a pH of 8.5 in the trap or pond is inappropriate because the surface water quality standards only apply in the receiving water . A trap or stormwater pond is

not water of' the state. Any compliance monitoring should be based on the discharge point into surface waters of the State, after appropriate dilution. (Sound Transit)

Response: See response to comment 381 above.

385. Special Condition S4: Monitoring pH in the sediment trap or pond and imposing a requirement to meet a pH of 8 5 in the trap or pond is inappropriate because the surface water quality standards only apply in the receiving water. A trap or stormwater pond is not waters of the state. Any compliance monitoring should be based on the discharge point into surface waters of the State, after appropriate dilution. (Costco)

Response: See response to comment 381 above.

386. - pH Monitoring: Sites with Significant Concrete Work or Engineered Soils Carbon dioxide does not occur as a liquid at 1 atmosphere of pressure. The document should refer to solid or compressed carbon dioxide gas, not to liquid CO2. Appropriate guidance should be developed and published for this BMP. (King Co)

Response: The language regarding CO2 has been corrected. A pH treatment BMP is currently under development.

387. F.2. - "Engineered soils" means soil amendments including, but not limited, to Portland cement treated base (CTB), cement kiln dust (CKD), or fly ash. This does not include fertilizers. Delete - "This does not include fertilizers." (King Co)

Response: "This does not include fertilizers." has been deleted.

388. Comment: S4 F 2. Suggest removing "This does not include fertilizers " as it is unnecessary. (WSDOT)

Response: See response to comment 387 above.

389. I would suggest that the monitoring of pH occur on weekly bases as proposed for turbidity. Furthermore, pH monitoring should address site activity related to acid conditions, buildings using brick (i.e. the new buildings in Tumwater) as well area of restoration (old city downtowns) frequently acid wash w Hydrochloric Acid.

It appears the DRAFT permit focus captures the large concrete pours, but neither the smaller cement work nor the brick wash events. I can recall the WDOE reports regarding fish kills in Washington some years back, a big percent related to concrete work at bridge construction sites. (City of Tacoma)

Response: For this permit cycle, Ecology has decided to focus pH sampling requirements on sites with large concrete pours (≥1000 cubic yards) and engineered soils. Sites with smaller quantities of concrete, or bridge work in close proximity to surface waters, may be required to sample pH on a case by case basis (General Condition G13). Acid wash water is not authorized to be discharged under this permit

(S1.C.3 Non-Stormwater Discharges), so the permit will not be revised to address this activity.

390. In section F regarding pH, we disagree with restricting pH measurement to just those sites with significant concrete work. Typically, projects doing concrete work of that size are experienced, and are well set-up to handle wash waters used to cure the concrete, or wash waters from trucks. Our biggest problems have been from the small contractor building a single family home. They often do not provide an adequate wash out area for the trucks, and, even worse, washed aggregate driveways seem to be popular, and our inspectors often find the permanent storm drainage system with pipes half full of concrete. Something in this permit needs to address a problem like this, where individual contractors working within a planned development each contribute to a worse problem that a large pour does. Obviously, better education is needed, at a minimum. (Pierce Co)

Response: The permit requires all sites handling concrete to implement appropriate source control BMPs to prevent stormwater contamination. Applicable BMPs are BMP C151: Concrete Handling, BMP C151: Sawcutting and Surfacing Pollution Prevention, and BMP C153: Material Delivery, Storage and Containment. Concrete washwater must be contained in a lined container and disposed of in a manner which does not violate water quality standards. Washdown from exposed aggregate driveways can not drain to storm drains or other tributaries to waters of the state; these discharges would be a violation of the permit. Ecology agrees that improved education will be necessary to prevent pollution from concrete work.

391. Page 20, S4.F1: The threshold of 1000 cubic yards for "significant concrete work" seems too high. Please re-evaluate this volume. (WDFW)

Response: Ecology has re-evaluated the 1000 yard threshold, and has decided to retain it without revision. Please see response to comments 389 and 390.

392. S4 F WSDOT appreciates that the trigger for pH monitoring was based on observations from construction projects where BMPs are regularly used and concurs with the 1000 cubic yard trigger in general. While smaller concrete volumes could conceivably cause problems when BMPs are not used, BMPs should always be required. It is good to have monitoring triggers that recognize the effectiveness of required BMPs. WSDOT encourages Ecology to promulgate more approved BMPs for treatment of pH. (WSDOT)

Response: Ecology agrees that appropriate source control BMPs are necessary to prevent pH problems from small concrete pours. Please see response to comment 390 above. A pH treatment BMP is currently under development.

393. Comment: S4 F 6 b (See also S9 D 9 f and g) Both sections discuss pH treatment in different levels of detail and are not cross-referenced .Also, there is no corresponding guidance in Ecology's stormwater manuals regarding pH treatment. Appropriate guidance is a necessary prerequisite for such a condition. Without proper guidance, well meaning yet inexperienced permittees, could incorrectly treat pH and inadvertently cause low pH

problems. This issue should only be discussed in one location to avoid inconsistencies and confusion. (WSDOT)

Response: The different levels of detail are necessary because S4 is focused on Monitoring; and S9 is focused on the Stormwater Pollution Prevention Plan. These two sections are not contradictory, and Ecology has decided not to consolidate them into a single section. A pH treatment BMP is currently under development.

394. In Section H for pH, it states in the table that a meter must be used to check for pH. But then, in H.2.a.i., it states that there is a 24 hour holding time for pH. I know of no such holding time ever allowed for pH—it has always been an instantaneous measurement. Bacteria in the sample will change the pH quickly, especially under the conditions one would imagine at a construction site with personnel who do not do water quality monitoring for a living. I would suggest that the use of pH papers, Hach kits or even quick pens for pH would be a much better measure, even with their inherent inaccuracies. That change would also mean changing the detection limit listed in this section. (Pierce Co)

Response: Ecology agrees and has deleted the language regarding Sampling and Analysis – General Procedures, including 24 hour holding time for pH, detection limits, etc. "Samples shall be representative of the flow and characteristics of the discharge." has been moved to S4.C.2.a. - Sampling Frequency.

A definition of representative sampling has been added to Appendix A:
Representative Sample means a stormwater or wastewater sample which represents the flow and characteristics of the discharge. Representative samples may be a grab sample, a time-proportionate composite sample, or a flow proportionate sample. Ecology's Construction Stormwater Monitoring Manual provides guidance on representative sampling.

"*Analytical methods used to meet the monitoring requirements specified in S4 shall conform to the latest revision of the Guidelines Establishing Test Procedures for the Analysis of Pollutants contained in 40 CFR Part 136*" has been deleted from S4. The turbidity, transparency, and pH benchmark sampling in S4 is internal process control and exempt from the analytical methods in 40 CFR Part 136. Furthermore, turbidity and pH "need not be accredited or registered… unless the laboratory must otherwise be accredited or registered" [WAC 173-226-090(5)].

The 40 CFR Part 136 and WAC 173-226-090(5) accreditation language may apply to discharges to certain TMDL waste load allocations:

i. Where an applicable TMDL sets specific waste load allocations or requirements for discharges covered by this permit, discharges shall be consistent with any specific waste load allocations or requirements established by the applicable TMDL.

v. Discharges shall be sampled weekly, or as otherwise specified by the TMDL, to evaluate compliance with the specific waste load allocations or requirements.

vi. Analytical methods used to meet the monitoring requirements shall conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 CFR Part 136. Turbidity and pH methods need not be accredited or registered unless conducted at a laboratory which must otherwise be accredited or registered.

395. pH (S4.F.7). PH monitoring data should be included in data submittals to Ecology (as well as Temperature, when required). If the facility operator is already submitting data, it is not a large burden to include pH data as well. (People For Puget Sound)

Response: The permit has been revised to require submittal of pH monitoring data, when pH sampling is applicable.

396. Comment 25: Condition S4.F.7. indicates that the results of pH monitoring do not generally have to be submitted to Ecology. All monitoring results should be submitted to Ecology so that Ecology can use them to screen for problematic sites and so that they can be readily available for public review. Any difficulties that Ecology would anticipate with managing pH or other monitoring data are not an appropriate reason to not require its submission. Ecology should fix its data management systems if necessary. (Puget Soundkeeper)

Response: Please see response to comment 395 above.

397. Question 25.1: What is the reason that pH monitoring results do not generally have to be reported to Ecology? (Puget Soundkeeper)

Response: Please see response to comment 395 above.

398. Question 25.2: How is Ecology going to use pH monitoring data to detect problematical sites if that data is not to be submitted? (Puget Soundkeeper)

Response: Please see response to comment 395 above.

399. Question 25.3: How is the public going to use pH monitoring data to identify problematical sites if that data is not to be submitted? (Puget Soundkeeper)

Response: Please see response to comment 395 above.

400. S4.F 3 Suggest replacing the "until area of engineered soils is fully stabilized" with "until engineered soils are covered, or runoff pH is in compliance with state standards". Why? By definition engineered soils are stable and soil instability is not necessarily tied to the risk of pH problems. (WSDOT)

Response: In the case of engineered soils, the risk of elevated pH continues until the area is fully stabilized to prevent erosion (which may include covering). The term "covered" may be subject to interpretation in the field, so "fully stabilized" will be retained.

S4.G Water Quality Monitoring – Impaired Waterbodies

401. Page 20, S4 G1 -we support the required monitoring for parameters for which receiving waters are listed as impaired on the 303(d) list. (PSAT)

Response: Ecology appreciates the support. This section has undergone a minor revision based upon the relationship between suspended sediment (soil particles) and phosphorus. Ecology has determined that it would not be appropriate to apply ambient lake criterion for total phosphorus directly to stormwater discharges. Therefore, turbidity will be used as a surrogate (indicator) parameter for phosphorus; i.e., compliance with the turbidity criterion, would sufficiently demonstrate that the discharge is not contributing to a water quality violation in a phosphorus-listed waterbody.

402. "Ecology states that it will not require discharges to tributaries that drain to 303(d) listed waters to be monitored to TMDL standards. However, Ecology has proposed that discharges that go to ditches, then to 303(d) waters, to be regulated regardless of distance away from the construction area (i.e., the construction site could be 5 miles away via a series of ditches from a receiving 303(d) water body. The water may have obtained substantial filtration or dilution within that distance). Having no TMDL standards for non-303(d) tributaries, but having TMDL standards for ditches seems a bit inconsistent. Is it possible to assign a quantifiable numerical value to distance from the receiving water in accordance with the permit? For example, perhaps stating that project areas within so many feet of 303(d) water bodies, with a ditch connection, will be required to achieve TMDL standards at the ditch outlet?" (Pierce Co/Banois)

Response: Ecology has decided to retain the current policy of requiring monitoring for indirect discharges to impaired waterbodies, via ditches or other stormwater conveyance systems; and a maximum conveyance system distance has not been established. However, to accommodate the fact that some conveyance systems will reduce/remove pollutant concentrations and others will increase concentrations (from unrelated pollutant sources); compliance monitoring may take place either in the receiving water, or at the property boundary.

403. Improved monitoring and reporting requirements to comply with RCW 90.48.555 are an improvement in the DCSGP. Especially important is this requirement for construction sites discharging to water bodies that have been mandated with a Total Maximum Daily Load or that are on the 303(d) list for turbidity, fine sediment, high pH, phosphorus, and other applicable water quality parameters. (WDFW)

Response: Ecology agrees that this is an improvement. Note: "other applicable water quality parameters" has been deleted to reduce confusion. Additional monitoring for discharges to impaired waterbodies listed for parameters other than turbidity, fine sediment, high pH and phosphorus may be required on a case by case basis, per General Condition G13

404. Temperature (TMDL/303d) (S1.D.5 and 6, S3.A, S4.G.1). Retained water can heat up prior to discharge, especially during summer months, and therefore should be listed in the permit because of its applicability to waters that are impaired (i.e., listed on the 303(d) list) due to Temperature. At construction sites, in addition to summer storms, there is additional water from the site, such as dewatering water and construction related water that is retained in the stormwater structures. The permit should list Temperature as a pollutant that must be considered and include additional BMPs such as disallowing breaching of detention basins if the water temperature is too high, shading detention basins during hot months, deeper ponds, etc. Also, Temperature should be monitored in discharged stormwater if water is discharged between storms. Temperature is the least expensive monitoring to perform. (People For Puget Sound)

Response: Construction sites typically do not discharge stormwater during the dry summer months when 303(d)-listed receiving waters are at risk of water quality standards violations for temperature. Dewatering water is typically cold (ground water temperature) and may be discharged directly to surface water without detention unless it is contaminated.

Based on these considerations, Ecology has decided not to include temperature in the list of impaired waterbody sampling parameters. Temperature monitoring may be required on a case by case basis, per General Condition G13.

Discharges from ponds which cause violations of any water quality standard, including temperature criteria, are not authorized under the permit and would be subject to penalty. These will be determined on a case-by-case basis by Ecology inspectors.

Ecology will also consider appropriate revisions to the existing construction stormwater BMPs in the Stormwater Management Manuals (e.g., BMP C241: Temporary Sediment Pond, BMP C240: Sediment Trap, etc.) to address temperature.

405. Regarding the entirety of S4.G about increased monitoring requirements and standards for discharges to 303(d) and TMDL waters, I repeat my comments #9, 10, 13. (Otak)

Response: Please see original responses to repeated comments: 235, 236, and 238.

406. In S4.G.1, please define and/or clarify the meaning of "applicable effluent limit". (Otak)

Response: This condition (Moved to S8) has been revised based on public comments and RCW 90.48.555. The term "applicable effluent limit" has been deleted.

407. Regarding the phosphorus monitoring analytical methods shown in the table on Page 21, it is appropriate to differentiate between forms that are bioavailable and forms that are bound in organic matter, soil minerals, and insoluble precipitates. This is true also if metals monitoring is ever required. If phosphorus (or metals) monitoring is required, permittees should be given the ability to compare dissolved bioavailable forms to the water quality criterion rather than total concentrations. This has been a long running issue and I don't understand why Ecology sometimes still regulates total concentrations in discharges against water quality criteria that were established based on dissolved bioavailable concentrations. (Otak)

    Response: Ecology has determined that it would not be appropriate to applying ambient lake criterion for total phosphorus directly to stormwater discharges. Therefore, turbidity will be used as a surrogate (indicator) parameter for phosphorus; i.e., compliance with the turbidity criterion, would sufficiently demonstrate that the discharge is not contributing to a water quality violation in a phosphorus-listed waterbody.

408. The *footnote under the table on page 21 is not real clear about where and what is being monitored. Is this receiving water monitoring or end of pipe discharge monitoring? Please explain and also address what should happen if the discharge is into a public storm drain. (Otak)

    Response: To accommodate the wide variety of discharge scenarios which may exist (direct discharges, discharges to storm drains, etc.) the permit (S8) has been clarified to allow compliance monitoring to take place either in the receiving water, or at the property boundary (prior to discharge to a public storm drain). Ecology field staff may be available to assist dischargers understand and comply with monitoring requirements for impaired waterbodies.

409. S4.G (Page 21-22 of 50) Tables on both pages. Shouldn't these be in a site-specific permit and not in the Construction Stormwater General Permit? (City of Richland)

    Response: Ecology has chosen to address the specific legal and technical requirements for discharges to impaired waterbodies in the general permit, rather than requiring site specific individual permits.

410. S4G (Page 21-22 of 50) Tables on both pages. Shouldn't these be m a site-specific permit and not in the Construction Stormwater General Permit? (EWWA)

    Response: Please see response to comment 409 above.

411. S4G (Page 21-22 of 50) Tables on both pages. Shouldn't these be m a site-specific permit and not in the Construction Stormwater General Permit? (West Richland)

    Response: Please see response to comment 409 above.

412. G. – Move to Special Condition for 303(D) listed or TMDL water bodies. ” (King Co)

Response: All 303(d)/TMDL requirements have been consolidated in Condition S8.

413. S4.G.1. Water Quality Monitoring for Sites Discharging to Certain Impaired Waterbodies – The comments presented above for Special Condition S3.A. apply for this section as well. (Weyerhaeuser)

Response: Please see original responses to comments related to impaired waterbodies.

S4.H. Sampling and Analysis – General Procedures

414. Comment: S4 H 1 a Requiring composite samples to cover a two-hour period when the acute water quality standards are based on a one-hour period seems arbitrary and unnecessary. (WSDOT)

Response: Requirement has been deleted.

415. S4.H.1.a requirements for composite sampling are not feasible in much of eastern Washington, where most precipitation as rainfall occurs during short intense thunderstorms. Often times runoff from even the largest construction sites is over within the first half hour, let alone 2 hours. Along with the allowed grab sampling, why not allow composite sampling with shorter sampling periods to reflect eastside storm conditions. (Otak)

Response: Requirement has been deleted.

416. Comment: S4 H 1 c The permit references an unavailable Construction Stormwater Sampling Manual. Comments can't be made on an unavailable manual. WSDOT has long established sampling protocols in it's approved Highway Runoff Manual. In the absence of published Guidance from Ecology, WSDOT asserts that its existing sampling methods are adequate (WSDOT)

Response: Ecology’s forthcoming sampling guidance is not likely to be inconsistent with the protocols in the Highway Runoff Manual.

417. Comment #25: S4.H.1.c - As discussed above, depending on how “representative” is defined, it may be difficult or impossible to accomplish in eastern Washington. Are single grab samples going to be considered by Ecology to be “representative of the flows and characteristics of the discharge”? Please answer. Also, where can a copy of the “Construction Stormwater Sampling Manual” be obtained (is this the Caltrans document or the DOE Industrial monitoring document?)? Please cite the source of the document for the permittee. (Otak)

Response: Grab samples are acceptable for meeting "representative" criteria. The Sampling Guidance Document will be published when the permit is issued.

418. S4.H.1(f) (Page 22 of 50) DMR What is the DMR? (City of Richland)

Response: DMR means Discharge Monitoring Report, which is used to submit monitoring information to Ecology in accordance with RCW 90.48.555.

419. S 4 H l (f) (Page 22 of 50) DMR What is the DMR? (EWWA)

Response: Please see response to comment 418 above.

420. S 4 H l (f) (Page 22 of 50) DMR What is the DMR? (West Richland)

Response: Please see response to comment 418 above.

421. H.2.a.i - Conduct the analysis within the holding time required by the method (24 hours for pH or 48 hours for turbidity**).** Add – "and 28 days for phosphorus" (King Co)

Response: Holding time language was deleted.

422. Section H. Sampling and Analysis – General Procedures Sample preservation methods are not appropriate as permit conditions, because standard methods vary according to type of analysis and the amount of time between collection and analysis. Where preservation by chilling to 4° C is a method employed for certain analyses, it is not necessary for most analyses required under this permit. Permit conditions of this type merely creates more burden for the permittee and provide no increased environmental protection. The Boeing Company requests that the Department remove the reference to preservation methods from the permit and include them in the appropriate guidance document e.g. Construction Stormwater Sampling Manual. (Boeing)

Response: Sample preservation methods have been deleted.

423. Comment 26: Condition S4.H.f. excuses permittees from sampling "outside of working hours." This presents opportunities to permittees for monitoring gamesmanship, i.e., a permittee could avoid sampling and, potentially, a permit violation by suspending or postponing work until a discharge stops. This condition should be written to avoid manipulation of "working hours" to avoid monitoring requirements. It should qualify "working hours" as "standard working hours." (Puget Soundkeeper)

Response: Language changed to "Sampling is not required outside of normal working hours or during unsafe conditions."

424. S4.H.1.b. Sampling and Analysis – The requirement to collect samples "as close to the point of discharge from the site as reasonably practical" is not applicable for the

assessment for turbidity and pH. This language should be changed to acknowledge that reality.

Discussion - The proposed permit language referring to the "point of discharge" simply creates confusion. Comments provided for Special Condition S3.A. above (comments numbered 5 and 6) explain this. (Weyerhaeuser)

Response: Language has been deleted.

425. S4.H.5.b This section should reference "S4.G" rather than "S.4.F." (AGC)

Response: Formatting has been revised.

S5. Reporting and Recordkeeping Requirements

S5.A. - High Turbidity Phone Reporting

426. Suggest moving S5A closer to S5 F as they both deal with reporting water quality problems (WSDOT)

Response: S5.F is more broad than "water quality problems" such as high turbidity; it deals with any kind of permit non-compliance. No change.

427. Any time turbidity sampling performed in accordance with Special Condition S4.C indicates turbidity is 250 NTU or greater (or transparency is 6 cm or less) the Permittee shall notify the appropriate Ecology regional office by phone within 24 hours of analysis."

Add – "High turbidity phone reporting shall also include the local jurisdiction's inspection agency, where available, where a construction permit is issued." The application of this provision in the case of a QLP needs to be clarified. Does Ecology want to be notified in all cases, even when there is a QLP? Should the notification go to the QLP, which is then required to report to Ecology? The latter would seem preferable, if Ecology wants the notice. Even better would be a requirement that the QLP include these reports in its monthly or quarterly reports. (King Co)

Response: QLP provisions have been deleted. No change to phone reporting language.

Discharge Monitoring Reports (DMRs)

428. S5 B : Monthly discharge reports impose unreasonable costs on sites less than five acres, particularly given that regulatory imposition of the stormwater permit is entirely new. (BIAW)

Response: RCW 90.48.555(8)(a) requires an "adaptive management mechanism, [which] include[s], at a minimum, the following elements: … (v) Reporting to the department." This new section of state law applies to all sites under this general permit regardless of acreage. Ecology plans to minimize the cost of reporting by making electronic (internet-based) DMRs available.

429. Section S.5.B Discharge Monitoring Reports – The requirement should be eliminated for sites between 1 and 5-acres for the reasons stated above [*in comment 1.G.*]. (City of Kennewick)

Response: Please see response to comment 428 above.

430. B.- When a permit is issued by a QLP, should the Discharge Monitoring Reports be sent to them instead of Ecology? (King Co)

Response: QLP provisions have been deleted.

431. Relative to the compliance reporting requirements associated with National Pollutant Discharge Elimination System (NPDES) permits for wastewater treatment plant discharges, the compliance reporting provisions for this permit appear weak. While the need for monitoring and reporting of discharge quality is significantly improved in this draft permit, the indication that Ecology will "prioritize" enforcement and technical assistance actions based on reported exceedances of standards effectively provides incentive for under- reporting of turbidity values. A contractor who wishes to avoid Ecology inspections will, no effective enforcement? Are Ecology's enforcement costs adequately considered in the economic analysis? Ecology may wish to consider a provision for third party sampling, split samples taken at the time of site evaluations, or some other mechanism to enhance the probability of compliance. (Dept of Corrections)

Response: Ecology believes that the reporting requirements in this general permit are justifiably different than the requirements for wastewater treatment plants, and appropriate for a stormwater general permit. In Washington State, and in the rest of the United States, self-monitoring and reporting is the cornerstone of the NPDES Program. Ecology has several tools available to prevent or minimize problems with self-monitoring and reporting. Compliance inspections are routinely performed by Ecology staff and typically include a thorough inspection of BMPs and treatment facilities. These inspections allow staff to determine whether the facility is capable of producing an effluent that will meet the effluent limits. Additionally, Ecology may also conduct periodic sampling of a permittee discharge to determine if the results differ significantly from those reported by a permittee.

The first question: "A contractor who wishes to avoid Ecology inspections will, no effective enforcement?" is not complete. No response was possible.

In response to the question about Ecology's enforcement costs, these costs were not included in the economic analysis in accordance with WAC 173-226-120(4).

432. What will DOE do with the data submitted? If DOE issues the permit as written, which we strongly discourage, we request DOE to review the data collected one year after implementation to determine if this is the most effective way to protect the environment. (Master Builders)

Response: Reporting is required by RCW 90.48.555(8)(a). Reported data will be entered into Ecology's Water Quality Permitting Life Cycle System (WPLCS) database, where it will be used by Ecology staff and be available for public review. Data will be reviewed periodically, and will be used to write the 2010 general permit consistent with state and federal laws.

433. **Electronic submittal.** Applications and DMRs should all be submitted electronically. After submittal, they should immediately be placed on Ecology's web site. These are both short forms and should be easy to create in an electronic format within a few months. Required submittals should be an easy process for facility operators and will enhance public participation in the permitting process. (People For Puget Sound)

Response: Ecology will allow and promote the use of electronic applications and DMRs. However, Ecology recognizes that some permittees may not have computer/internet access, so the permit will also allow paper forms to be submitted by mail.

434. S5.C (Page 23 of 50) "The Permittee shall retain records ... for a minimum of three years following the termination of permit coverage." Considering the fact that construction firms come and go, how will this record keeping requirement be met if a construction firm goes out of business? (City of Richland)

Response: Records can be stored in the same manner as their business and tax records (file cabinets, computer files, etc.). The 3-year record retention language is required by federal law [40 CFR 122.41(j)(2)].

435. S5C (Page 23 of 50) "The Permittee shall retain records , , for a minimum of three years following the termination of permit coverage " Considering the fact that construction firms come and go, how will this record keeping requirement be met if a construction firm goes out of business? (EWWA)

Response: Please see response to comment 434 above.

436. S5C (Page 23 of 50) "The Permittee shall retain records , , for a minimum of three years following the termination of permit coverage " Considering the fact that construction firms come and go, how will this record keeping requirement be met if a construction firm goes out of business? (West Richland)

Response: Please see response to comment 434 above.

437. S5 C : A three-year records retention requirement is also unreasonable, given the number of other contracts and regulatory paperwork required for each project. Most small builders have limited, if any, office space to store ongoing documentation, let alone three years worth. (BIAW)

Response: Please see response to comment 434 above.

438. - *Delete* - "or when requested by Ecology" (King Co)

Response: This standard language is consistent with the Industrial Stormwater General Permit. No change to condition.

439. **D.4 – The individual who performed the analyses;** *Add* – "The individual or laboratory…" (King Co)

Response: WAC 173-220-210(2)(b)(iii) requires "who performed the analyses"; this individual's name is basic "chain of custody" information. No change to the permit.

440. **S5.E Comment 32:** The reference to S5.E.1. in Condition G15 should be to S5.F. (Puget Soundkeeper)

Response: Correction made.

S5.F - Noncompliance Notification

441. S5 F 2 WSDOT suggests eliminating multiple redundancies within the same sentence like 1) stop... discharge/pollution, 2) stop the non-compliance, and 3) correct the problem (WSDOT)

Response: This language has been clarified as follows:

Noncompliance Notification

In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may cause a threat to human health or the environment, the Permittee shall:

1. Immediately notify Ecology of the failure to comply.

2. Immediately take action to prevent the discharge/pollution, or otherwise stop or correct the noncompliance and, if applicable, repeat sampling and analysis of any noncompliance immediately and submit the results to the Department within five (5) days after becoming aware of the violation.

442. S5 F 3 Question: Will email suffice? (WSDOT)

Response: No, federal rule [40 CFR 122.41 (l)(6)(i)] requires oral notification: "… information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances."

443. S5 F 3 The last sentence is not necessary (redundant), as violations are not allowed per G-1 and S-3. (WSDOT)

Response: This is standard NPDES permit language based on federal and state requirements. No change.

444. Please define the terminology and provide criteria to help the permittee know if they have a situation that "*causes a threat to human health or the environment*". This can be interpreted very broadly when "environment" is included and clarification of the intent, possibly with some examples would be helpful, in the definitions. (Otak)

Response: This is standard NPDES permit language based on federal requirements [40 CFR 122.41 (l)(6)(i)], and it is not possible to further define this terminology in a general permit. The language has been clarified to the extent possible (see response to comment 441 above. Separate permit implementation guidance is forthcoming and this issue should be addressed.

445. Page 24, S5.F.1: If fish or wildlife are threatened or killed, contact should also be made to WDFW. (WDFW)

Response: Ecology has considered the suggestion, but has determined that the legal authority does not exist for such a requirement in an NPDES permit. No change. Separate permit implementation guidance is forthcoming and this issue should be addressed.

446. – In the event the Permittee is unable to comply with any of the terms and conditions of this permit due to any cause, and which causes a threat to human health or the environment, the Permittee shall
Add – "causes a threat to human health or the environment <u>as defined in Special Condition S3,</u>" (King Co)

Response: This is standard NPDES permit language based on federal requirements [40 CFR 122.41 (l)(6)(i)], and Ecology has decided not to limit applicability to Condition S3.

447. F.2 Noncompliance Notification *Delete* 'etc' following 'discharge(s)/pollution…' (King Co)

Response: Language has been revised to improve clarity, and "etc." has been deleted. See response to comment 441 above.

448. Section F. Noncompliance Notification; Subsections 2. and 3. The requirement to submit a detailed written report and analytical data within 5 days is much too stringent. It would be very difficult to receive analytical data and to determine detailed steps to reduce, eliminate, and prevent reoccurrence of noncompliance in such a short period of time. The Industrial Storm Water General Permit (ISWGP) allows for immediate notification followed by a written report in 30 days. The draft permit already requires immediate verbal notification to the Department with a provision for the Department to require earlier submission. Changing the report and analytical data submission period to 30 days will follow the standard set by the ISWGP. (Boeing)

Response: The 5 day notification is required by 40 CFR 122.41(l)(6)(i). Considering that typical construction sites will be performing simple on-site sampling/analysis (turbidity and/or pH) the 5 day requirement appears to be feasible. No change to the permit.

S5.G. Public Access to SWPPPs

449. Special Condition S5 G: The requirement to provide a copy of the SWPPP to the public when required in writing should be deleted. The Seventh Circuit Court of Appeals recently held that the public is not entitled to the SWPPP as part of'the public review and comment aspect of NPDES permitting *Texas Independent Producers and Royalty Owners Assn v EPA,* 410 *F* 3d 964 ('7" Cir 2005) (notice of intent and SWPPPs are not permits or permit applications). (Sound Transit)

Response: This requirement is consistent with the Industrial Stormwater General Permit, and Sand and Gravel General Permit. This public review period, however, is limited to after permit coverage has been granted; not during the public comment period for applications for new or modified permit coverage (WAC 173-226).

450. Special Condition S5 G*:* The requirement to provide a copy of the SWPPP to the public when required in writing should be deleted The Seventh Circuit Court of Appeals recently held that the public is not entitled to the SWPPP as part of the public review and comment aspect of NF'DES permitting. *Texas Independent Producers and Royalty Owners Assn* ***v*** *EPA,* 410 *F* 3d 964 (7'h Cir 2005) (notice of intent and SWPPPs are not permits or permit applications) (Costco)

Response: Please see response to comment 449 above.

451. We are disappointed that the department retains a provision in condition S5 allowing public access to SWPPPs. This is a provision original to the State of Washington and sets up significant security and safety issues for construction sites. This provision should be limited to public requests for SWPPPs through the Department of Ecology. SWPPS should only be available to the public through a request to the Department of Ecology. (AGC)

Response: In cases where the permittee does not want to provide the SWPPP directly to the public, Ecology will mediate public requests for SWPPPs as set forth in the permit. This should take care of any security and safety issues.

452. S5.G Public access to a SWPPP should be through the Department of Ecology. (AGC)

Response: Please see response to comments 449 and 454 above.

453. Condition S5.G.2. should specify that the SWPPP, *including monitoring plans and site log*, must be provided to the public as specified. (Puget Soundkeeper)

Response: Condition S5.G has been revised to include public access to all required plans and records (permit, site log book, SWPPP, authorization letter). The permit does not require a separate monitoring plan; monitoring would be included in the SWPPP.

454. The second paragraph of Condition S5.G.2.b. gives the permittee an option to respond to a request from the public for a copy of the SWPPP by providing a copy to Ecology. Timing requirements (ten days) should be inserted for this option, as well as a requirement to notify the requester within a specified time of the permittee's selection of this option. Without these changes, a permittee could arguably comply by simply forwarding a copy of the SWPPP to Ecology at any time after receipt of a public request and without providing any notification to the requestor. (Puget Soundkeeper)

Response: To address this comment, the paragraph has been replaced with language based on the recent settlement of the Sand and Gravel General Permit appeal:

> Within 14 days of receipt of the written request, the Permittee may submit a copy of the plans and records to Ecology for viewing and/or copying by the requestor at an Ecology office, or a mutually agreed upon location. If plans and records are viewed and/or copied at a location other than at an Ecology office, the Permittee will provide reasonable access to copying services for which a reasonable fee may be charged. The Permittee shall notify the requestor within 10 days of receipt of the request where the plans and records may be viewed and/or copied.

455. S5G, G3, S9B2 all include access requirements for plans are records and all three sections contradict each other on timeframes for providing SWPPS (i.e., G- reasonable time, S5-14 days and S9-immediately), Access to documents should only be discussed in one location in order to eliminate such contradictions. (WSDOT)

Response: The following two requirements are not contradictory. To clarify, S5.E (formerly S5.G) "available upon request to Ecology" refers to availability during on-site inspections. S5.E1 (formerly S5.G3) refers to "written requests… from Ecology. The "on-site plan availability to Ecology" language is S9.B3 was redundant with S5.E and has been deleted to make the permit more concise.

S6. Permit Fees

456. What will the collected permit fees be used for? (Master Builders)

> **Response**: Ecology is required by statute (RCW 90.48.465) to recover the costs of administering waste water discharge permit program including the construction stormwater general permit. Some of the administrative activities supported by permit fees include writing and issuing permits, inspections, technical assistance and data management. In 2004, the state Legislature directed Ecology to establish an inspection and compliance assurance program for the construction stormwater general permit (RCW 90.48.560) and to establish permit fees sufficient to pay for the permitting and inspection of construction sites (RCW 90.48.565).

457. The Permittee shall pay permit fees assessed by the Department. Fees for stormwater discharges covered under this permit shall be established by Chapter 173-224 WAC. Permit fees will continue to be assessed until the permit is terminated in accordance with Condition S10 or revoked in accordance with Condition G5.
Add - No fees will be assessed by the Department on permits issued by QLP.
Replace - Condition S10 *with* – Special Condition S10
Replace - Condition G5 *with* – General Condition G5 (King Co)

> **Response:** QLP requirements have been deleted. The terms "Special" and "General" have been added before Condition S10 and Condition G5, respectively.

S7. Solid and Liquid Waste Disposal

458. Solid and liquid wastes generated by construction activity such as demolition debris, construction materials, contaminated materials, and waste materials from maintenance activities, including liquids and solids from cleaning catch basins and other stormwater facilities, shall be handled and disposed of in accordance with
    1. Special Condition S3, Compliance with Standards, and
    2. WAC 173-216-110.

The proper handling and disposal of the wastes listed in this section are addressed in various other WACs including WAC 173-350 (Solids Waste Handling Standards) and WAC 173-303 (Dangerous Goods).
Replace – "1. Special Condition S3, Compliance with Standards, and 2. WAC 173-216-110." *with* – "requirements and standards found in applicable regulations." (King Co)

> **Response:** Ecology does not have the statutory authority to require compliance with solid waste regulations (WAC 173-350, WAC 173-303) in a stormwater general permit. No change.

459. **Sediment Disposal.** The permit should specify where sediment from sediment traps and other on-site retention areas is disposed and method of disposal. Some of this material will include toxic contaminants (which is one of the reasons it is being retained) and therefore care should be taken as to disposal. Most operators will likely handle the sediment in an effective manner but the permit should be more specific in order to protect against actions by rogue operators. (People For Puget Sound)

Response: The requirements for sediment disposal is site specific and case specific, so Ecology has decided to defer to the following permit language (revised per comment above):

SOLID AND LIQUID WASTE DISPOSAL
Solid and liquid wastes generated by construction activity such as demolition debris, construction materials, contaminated materials, and waste materials from maintenance activities, including liquids and solids from cleaning catch basins and other stormwater facilities, shall be handled and disposed of in accordance with

1. Special Condition S3, Compliance with Standards, and

2. WAC 173-216-110, WAC 173-350, WAC 173-303, and other applicable regulations.

460. S7 As there is no reason to presume that any discharges that violate standards are allowed under any circumstances there is no need to reference S3 (WSDOT)

Response: Given the specific context of this cross-reference to S3, this language will be retained.

S8. Operation and Maintenance

461. Special Condition S8 ("Operation and Maintenance") duplicates other permit conditions pertaining to BMPs and SWPPPs and, therefore, should be deleted (Sound Transit)

Response: Ecology agrees and has deleted this redundant language, and has consolidated all 303(d)/TMDL related requirements in S8.

462. Special Condition S8 ("Operation and Maintenance") duplicates other permit conditions pertaining to BMPs and SWPPPs This condition serves no additional environmental benefit and exposes permittees to multiple violations for the same regulatory obligations, The condition should be deleted, (Costco)

Response: See response to comment 461 above.

463. A – Proper operation and maintenance also includes, but is not limited to… *Delete* 'but is not limited to' (King Co)

Response: This condition has been deleted. See response to comment 461 above.

464. Duty to Mitigate *Add* – "causes a threat to human health or the environment <u>as defined in Special Condition S3,</u>" (King Co)

Response: This condition has been deleted. See response to comment 461 above.

465. S8 introduction This section appears to contain language that appears to have come from indusb.ia1 or municipal permits and is inappropriate for small construction projects like

"maintenance also includes adequate laboratory controls", and "this provision requires the operation of backup or auxiliary facilities or similar systems" Such text will only confuse permittees and should be removed or revised. (WSDOT)

Response: This condition has been deleted. See response to comment 461 above.

466. Comment: S8 1 through 4 These conditions largely duplicate conditions already described in S3, S4, S5, S9, and S10 Redundancies need to be eliminated to avoid confusion. (WSDOT)

Response: This condition has been deleted. See response to comment 461 above.

467. Both Special conditions S8 A 1 and S9 D 1 l(a and b) describe BMP maintenance requirements. BMP maintenance requirements should be in a single location. (WSDOT)

Response: Condition S8 has been deleted. See response to comment 461 above.

468. Comment: Both Special conditions S8 A 4 and S9 B describe the need to maintain a SWPPP. SWPPP requirements should be in a single location (WSDOT)

Response: Condition S8 has been deleted. See response to comment 461 above.

469. Comment: Conditions S8 B and G10 both discuss preventing the discharge of sludge. Sludge could be discussed in a single location. (WSDOT)

Response: Condition S8 has been deleted. See response to comment 461 above.

S9. Stormwater Pollution Prevention Plans

General

470. Section S.9 Storm Water Pollution Prevention Plan – Develop a simplified approach for the developers of sites between 1 and 5-acres. The focus needs to be on the installation and maintenance of erosion controls, instead of on monitoring equipment, CECSL's and reports that do not directly reduce erosion storm water runoff. (City of Kennewick)

Response: Ecology has recently produced a Stormwater Pollution Prevention Plan Template to help 1-5 acre sites comply with permit requirements: http://www.ecy.wa.gov/programs/wq/stormwater/construction/#swppp_template

Monitoring requirements are required by RCW 90.48.555(8)(a), and 1-5 acre sites may use a low-cost, simple transparency tube for sampling rather than a turbidimeter.

471. Preparation of a storm water pollution prevention plan for every project will likely mean that we'll have to hire additional engineers and maintain additional records. This requirement is expected to cost and additional two to ten thousand dollars per project. (Barclays North)

Response: The development and implementation of a stormwater pollution prevention plan is required by EPA's Phase II Stormwater Rule. Ecology has recently developed a computer based stormwater pollution prevention plan (SWPPP) template to help minimize the cost of a quality SWPPP.

472. S9 largely contains 7 pages of text copied from chapter 2 of Ecology's Stormwater Management Manual for Western Washington. This section adds greatly to the length and complexity of' the permit and introduces inconsistencies. The permit could reference approved manuals or provide a brief summary of the most important elements (especially S9.D). Part of S9 overlap or contradicts other parts of the permit should be removed Examples include:
    - S9 B 2 is inconsistent with G-3 B
    - S9D.12b and c simply reference other sections and can be deleted
    - S9 C 4 repeats, with inconsistencies S3 D.2
    - S4 F.6b and S9D9f.
    - S8,A 1 and S-9D.11
    - S8A 4 and S-9B (WSDOT)

    Responses:
    - S9.B.2 is not inconsistent with G-3 B, but S9.B2 has been deleted because all "access to plans and records" requirements were consolidated in Condition S5.
    - S9D.12b and c: Ecology has determined that these fundamental requirements of the permit and stormwater manuals warrant repetition. However, "as needed" is not consistent with timeframes specified elsewhere (S4 and S9) and has been deleted.
    - S9 C 4 and S3 D.2: This repetition is necessary. S9.C.4 is consistent with S3.D.2.
    - S4 F.6b and S9D9f: No problem detected.
    - S8,A 1 and S-9D.11: S8 Operations and Maintenance deleted to reduce redundancy.
    - S8A 4 and S-9B: S8 Operations and Maintenance deleted to reduce redundancy.

S9.A. - SWPPP Objectives

473. **S9.A.3 SWPPP, Objectives (pg 26)** I note that the term "volume" is used. Is ecology requiring retention of stormwater to ensure that runoff volumes do not exceed the undeveloped condition? If so, this will be a very difficult requirement to meet, particularly in wetter areas with fine soils. Detention is allowed by stormwater manuals for treated post development flows and, when properly designed should be allowed under this permit when allowed by the local jurisdiction without also requiring retention. Retention should only be required when there are no available conveyance systems with adequate capacity, local governments require it, or direct discharge is not possible. (Otak)

    Response: The permit does not require control of runoff volumes from the construction site or the developed site condition. The term "volume" has been deleted

and "peak flow rates" has been changed to "peak volumetric flow rates and velocities" to more explicitly state that flow control requirements address "cubic feet per second" and "feet per second" of stormwater runoff. Ecology's stormwater manuals have Best Management Practices to deal with both.

474. **Comment:** S9A 1 through 3 could be greatly condensed For example S9.A3 could be condensed from: To "prevent, during the construction phase, adverse water quality adverse impacts of beneficial uses of the receiving water by controlling peak flow rates and volumes of stormwater at the permittee's outfalls and downstream of the sites to: To control peak stormwater discharge flow rates "
Why shorten it?
    - Construction permits are specific to construction
    - Ecology-mandated detention BMPs control peak flow rates, not volumes
    - The permit should focus on what is and what is not allowed - the reasons for permit requirements are described in Ecology's Guidance manuals (WSDOT)

    Response: Ecology has revised the sentence: "To control peak volumetric flow rates and velocities of stormwater discharges".

475. **A.1. "To implement Best Management Practices (BMPs) to prevent erosion and sedimentation, and to identify, reduce, eliminate or prevent stormwater contamination and water pollution from construction activity."** Add – after "**construction activity.**" "and to implement source control BMPs for construction activities." (King Co)

    Response: The suggested language is already covered by "(BMPs)… to identify, reduce, eliminate or prevent stormwater contamination and water pollution…". No change.

476. Page 26, S9.A3: The goals of the prevention plan should also include prevention of 1) downstream erosion and 2) impacts to aquatic habitat. (WDFW)

    Response: The suggested language is adequately covered by the listed goals:
    - To implement Best Management Practices (BMPs) to prevent erosion and sedimentation, and to identify, reduce, eliminate or prevent stormwater contamination and water pollution from construction activity.
    - To prevent violations of surface water quality, ground water quality, or sediment management standards.
    - To control peak volumetric flow rates and velocities of stormwater discharges.

S9.B. - General Requirements

477. **Comment:** WSDOT suggests eliminating unnecessary repetition of the phrase "in accordance with the requirements of this permit" in S9(introduction) and S9 B 1 (WSDOT)

Response: The repetition has been eliminated. "…beginning with initial soil disturbance and until final site stabilization" has been moved up to the introduction; and "in accordance with the requirements of this permit" has been deleted from S9.B.1.

478. Are there any requirements concerning who must prepare a SWPPP (P.E., P. Geologist, etc.? For many sites the SWPPP will be a complex document the preparation of which will require specialized skills. A CESCL must perform inspections, but it seems that anybody can prepare SWPPPs. (Otak)

Response: The permit does not contain legally mandated minimum qualifications for the lead person in charge of preparing a SWPPP. State law (Chapter 18.43 RCW), and regulations (Chapter 196 WAC) requires that engineering work be performed by or under the direction of a professional engineer licensed to practice in Washington State. Therefore, those portions of construction SWPPP's that involve engineering calculations must be prepared by or under the direction of a licensed engineer. In particular, those Best Management Practices that involve engineering calculations for proper sizing or placement must be designed by or under the direction of a licensed engineer. BMP's that require such calculations include:

C131 - Gradient Terrace
C200 - Interceptor Dike or Swale
C201 - Grass-lined channel
C204 - Pipe slope drains
C205 - Subsurface drains
C206 - Level Spreaders
C209 - Outlet Protection
C232 - Gravel Filter Berm
C240 - Sediment Trap
C241 - Sediment Pond
C250 - Chemical Treatment
C251 - Filtration

479. S9.B.1 Ecology retains the requirement that a SWPPP be prepared and fully implemented in accordance with the permit beginning with the initial soil disturbance. No effort has been made to clarify this condition with the requirement that the NOI include a certification that an adequate SWPPP has been developed at the time of application. (AGC)

Response: The permit (S2) has been revised. The SWPPP must be developed prior to soil disturbance; and does not necessarily need to be developed at the time of application (NOI submittal).

480. **Construction Phasing/Sequence and BMP Implementation Schedule** Section **S9.B.l.d** requires that the SWPPP include documentation regarding the "[c]onstruction

phasinglsequence and BMP implementation schedule." Such schedules and sequences are often subject to change by the weather and by third-parties. The provision is unclear as to what level of detail the SWPPP narrative must specifically describe a sequence of construction. We request that it be sufficient that such information may be gleaned from records kept in the ordinary course of construction activities, provided copies are attached to the SWPPP or available upon request. Regarding the BMP implementation schedule, we request that it be sufficient to include a narrative and documents generally describing the timing, rather than requiring exact dates. In that regard, we suggest that the following provision describing the documents in the SWPP narrative under S9.B. 1 be revised as follows: **d. Records kept in the ordinary course of construction activities describing the** construction phasing/sequence and **general timeframe for** the BMP implementation schedule. (Centex Homes)

Response: The requirement to include "construction phasing/sequence and BMP implementation schedule" information may be satisfied by attaching existing documentation in the manner suggested. Exact dates are not necessary. However, to keep this section concise, the revision will be limited to adding "general": "Construction phasing/sequence and general BMP implementation schedule".

481. **B.1.g** A reference to compliance with the Site Log Book requirements of S4.A would be adequate for the narrative. (King Co)

Response: Site Log Book has been deleted from SWPPP narrative list; this is covered adequately in S4. Monitoring.

482. **Comment:** S9B 1 g The site log book accompanies the SWPPP. It is not a component of the SWPPP narrative (WSDOT)

Response: Ecology agrees with the comment and has deleted site log book from S9.B.1.g.

483. Special Condition S9 B 2 requires the permittee to make the SWPPP "immediately" available upon request to Ecology or the local jurisdiction The "immediate" language should be replaced with "in a reasonable time " On a large construction site, the SWPPP is often located in the construction trailer and it may not be possible to "immediately" produce that document. (Sound Transit)

Response: Ecology has decided to retain "immediately". This requirement has been in effect for over 10 years. Ecology inspectors use discretion when implementing this in the field, and would accommodate the amount of time it takes to retrieve the SWPPP from the construction trailer on a large site.

484. Special Condition S9 B 2 requires the permittee to make the SWPPP "immediately" available upon request to Ecology or the local jurisdiction. The "immediate" language should be replaced with "in a reasonable time". (Costco)

Response: Please see response to comment 483 above.

485. **Comment:** S9 B 3 should be more succinctly written We suggest replacing the existing text with: "The SWPPP narrative and map should be modified within XX days whenever changes are necessary, for any reason, to prevent or stop discharges of pollutants " (WSDOT)

Response: This condition has been revised to improve clarity and ensure consistency with the timeframes for SWPPP revision and BMP implementation in S4 – Monitoring:

The Permittee shall modify the SWPPP if, during inspections or investigations conducted by the owner/operator, or the applicable local or state regulatory authority, it is determined that the SWPPP is, or would be, ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The Permittee shall take the following actions:

a. Review the SWPPP for compliance with Condition S9 and make appropriate revisions within 7 days of the inspection or investigation;

b. Fully implement and maintain appropriate source control and/or treatment BMPs as soon as possible, but no later than 10 days from the inspection or investigation; and

c. Document BMP implementation and maintenance in the site log book.

S9.C. – Stormwater Best Management Practices

486. Condition S9.C.3. would allow SWPPP BMPs to be consistent with "[o]ther stormwater management guidance documents or manuals which provide an equivalent level of pollution prevention and are approved by Ecology." This provision does not specify the identity of any such "other stormwater management guidance documents or manuals," nor any procedure (including public participation) for Ecology approval of such. NPDES permits should not incorporate unidentified guidance documents or documents that do not yet exist. In addition, this provision would allow Ecology to effectively modify permit conditions by approving, and thereby authorizing for use under this permit, guidance documents or manuals after the date of permit issuance without following mandatory permit modification procedures. A similarly objectionable reference is included in Condition S3.D.2., where there should also be a reference to specific manuals. (Puget Soundkeeper)

Response: RCW 90.48.555(6)(b)(i) allows BMPs to be consistent with "[o]ther stormwater management guidance documents or manuals which provide an equivalent level of pollution prevention and are approved by Ecology". Since equivalency (equivalent level of pollution prevention) is known up front, this does not consistitute a permit modification.

S9.D. – SWPPP – Narrative Contents and Requirements

487. S9.D SWPPP, pages 28-32 . The CWHBA is concerned that the extensive and subjective requirements of S9.D are subject to interpretation as to "adequacy". This makes the SWPPP vulnerable to public comment under S2.B.6 and will cause unnecessary delays for approval. (CWHBA1)

    Response: Ecology believes that the SWPPP requirements in S9.D are clear and objective. Condition S2 Application Requirements has been revised; SWPPPs do not need to be submitted or made available during the public comment period.

488. S9 D : BIAW is primarily concerned about the ability of small contractors and property owners to develop individual SWPPPs that meet the extensive, prescriptive, and subjective standards of S9.D. While we are hopeful that DOE will be able to develop a SWPPP "plug-n-play" template, until that time we are opposed to requiring sites less than five acres to develop technical and confusing SWPPPs for which they are liable. This is of concern because the permit does not indicate a baseline for what entails an "adequate" SWPPP. Moreover, this new (and incredibly large) number of new permit applicants could be endlessly delayed by the public requesting and appealing SWPPPs under S2. (BIAW)

    Response: Ecology believes that the SWPPP requirements in S9.D are clear and objective. The new SWPPP template is available and should help small contractors develop an adequate SWPPP narrative to comply with the permit: http://www.ecy.wa.gov/programs/wq/stormwater/construction/#swppp_template Condition S2 Application Requirements has been revised; SWPPPs do not need to be submitted or made available during the public comment period.

489. MBA is concerned about the ability of small contractors and property owners to develop individual stormwater pollution prevention plans (SWPPPs) that meet the extensive, prescriptive, and subjective standards of section S9.D. While we are hopeful that DOE will be able to develop a SWPPP template, until that time we are concerned about requiring sites under five acres to develop technical and confusing SWPPPs for which they are liable. This is a concern because the permit does not indicate a baseline for what an "adequate" SWPPP entails. (Master Builders)

    Response: Please see response to comments 470 and 471.

490. Page 28, S9 D - we support including the 12 minimum control measures for erosion and sediment control from the department's stormwater manuals. This provides permittees with clear direction and clarifies expectations. (PSAT)

    Response: Ecology appreciates the support and agrees that inclusion of the 12 elements provides clear direction and certainty.

491. **Comment 30:** Condition S9.D. describes twelve elements for inclusion in the narrative of the SWPPP, but these elements are slightly different from the way they are specified in the Stormwater Management Manual for Western Washington, Vol. 2. The twelve elements in the permit for inclusion in the SWPPP should match the manual's requirements. (Puget Soundkeeper)

Response: The revised elements offer an equivalent or superior level of environmental protection. The minor changes were necessary to address the following issues:

- The need to integrate, and make distinctions between the 12 elements from both the Eastern and Western WA manuals;
- The manuals contained some "informational" language which was not appropriate for a regulatory permit.
- Technical issues addressed during the public comment.
- Other revisions were made to improve clarity, reduce redundancy, and address technical issues.

492. **Question 30.1:** Why are the S9.D. elements different from those in Vol. 2 of the Stormwater Management Manual for Western Washington? (Puget Soundkeeper)

Response: Please see response to comment 491 above.

493. S9.D, pages 28 - 32. The Permit should clearly state that all 12 elements may not apply to a project's SWPPP. In the first paragraph of S9.D, page 28, delete "...and the exemption from that element is clearly justified in the SWPPP." How does a Developer "justify" an exemption if an element does not apply to a project? (CWHBA)

Response: A simple written statement describing why a particular element is not applicable to a project will suffice. Some examples are provided to illustrate the appropriate level of detail:

- The project is an unvegetated (crushed rock) redevelopment site and all subgrade soils on the property will be disturbed. The SWPPP does require BMPs to address Element #1 – Mark Clearing Limits.
- The project has flat topography (<2% maximum grade) and no steep slopes are present. See attached site map. The SWPPP does not require BMPs related to Element #6 – Protect Slopes.
- The project will not discharge to any storm drains. All stormwater will be drain south into the roadside ditch on the north side of Apple Valley Road before entering the Yakima River 9000' to the north. Storm drain inlet protection BMPs are not required; Element #7 – Protect Drain Inlets is not applicable.
- The project will not involve the discharge (pumping) of foundation, vault, trench, or excavation dewatering water off-site, so Element #10 - Control De-Watering does not apply.

494. S9.D (Page 28-32 of 50) SWPPP – Narrative Contents and Requirements "Each of the 12 elements ... shall be included in the narrative of the SWPPP ... unless site conditions render the element unnecessary..." This reads that all 12 elements shall be included in the narrative even if the site conditions render one or more of the elements unnecessary. Why even include the unnecessary element in the narrative of the SWPPP? (City of Richland)

Response: Please see response to comment 493.

495. S9 D (Page 28-32 of 50) SWPPP - Narrative Contents and Requirements "Each of the 12 elements shall be included in the narrative of the SWPPP unless site conditions render the element unnecessary ". This reads that all 12 elements shall be included in the narrative even if the site conditions render one or more of the elements unnecessary. Why even include the unnecessary element in the narrative of the SWPPP? (EWWA)

Response: Please see response to comment 493.

496. S9 D (Page 28-32 of 50) SWPPP - Narrative Contents and Requirements "Each of the 12 elements shall be included in the narrative of the SWPPP unless site conditions render the element unnecessary ". This reads that all 12 elements shall be included in the narrative even if the site conditions render one or more of the elements unnecessary. Why even include the unnecessary element in the narrative of the SWPPP? (West Richland)

Response: Please see response to comment 493.

S9.D.1.b SWPPP, Narrative Contents, Clearing Limits (pg 28)

497. Page 28, S9.D.1.A: "Sensitive areas and their buffers" needs to be defined. (WDFW)

Response: The following definitions have been added to Appendix A:

a. *Sensitive area* means a waterbody, wetland, stream, frequently flooded area, aquifer recharge area, or channel migration zone.
b. *Buffer* means an area designated by a local jurisdiction that is contiguous to and intended to protect a sensitive area.

498. It is not clear what is being required by S9.D.1.b, please explain. While I understand and support the concept of preserving native vegetation and top soils, I do not think it is a good idea to make it a permit requirement unless very carefully thought out to ensure workability and clarity for the permittee. Please explain how the standard "maximum extent practicable" will be assesses and complied with. This seems to be a very subjective criteria which will likely lead to "nuisance" permit challenges by project opponents, creating delays and increasing costs for otherwise compliant permittees. (Otak)

Response: Preserving native vegetation and topsoils, is not a permit requirement, it is a fundamental stormwater management concept and source control BMP to prevent soil erosion and compaction which can lead to short and long term water quality

impacts. Ecology strongly encourages permittees to minimize clearing and soil disturbance to the maximum degree practicable, but recognizes that this is not always feasible. Ecology does not expect this element to lead to nuisance permit challenges or delays.

Note: Since ***maximum extent practicable*** is defined differently in 40 CFR and municipal stormwater (MS4) permits, it was replaced with ***maximum degree practicable***.

499. "Mark Clearing Limits – b. The duff layer, native top soil and natural vegetation shall be retained in an undisturbed state to the maximum extent practicable." This statement does not make sense. Marking clearing limits means you are going to clear to those limits for the construction of your project. The duff layer or native top soil will be gone during the clearing of the project, so how can it be retained? (City of Richland)

    Response: Ecology believes this design element is technically sound and has real water quality benefits. Many projects do not require clearing and soil disturbance on 100% of the site. SWPPP designers should strive to minimize the footprint of the project and preserve vegetation and soils as much as possible. When applicable, the line between an area that will be disturbed, and an area that will be preserved (vegetation, sensitive areas, etc.), is called a "clearing limit". Clearing limits should be marked in the field and on the plans so that they are not inadvertently cleared or damaged by construction activity or traffic.

500. "Mark Clearing Limits - b The duff layer, native top soil and natural vegetation shall be retained in an undisturbed state to the maximum extent practicable" This statement does not make sense Marking clearing limits means you are going to clear to those limits for the construction of your project. The duff layer or native top soil will be gone during the clearing of the project, so how can it be retained? (West Richland)

    Response: Please see response to comment 499 above.

501. "Mark Clearing Limits - b The duff layer, native top soil and natural vegetation shall be retained in an undisturbed state to the maximum extent practicable" This statement does not make sense Marking clearing limits means you are going to clear to those limits for the construction of your project. The duff layer or native top soil will be gone during the clearing of the project, so how can it be retained? (EWWA)

    Response: Please see response to comment 499 above.

S9.D.2.e Construction Access, Street Wash

502. Comment #30: This criteria as written would give the SWPPP preparer the idea that discharging street wash water into private or public drywells (or other permanent infiltration systems) is allowed – which should not be the case. (Otak)

Response: Revision made: "…state surface waters" was replaced with "waters of the state", which includes discharges to drywells or other permanent infiltration structures. The revised sentence is "Street wash wastewater shall be controlled by pumping back on site or otherwise be prevented from discharging into systems tributary to waters of the state."

S9.D.2 Tracking Sediment Offsite

503. Section **S9.D.2** provides a number of BMPs to minimize the tracking of sediment onto public roads. We request clarification regarding the location of the point for assessing compliance with the general permit. Specifically, if the point of compliance is the "receiving water", as it appears to be under the terms of the general permit, why is it critical to address sediment in the public roads, which could be miles from receiving water and have BMPs to control sediment prior to the discharge point? Moreover, how much sediment may leave the site before triggering a violation? This has been an area of inconsistent enforcement throughout the country. Therefore, clarification would be appreciated. (Centex Homes)

    Response: These BMP are used when tracked-out mud and sediment can be washed into waters of the state, including storm drains and other conveyances tributary to waters of the state. The authority for this requirement is RCW 90.48.080:

    RCW 90.48.080 Discharge of polluting matter in waters prohibited.

    It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter.

    Point of compliance is site specific and case specific. Ecology inspectors meet on a regular basis to promote consistent implementation and enforcement.

504. Establish Construction Access – b, c, d These requirements portray the need for a separate eastern Washington permit. The large Central Basin is more concerned in preventing air pollution from wind events than the little annual rainfall we have. (City of Richland)

    Response: Ecology does not agree that these requirements portray the need for a separate Eastern Washington Permit. These elements were taken from the Stormwater Management Manuals for both Eastern and Western Washington, and are based on the cooperative efforts of dozens of regional stormwater professionals and stakeholders from the public and private sectors.

505. Establish Construction Access - b, c, d These requirements portray the need for a separate eastern Washington permit. The large Central Basin is more concerned in preventing air pollution from wind events than the little annual rainfall we have. (EWWA)

Response: Please see response to comment 504.

506. Establish Construction Access - b, c, d These requirements portray the need for a separate eastern Washington permit. The large Central Basin is more concerned in preventing air pollution from wind events than the little annual rainfall we have. (West Richland)

Response: Please see response to comment 504.

S9.D.3.a SWPPP, Narrative Contents, Control Flow Rates

507. This section states that flow control requirements will be "as required by local plan approval authority". Please clarify what is meant by "local plan approval authority". Is this Ecology, or is this meant to be Ecology or a Qualified local program? (Otak)

Response: Local plan approval authority means a local government or jurisdiction that regulates development and/or stormwater through an ordinance or code.

508. Page 28, S9.D.3.A: The DCSGP should add "aquatic habitat for fish and wildlife" as a criterion for controlling flow rates. (WDFW)

Response: The current criterion (Properties and waterways downstream from development sites shall be protected from erosion due to increases in the velocity and peak volumetric flow rate of stormwater runoff…) is intended to protect water quality for all beneficial uses, including aquatic habitat for fish and wildlife. No change.

S9.D.4.c SWPPP, Narrative Contents, install Sediment Controls

509. This language on juvenile salmonids is hard to interpret. Please provide an explanation of what this means and how compliance with it will be assessed so that theSWPPP preparer, the operator, the inspector, and the regulator all know how this is to be addressed. Examples of how this comes into play would be helpful. (Otak)

Response: This means that BMPs should not be placed in salmonid bearing waters at times of the year when this may cause a loss of habitat. Compliance is site specific, and will be assessed on a case by case basis.

In the Stormwater Management Manuals for Eastern and Western Washington, BMP C207 - Check Dams provides an example:

> Check dams shall not be placed below the expected backwater from any salmonid bearing water between October 1 and May 31 to ensure that there is no loss of high flow refuge habitat for overwintering juvenile salmonids and emergent salmonid fry.

510. Under section S9.D.4.a, a sediment pond or other appropriate sediment removal BMP is required prior to stormwater runoff leaving the construction site or discharging into an

infiltration facility. Under federal law, this requirement is only necessary for sites greater than ten acres. We request that this section is rewritten to reflect this. (Master Builders)

Response: Sediment control BMPs for construction sites have been AKART in Washington State for over ten years. EPA's requirement for a sediment pond is not based on the size of the *site*, it is based on the size of the contributing *drainage area*. A single site may be comprised of multiple drainage areas, and each drainage may require a different type of sediment control. Ecology's Stormwater Manuals calls for a temporary sediment pond on drainage areas 3 acres or larger. For drainage areas under 3 acres, a sediment trap (basic pond without flow control oulet) may be used. For very small drainage areas, simple BMPs such as silt fences, triangular silt dikes, etc. may be adequate to prevent sedimentation of surface waters or clogging of stormwater infiltration structures (dry ponds, dry wells, etc.). These sediment control requirements are consistent with EPA and other state programs. No change.

511. Install Sediment Controls. You are requiring a sediment pond be constructed prior to any infiltration facility that is required to be built prior to any soil disturbed on-site. Is this a western Washington problem? (City of Richland)

Response: Siltation is the largest cause of impaired water quality in rivers and the third largest cause of impaired water quality in lakes (U.S. EPA, 1998). Installing sediment control BMPs (sediment ponds, traps, silt fence, etc.) as one of the first steps in grading is a fundamental pollution prevention principle. It is a common practice throughout the United States and a required element of the Stormwater Management Manuals for Eastern and Western Washington.

512. Install Sediment Controls: You are requiring a sediment pond be constructed prior to any infiltration facility that is required to be built prior to any soil disturbed on-site. Is this a western Washington problem? (EWWA)

Response: Please see response to comment 511.

513. Install Sediment Controls: You are requiring a sediment pond be constructed prior to any infiltration facility that is required to be built prior to any soil disturbed on-site. Is this a western Washington problem? (West Richland)

Response: Please see response to comment 511.

S9.D.5.c SWPPP, Narrative Contents, Preserve Vegetation, Stabilize Soils

514. If the language about stabilizing soils at the end of the day before a weekend or holiday based "the weather forecast" is retained, then I suggest adding an item to the inspection recordkeeping requirements such as "note the 5 day forecast weather conditions", perhaps on a weekly basis (close to the weekend) even though an actual site inspection may not be required. I think that tracking the weather forecast is an easy, low time/cost item that can save a lot of pollution problems. (Otak)

Response: Ecology agrees that paying attention to the weather forecast is important for pollution prevention, but Ecology has decided not to make it an enforceable requirement of the permit at this time. Ecology will add it to related guidance documents.

515. Preserve Vegetation/Stabilize Soils “East of the Cascade Mountains Crest During the wet season (October 1 – June 30); 5 days” “The Central Basin, East of the Cascade Mountains Crest During the wet season (October 1 –June 30): 15 days” These time periods are unrealistic for construction on the east side of the state. Ecology recognized this and removed it from the Eastern Washington Stormwater Manual.” Why is it in this permit? Another reason for an eastern Washington permit. (City of Richland)

    Response: The permit requirements were taken directly from the Stormwater Management Manuals for Eastern Washington and are intended to minimize the likelihood of significant soil erosion which can cause water quality violations. No change.

516. Preserve Vegetation/Stabilize Soils "East of the Cascade Mountains Crest During the wet season (October 1 -June 30); 5 days" "The Central Basin, East of the Cascade Mountains Crest During the wet season (October 1 -June 30): 15 days" These time periods are unrealistic for construction on the east side of the state Ecology recognized this and removed it from the Eastern Washington Stormwater Manual." Why is it in this permit? Another reason for an eastern Washington permit. (EWWA)

    Response: Please see response to comment 515 above.

517. Preserve Vegetation/Stabilize Soils "East of the Cascade Mountains Crest During the wet season (October 1 -June 30); 5 days" "The Central Basin, East of the Cascade Mountains Crest During the wet season (October 1 -June 30): 15 days" These time periods are unrealistic for construction on the east side of the state Ecology recognized this and removed it from the Eastern Washington Stormwater Manual." Why is it in this permit? Another reason for an eastern Washington permit. (West Richland)

    Response: Please see response to comment 515 above.

S9.D.5 Stabilizing "Exposed and Unworked Soils"

518. Section **S9.D.5** provides requirements, including timeframes, for stabilizing "exposed and unworked soils". We request clarification on the following issues regarding that provision:
    - What constitutes "exposed and unworked soils"?
    - There is a requirement for stabilizing soil stockpiles - do the same timeframesapply as for "exposed and unworkable soils"?

- If a home has been completed but is awaiting fencing and installation of asprinkler system and activity on the lot will not cease for a few weeks, doesstabilization still have to begin within the timeframes listed?
- Is it necessary to undertake stabilization even if source control (physical, structural, or mechanical) BMPs or sediment control BMPs remain in place tocontrol sediment from leaving an area of exposed and unworked soils? (Centex Homes)

Responses:

- "Exposed and unworked soils" mean soils which are 1) "exposed" to direct precipitation (i.e., not covered or protected from erosion with a soil stabilization BMP such as mulch, plastic, temporary vegetation, etc.), and 2) not being actively "worked" (i.e., graded, excavated, or otherwise disturbed or redisturbed by construction activity).
- Yes. The same timeframes apply to soil stockpiles; but would not apply to an "active" stockpile where material is being added or removed from the stockpile. Plastic cover should not be used on native soil stockpiles (BMP C125 – Topsoiling).
- Yes. If the soils are exposed and unworked (but will be redisturbed later), they should be temporary stabilized during the period of inactivity.
- Soil stabilization BMPs (plastic, mulch, etc) are source control BMPs to prevent sediment (sand, silt, and clay) from being suspended in stormwater runoff. The use of sediment control BMPs (ponds, silt fence, silt dikes, etc.) typically does not mitigate the need for basic erosion control with soil stabilization BMPs (mulch, plastic, temporary vegetation, etc.). Depending on the soil type, sediment ponds or sediment traps may not be effective in removing suspended sediment, especially fine sediment and clay particles. When fine sediment or clays are present, soils should be protected from erosion because once suspended in stormwater, the high turbidity can be difficult and expensive to treat. Stormwater from sites with sandy outwash soils, without significant clay content, can often be treated (settled) successfully with sediment ponds, traps, or other sediment control BMPs.

519. The need to inspect the site/BMPs can even be triggered by the forecast rather than be a blanket weekly requirement which is currently not tied to anything. This kind of approach would be far more efficient in eastern Washington where very long dry periods are common in both winter and summer. (Otak)

Response: Weekly inspections have been required in Washington and most other states since the early 1990's. Ecology has decided to retain a weekly inspection frequency rather than trigger inspections based on forecast.

520. However, during the winter the need to plan for snow melt is necessary in eastern Washington (which does not seem to be addressed at all in this permit) so if there is snow on the ground (which should be tracked and noted in records), and the forecast is for warm temperatures, then site inspection should be triggered along with soil stabilization (and possible monitoring) if it is before a weekend or holiday. (Otak)

Response: The permit has been revised to require inspections within 24 hrs. of "any discharge from the site" rather than "within 24 hrs. of any rainfall event which results in a discharge". This should cover discharges related to snowmelt.

521. Condition S9.D.5.c. would require soils to be stabilized at the end of a shift before a holiday or weekend "if needed based on the weather forecast." This is vague and subjective, and should be changed to require soil stabilization "if the weather forecast indicates a chance of precipitation." (Puget Soundkeeper)

Response: The suggested change has not been implemented because many forecasts include a chance of precipitation, but the chance (probability) may be low (e.g., 10%). Ecology has decided to retain the language from the manuals: "if needed based on the weather forecast.".

522. S9.D.5.b, page 29. The time periods for the arid climate in the Central Basin are not realistic and create an unneeded expense. The time periods should be deleted. Although the Permit allows a Qualified Local Program to adjust the time periods, it is not known when or in what municipalities a Qualified Local Program will be approved. (CWHBA)

Response: The permit time periods for the Central Basin were taken directly from the Stormwater Management Manual for Eastern Washington and are intended to minimize the likelihood of significant soil erosion which can cause water quality violations. No change to the timeframes. However, "Qualified Local Programs" has been replaced with "local jurisdiction"; this is consistent with the SWMMEW.

S9.D.6.b SWPPP, Narrative Contents, Protect Slopes, Off Site Run On

523. Comment # 36: Should note here that unless run-on water is contaminated by on-site activities or the method used to pass it through the site, the permittee is not responsible for addressing volume, rates, or quality of run-on water as it is passed through the site. (Otak)

Response: "Run-on" passing through a site would be defined as waters of the state; similar to a wetland or stream on a construction site.

For compliance purposes, run-on would typically be considered "background conditions", which is defined in the water quality standards:

> *"the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge"*

This is a site-specific compliance issue, and cannot by adequately addressed in a general permit.

S9.D.6.c - At the top of slopes, collect drainage in pipe slope drains or protected channels to prevent erosion

524. The provision for pipe slope drains at the top of slopes needs further clarification. The applicant should be allowed to choose the type of BMP appropriate to site conditions and should not be required to use pipe slope drains or protected channels in all cases. If Ecology requires the use of pipe slope drains or protected channels, the size and angle of slope areas that need pipe slope drains or protected channels should be defined. Small areas with slopes or areas with slight slope angles should not be included in this requirement as erosion can be prevented/controlled using other BMPs. (King Co)

    Response: For small areas or minor slopes where erosion can be prevented/controlled using BMPs other than pipe slope drains or protected channels, then the SWPPP narrative should include justification per Condition S9.D:

    "Each of the 12 elements below in S9.D.1-12, shall be included in the narrative of the SWPPP and implemented unless site conditions render the element unnecessary and the exemption from that element is clearly justified in the SWPPP".

525. S9 SWPPP D6ci page 30 The description of the flow rates derived from a continuous simulation model required for temporary slope drains is too vague. The continuous simulation design flow rate has two listed recurrence intervals (10-yr and 25-yr). The 2005 Western Washington Stormwater Manual BMP C204 slope drains calls for a recurrence interval of 10 years. Additionally, the Western Washington Hydrology Model (WWHM) version 2 does not have a setting for bare ground (impervious, pasture, landscaping, forest are only cover types). Therefore one cannot calculate the flow rate expected for site conditions present during grading activities without getting into the parameter settings of the underlying HSPF engine. We recommend stating the design criteria as the 10 yr storm for pasture conditions for continuous simulation. (Kitsap Co)

    Response: The design criteria for temporary pipe slope drains in Western Washington has been changed to be consistent with the design criteria for conveyance channels:

    "Temporary pipe slope drains shall handle the peak 10-minute velocity of flow from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year, 1-hour flow rate predicted by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis shall use the existing land cover condition for predicting flow rates from tributary areas outside the project limits."

    The following language has been added to the Western Washington design criteria for pipe slope drains and temporary on-site conveyance channels:

"For tributary areas on the project site, the analysis shall use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the WWHM to predict flows, bare soil areas should be modeled as "landscaped area."."

S9.D.8.a.i & ii SWPPP, Narrative Contents, Stabilize Channels

526. I suggest adding the word "peak" between "10 minute" and "velocity" in the first sentence of i, and between "Crest:" and "velocity" in the first sentence of ii. (Otak)

Response: D.8.a.i has been revised: "peak" has been added before "10-minute" (i.e., "peak 10-minute velocity"). D.8.a.ii has also been revised: "Channels shall handle the expected peak" has been added between "Crest" and "velocity":

"East of the Cascade Mountains Crest: Channels shall handle the expected peak flow velocity from a 6-month, 3-hour storm for the developed condition, referred to as the short duration storm."

527. Page 31, S9.D.8.B: Outlet work in state surface waters should comply with WAC 220-110-050 and WDFW Aquatic Habitat Guidelines – Integrated Streambank Protection Guidelines. (WDFW)

Response: Ecology does not have statutory authority to require compliance with WDFW regulations in this general permit. However, Ecology may add the aquatic habitat guidelines to applicable technical guidance manuals in the future.

528. S9 SWPPP D 8ai This section has the same issue as #2 above except it only lists one recurrence interval for the design flow rate. Recommend pasture conditions for determining continuous simulation flow rate. (Kitsap Co)

Response: Revisions have been made to make the Western Washington design criteria for temporary conveyance channels consistent with pipe slope drains:

Temporary pipe slope drains shall handle the peak 10-minute velocity of flow from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year, 1-hour flow rate predicted by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis shall use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis shall use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the WWHM to predict flows, bare soil areas should be modeled as "landscaped area.".

S9.D.9. - Control Pollutants

529. “Wheel wash or tire bath wastewater shall be discharged to a separate on-site treatment system or to the system.”

Discharging dirty, muddy water into a sanitary system can be a problem for the local agency since wastewater treatment plants are not designed to handle this type of discharge and this may not be legal. Please clarify? (City of Richland)

Response: BMP C106: Wheel Wash in Ecology’s Stormwater Management Manuals requires local approval before discharging to sanitary sewer:

“Wheel wash or tire bath wastewater shall be discharged to a separate onsite treatment system, such as closed-loop recirculation or land application, or to the sanitary sewer with proper local sewer district approval”.

The permit will revised to include “or to the sanitary sewer, with local sewer district approval”.

530. "Wheel wash or tire bath wastewater shall be discharged to a separate on-. site treatment system or to the sanitary system " Discharging dirty, muddy water into a sanitary system can be a problem for the local agency since wastewater treatment plants are not designed to handle this type of discharge and this may not be legal. Please clarify? (EWWA)

Response: See response to comment 529 above.

531. "Wheel wash or tire bath wastewater shall be discharged to a separate on-. site treatment system or to the sanitary system " Discharging dirty, muddy water into a sanitary system can be a problem for the local agency since wastewater treatment plants are not designed to handle this type of discharge and this may not be legal. Please clarify? (West Richland)

Response: See response to comment 529 above.

532. **D.9 Control pollutants -** This section does not adequately address other pollutants associated with construction activities; sediment is only one of many problems found on a site. The SWPPP needs to affectively address these other pollutants. (King Co)

Response: Ecology agrees that all pollutants associated with construction need to be addressed in the SWPPP. Ecology believes that Condition S9.D9 adequately addresses the wide array of non-sediment pollutants found on construction sites. Specifically, Element 9 - Control Pollutants addresses: “all pollutants, including waste materials and demolition debris”, “all chemicals, liquid products, petroleum products”, “on-site fueling tanks”, “contaminated surfaces”, “fertilizers and pesticides”, “pH modifying sources… including but not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and

concrete pumping and mixer washout waters", and "other materials that have the potential to pose a threat to human health or the environment". No change.

533. **D.9. Control Pollutants - a. All pollutants, including waste materials and demolition debris, that occur onsite shall be handled and disposed of in a manner that does not cause contamination of stormwater.**
Replace with - All activities that occur on site that have the potential to discharge pollutants to surface, storm or ground water must implement Source Control Best Management Practices to minimize pollutant discharge. (King Co)

Response: Ecology has determined that the existing language is adequate. BMP C153: Material Delivery, Storage, and Containment was recently added to the source control BMPs in Vol. II of the Stormwater Management Manual for Western Washington. No change.

534. **Cover, containment, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment. On-site fueling tanks shall include secondary containment.**

Replace with – "Provide cover and containment to protect against leaks, spills and ruptures and to provide protection from vandalism" (King Co)

Response: Ecology has determined that the existing language is adequate. BMP C153: Material Delivery, Storage, and Containment was recently added to the source control BMPs in Vol. II of the Stormwater Management Manual for Western Washington. No change.

535. Maintenance, fueling, and repair of heavy equipment and vehicles shall be conducted using spill prevention and control measures. Contaminated surfaces shall be cleaned immediately following any spill incident.

Replace with – "Maintenance, Fueling, and Repair of heavy equipment and vehicles shall be conducted in designated areas. Spill prevention and cleanup measures must be implemented Any contaminated surfaces (including dirt, gravel, asphalt, concrete) must be cleaned up after a spill, and if necessary removed from the site and disposed of in accordance with local regulations." (King Co)

Response: Ecology has determined that the existing language is adequate. BMP C153: Material Delivery, Storage, and Containment was recently added to the source control BMPs in Vol. II of the Stormwater Management Manual for Western Washington; it includes new secondary containment and spill prevention and control guidance. No change.

536. BMPs shall be used to prevent or treat contamination of stormwater runoff by pH modifying sources. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from

concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters. Permittees shall adjust the pH of stormwater if necessary to prevent violations of water quality standards.

Include – "dewatering from concrete vaults including both prefabricated and poured in place (see BMPs)" (King Co)

Response: "dewatering concrete vaults" has been added to the list of pH modifying sources.

S9.D.10 - Control De-Watering

537. "Foundation, vault and trench de-watering water, which have similar characteristics to stormwater run-off at the site, shall be discharged into a controlled conveyance system prior to discharge to a sediment trap or sediment pond."

What study or paper determined that de-watering water had the same characteristics of stormwater run-off? So now we are required to build a controlled conveyance system prior to the sediment pond prior to the infiltration system. Construction sites are usually kept to a minimum area and with these three systems required, who will pay for the additional right-of-way that will need to be acquired to place these three facilities?

This also appears to be a western Washington problem and not an eastern Washington problem. Another reason for a separate permit. (City of Richland)

Response: The permit does not state that de-watering water has similar characteristics to stormwater at the site; and Ecology is not aware of any studies on the topic. This language means that when stormwater and de-watering water does have similar characteristics (e.g., turbidity/clarity, etc.), they may be co-mingled (treated) in the same sediment pond. The technical basis is to is to keep the clean(er) water clean, and handle and treat the dirty water separately. If they are mixed together, the resulting larger volume of dirty water will be more difficult and expensive to treat.

Not all dewatering activity requires treatment in a sediment pond or trap; clean, non-turbid water can typically be discharged directly off site. When dewatering water is muddy or turbid, and must be routed to a sediment pond or trap; it must be done so in a controlled manner (pump hose, ditch, etc.) which minimizes erosion or contamination.

The risks of water pollution from de-watering activity are not limited to western Washington. Adequate BMPs make sense when dewatering water is discharged to surface waters.

Ecology does not expect de-watering BMPs to require significant land requirements beyond what would already be required to implement a typical SWPPP.

538. Control De-Watering "Foundation, vault and trench de-watering water, which have similar characteristics to stormwater run-off at the site, shall be discharged into a controlled conveyance system prior to discharge to a sediment trap or sediment pond."

What study or paper determined that de-watering water had the same characteristics of stormwater run-off? So now we are required to build a controlled conveyance system prior to the sediment pond prior to the infiltration system. Construction sites are usually kept to a minimum area and with these three systems required, who will pay for the additional right-of-way that will need to be acquired to place these three facilities?

This also appears to be a western Washington problem and not an eastern Washington problem. Another reason for a separate permit. (EWWA)

Response: Please see response to comment 537 above.

539. Control De-Watering "Foundation, vault and trench de-watering water, which have similar characteristics to stormwater run-off at the site, shall be discharged into a controlled conveyance system prior to discharge to a sediment trap or sediment pond."

What study or paper determined that de-watering water had the same characteristics of stormwater run-off? So now we are required to build a controlled conveyance system prior to the sediment pond prior to the infiltration system. Construction sites are usually kept to a minimum area and with these three systems required, who will pay for the additional right-of-way that will need to be acquired to place these three facilities?

This also appears to be a western Washington problem and not an eastern Washington problem. Another reason for a separate permit. (West Richland)

Response: Please see response to comment 537 above.

540. D.10 – Refer back to allowed non-stormwater discharges listed in S1.C.3. (King Co)

Response: This change is not necessary.

541. D.10.c.v. – "use of a sedimentation bag with outfall to a ditch or swale for small volumes of localized de-watering." Add - pH testing and adjustment need to be applied to de-watering discharge (King Co)

Response: pH sampling is requirements are addressed in Condition S4 - Monitoring. Additional sampling may be required on a case by case basis. No change.

542. Section D. <u>SWPPP – Narrative Contents and Requirements</u> Subsection 10. b. Control De-Watering b. Clean, non-turbid dewatering water, such as well-point ground water, can be discharged to systems tributary to state surface waters… The above referenced text" should be revised to "…can be discharged to systems tributary to <u>or directly</u> into state surface waters". (Boeing)

Response: Language revised: "systems tributary to, or directly into surface waters of the state".

543. **S9.D.11. – Maintain BMPs** Sediment Fence Maintenance Section **S9.D.ll.a** provides some requirements regarding the maintenance of erosion and sediment control BMPs. The general permit does not address when trapped sediment must be removed from a sediment fence. We request the addition of the following language to that section: a. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function in accordance with BMP specifications. **For a sediment fence, the trapped sediment must be removed before it reaches one-half of the above ground fence height**. (Centex Homes)

    Response: Ecology has decided not to include specific maintenance standards. Also, BMP C233 – Silt Fence, states "Sediment deposits shall either be removed when the deposit reaches approximately one-third the height of the silt fence, or a second silt fence shall be installed".

544. **D.11 –**This is redundant. It is already stated in S.8.a.1 and is restated in D.12.b. Delete – entire section. (King Co)

    Response: Ecology has decided not to delete Condition S12.b; but has deleted the redundancy in S8 – Operations and Maintenance.

545. **D11 b – "All temporary erosion and sediment control BMPs shall be removed within 30 days after final site stabilization is achieved or after the temporary BMPs are no longer needed."** Temporary ESCs may need to be in place longer than 30 days after project completion due to home or other structural construction activities. (King Co)

    Response: The present language does not require temporary erosion and sediment control BMPs to removed within 30 days of project completion. The Permittee must remove temporary BMPs within 30 days of final site stabilization (defined in permit) or after the temporary BMPs are no longer needed.

S9.D.12. – Manage the Project

546. **D.12.b-** All of the statements made in this section are repeated throughout the permit. Delete – entire section. (King Co)

    Response: This language will be retained to ensure that these requirements are incorporated into the SWPPP and implemented in the field.

Site Map

547. Section S9.E.4 provides that the SWPP must include a site map showing the entire construction site, and identifying "[areas of soil disturbance and areas that will not be disturbed". We recommend the following additional parenthetical, which would simplify the designation process for sites where most or all of the area will be disturbed: Areas of soil disturbance and areas that will not be disturbed **(a statement that "all areas in the map will be disturbed unless otherwise noted" may be sufficient**); (Centex Homes)

548. E. - Rewrite section to allow submission of either a SWPPP map or Temporary Erosion and Sediment Control (TESC) plan sheets that contain equivalent information to that required for the proposed SWPPP map with the SWPPP narrative. The proposed SWPPP map would need to be submitted as multiple plan sheets for large linear projects such as roadway improvements or for projects that involve several locations such as offsite mitigation areas and would be duplicative of TESC plans. (King Co)

    Response: As long as the SWPPP (or TESC plan) contains all the requirements of Condition S9, the format will be acceptable.

549. **E.6 - Locations of off-site material, stockpiles, waste storage, borrow areas, and vehicle/equipment storage areas;** Add - This applies to any stockpiles located on-site such as stockpiled soils for landscaping activities. (King Co)

    Response: This change was not made. The purpose of E.6 is to make sure that off-site (non-contiguous) areas affected by construction activity is included within the SWPPP and appropriate BMPs are implemented. Existing language in Condition S9 requires erosion control BMPs for stockpiles, and all BMP locations need to be shown on the map.

S10. Notice of Termination

550. Notices of Termination for Individual Lots. Section S10.A contains three criteria for terminating storm water permit coverage, but it does not specifically address the situation where a homebuilder sells a lot after constructing a home. To address that situation, we request the addition of the following language at the end of that section: For residential construction in a larger plan of development or sale, individual lots are eligible for termination 1) when the lot undergoes final stabilization, or 2) when the homebuilder establishes temporary stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner (e.g., a vegetative buffer strip), and informs the homeowner of the need for, and benefits of, final stabilization. (Centex Homes)

    Response: Additional language (underlined below) has been added to S10 to allow permittees to terminate permit coverage when the project has been transferred:

    A. The site is eligible for termination when either of the following conditions have been met:

1. The site has undergone final stabilization, all temporary BMPs have been removed, and all stormwater discharges associated with construction activity have been eliminated; or
2. All portions of the site which have not undergone final stabilization per S10.A.1 have been sold and/or transferred (per Condition G9), and the permittee no longer has operational control of the construction activity.

Language has also been added to Conditions S2 and G9 to address partial transfers, including transfers to new builders who purchase lots in a common plan of development:

3. Transfer of Coverage Form
   Current coverage under this permit may be transferred to one or more new operators, including operators of sites within a Common Plan of Development, by submitting a Transfer of Coverage Form in accordance with Condition G9. Transfers do not require public notice.

   Coverage under this general permit is automatically transferred to a new discharger, including operators of lots/parcels within a common plan of development or sale, if:

   C. A written, signed agreement (Transfer of Coverage Form) between the current discharger (permittee) and new discharger containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to the Director; and

   D. The Director does not notify the current discharger and new discharger of the Director's intent to revoke coverage under the general permit. If this notice is not given, the transfer is effective on the date specified in the written agreement.

   When a current discharger (permittee) transfers a portion of a permitted site, the current discharger shall also submit an updated application form (NOI) to the Director indicating the remaining permitted acreage after the transfer. When a current discharger (permittee) transfers all portions of a permitted site to one or more new dischargers, the current discharger shall also submit a notice of termination (NOT) form to the Director.

551. In addition, we request the following clarifying language at the end of Section S10.B: A homebuilder may submit an NOT for individual lots on a lot-by-lot basis as lots become eligible for termination under the criteria in S10.A above. (Centex Homes)

Response: Permit coverage for these lots or parcels would be transferred to the new homebuilders; and they would terminate coverage when construction is complete, and final stabilization is achieved. See response to comment 521 above.

General Conditions

552. G2 - Add a section for municipal officers *Add* - In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official; or duly authorized representative". (King Co)

    Response: The present language is required by state and federal rules (WAC 173-220-040, 40 CFR 122.22). The application cannot be signed by a "duly authorized representative".

553. Add a section for authorized agents *Add* – Allowances for the designation of authorized agents should be included throughout this section– especially concerning certifications. It is rare that a corporate officer be involved in the actual application as it is usually completed by an agent designated by the responsible ownership party (King Co)

    Response: The present language is required by state and federal rules (WAC 173-220-040, 40 CFR 122.22). The application cannot be signed by a "duly authorized representative".

554. **G2.D –** The certification statement seems severe and should be reviewed for consistency with other permits. (King Co)

    Response: The certification statement is required by 40 CFR 122 and consistent with other permits.

555. G2 D The certification statement is excessively harsh and could have the unintended consequence of causing people to provide less information out of fear that any inaccuracies will lead to severe penalties The certification statement for S4 B *6* j seems more appropriate. (WSDOT)

    Response: The certification statement is required by 40 CFR 122.

556. G3 A and G16 discuss right of entry and property rights. Can they be combined as they seem to overlap? (WSDOT)

    Response: These conditions do not overlap and should be separate. No change.

557. General conditions G7, G12, and G17 all state that permittees must comply with other parts of the Clean Water Act or other with laws A single statement could cover all three conditions (WSDOT)

    Response: These conditions convey distinctly different federal requirements and are intended to be separated.

558. It is impossible for a construction project to violate G10 without first violating S3 or G1 As such, G10 is unnecessary and can be deleted. (WSDOT)

Response: G10 is a federal requirement and cannot be deleted. It is intended to ensure that once solids, sludge, or other pollutants are removed from stormwater, the pollutants are not discharged into surface waters (even at low concentrations that do not cause a violation of water quality standards).

559. G14 The text is repetitive. Could it be replaced with a more succinct summary of the criminal and civil penalties like: "**Any** person who violates the conditions of his permit shall incur a civil penalty of up to $10,000 per day. Each day that conditions are not met shall be deemed a separate violation. Willful violation is considered a criminal offence and, upon conviction, may lead to additional penalties of prosecution costs and imprisonment " (WSDOT)

    Response: This language is required to meet state and federal rules.

560. G26 The bypass prohibition condition appears to have originated in other permits types (municipal treatment works or industrial facilities) as it discusses "waste streams" The section is long and complex with only GA 5 addressing construction Ecology could simplify G26 to only include information that directly applies construction Projects (WSDOT)

    Response: This language is required to meet state and federal rules.

G3 "Authorized Representative of the Department"

561. Section G3 provides that the permittee must allow an "authorized representative of the Department" to enter the site to review records, to inspect the premises, and to sample or monitor. We request clarification regarding the following issues raised by this provision: Who is authorized to find a violation of the general permit?
    - How does the Department delegate authority to "authorized representatives"?
    - Is a representative from a local agency an "authorized representative of the Department"?
    - Is an EPA representative an "authorized representative of the Department"?
    - What authority does an "authorized representative of the Department" have to insist upon changes to the SWPPP, and what standards guide those inspectors in demanding additional controls?
    - If a permittee disagrees with an "authorized representative of the Department", what is the procedure for resolving that disagreement? (Centex Homes)

    Response:
    - There is no formal delegation process; all Ecology water quality inspectors are considered authorized representatives.
    - No, EPA delegated NPDES authority to the Department of Ecology; representatives of local governments are not .
    - No, EPA staff are not authorized representatives of the Department.

- General permits issued by EPA and Ecology have provisions for inspectors review SWPPP for completeness and adequacy with permit conditions. If deficiencies are found, the SWPPP must be modified. Inspectors base SWPPP reviews on the technical standards and requirements in the applicable stormwater management manuals and NPDES permit.
- Agency actions may be appealed within 30 days of receipt.

562. General Condition G4 D should be deleted. The triggering event of "unacceptable cumulative effects on the environment" is ambiguous. Permittees under the general permit should be able to rely on operating under the permit, provided that they comply with its terms and conditions related to water quality. Allowing Ecology to revoke the permit based on cumulative effects that Ecology believes are unreasonable creates a level of uncertain that is unacceptable. (Sound Transit)

    Response: This language is required by federal regulation and cannot be deleted. General permit coverage has never been revoked from a construction site due to "cumulative effects on the environment".

563. General Condition G4D should be deleted. The triggering event of "unacceptable cumulative effects on the environment" is ambiguous. Permittees under the general permit should be able to rely on operating under the permit, provided that they comply with its terms and conditions related to water quality. Allowing Ecology to revoke the permit based on cumulative effects that Ecology believes are unreasonable creates a level of uncertain that is unacceptable. (Costco)

    Response: See response to comment 533 above.

564. G4 D: The wording in this section is extremely broad and subjective, again potentially subjecting the Permit to being void for vagueness. What "information" is Ecology alluding to? What is deemed "unacceptable"? If the permitee has no notice and is unable to understand what is expected of him/her, then it will likely be considered void (BIAW)

    Response: This language is required by federal regulation.

565. G5: This section allows permit revocation on similarly broad and subjective standards. This breadth fosters uncertainty and distrust. (BIAW)

    Response: This language is required by federal regulation.

566. G4.D, page 35. The wording is too broad and subjective. What "information" is required to "indicate" coverage under the Permit is "unacceptable"? What is deemed "unacceptable"? (CWHBA1)

    Response: This language is required by federal regulation.

567. **G5.A** , page 35**.** Revocation of coverage under the Permit for "the violation of' Any term or condition" of the Permit is an overly broad and subjective standard. (CWHBA1)

Response: This language is required by federal regulation. General permit coverage has never been revoked from a construction site due to…

568. G8: Application for permit renewal six months prior to expiration is unreasonable for smaller projects (under five acres) that may not anticipate delay and otherwise do not have the resources to act so far in advance (BIAW)

Response: This 180 day renewal requirement is required by federal regulation. Whenever a permit is set to expire (5 years from issuance), Ecology sends written notice of the 180 day requirement to all permittees. Ecology typically uses enforcement discretion with late applications. Ecology recently streamlined the permit renewal process with an optional internet-based electronic application.

569. G8 Permit Renewal Section G8 provides that the permittee must apply for permit renewal at least 180 days prior to the specified expiration date of the general permit. We suggest that there be a shorter period of time (e.g., 30 days) closer to the expiration date, particularly for permittees seeking coverage under the next general permit for construction activities. (Centex Homes)

Response: This 180 day renewal requirement is required by federal regulation. Whenever a permit is set to expire (5 years from issuance), Ecology sends written notice of the 180 day requirement to all permittees. Ecology typically uses enforcement discretion with late applications. Ecology recently streamlined the permit renewal process with an optional internet-based electronic application.

570. Requiring an application for permit renewal six months prior to expiration is unreasonable for smaller projects under five acres that may not anticipate the delay or do not have the resources to take action so far in advance. (Master Builders)

Response: This 180 day renewal requirement is required by federal regulation. Whenever a permit is set to expire (5 years from issuance) Ecology sends written notice of the 180 day requirement to all permittees. Ecology typically uses enforcement discretion with late applications. Ecology recently streamlined the permit renewal process with an optional internet-based electronic application.

G9 Permit Transfer

571. Section *G9* pertains to transfer of general permit coverage. We request the following additional language: B. The Director does not notify the old and new discharger of the Director's intent to revoke coverage under the general permit. If this notice is not given within *30* days from the date the transfer request was received, the transfer is effective on the date specified in the written agreement. (Centex Homes)

Response: This suggestion is not consistent with WAC 173-226 and will not be implemented.

572. G24.B – Appeals of general permit conditions to individual discharger. This subsection provides that a general permit as applied to an individual discharger may be appealed to the PCHB within 30 days of the effective date of coverage. Does this apply to a permit issued by a QLP? If not, what type of appeal process, if any, must a QLP provide? (King Co)

Response: <u>All QLP provisions have been deleted.</u>

573. G26. - The term waste and waste stream is inappropriately used throughout this section. Replace the term waste with stormwater where the term waste appears. (King Co)

Response: Please see response to comment 574.

574. **G26.A. - Bypass, which is the intentional diversion of waste streams from any portion** *Replace* – "waste stream" *with* – "stormwater" The condition would also be improved by making it clear that Ecology must approve any bypass. The paragraph following condition A.4. that begins "The permittee shall notify …" may have more general application to the entire section, since it spells out a procedure for applying for a bypass permit. As written, it appears to apply only to Subsection A.4. The confusion may be the result of numbering problem in the section; although there is a subsection A, there is no subsection B. (King Co.)

Response: "Waste stream" is more broad than "stormwater", and will be retained to address non-stormwater waste streams (e.g., dewatering water, etc.).

The 30-day prior notification requirement applies to Subsection A.4 only (planned bypasses). Prior notification is not required for Subsections A.1 – 3.

The missing subsection B has been added:

B. <u>Duty to Mitigate</u>
<u>The Permittee is required to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.</u>

575. **G26.A.1 – Bypass of stormwater is consistent with the design criteria and part of an approved management practice in the applicable stormwater management manual**. King County projects often need to bypass the primary stormwater collection and treatment system during construction work. These stormwater bypasses include turbidity control BMPs and should meet the requirements of this section and not require approval from Ecology. (King Co)

Response: Depending on the specific situation, Subsection A.1 would typically apply to bypasses related to turbidity control BMPs:

> "Bypass of stormwater is consistent with the design criteria and part of an approved management practice in the applicable stormwater management manual.".

This would not require prior approval from Ecology.

576. **G26.A.3.b - There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, maintenance during normal periods of equipment downtime (but not if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance), or transport of untreated wastes to another treatment facility; and**
Replace – "untreated waste" *with* – "stormwater"
Replace – "untreated waste" *with* – "stormwater" (King Co)

Response: "Untreated waste" is more broad than "stormwater", and will be retained to address non-stormwater waste streams (e.g., dewatering water, etc.).

577. **G26.A.3.c - The Department is properly notified of the bypass as required in condition S5F of this permit.** *Add* – "Special Condition S5.F" (King Co)

Response: Special has been added (…Special Condition S5.F)

578. **G26.A.5.b - If there are feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, stopping production, maintenance during normal periods of equipment down time, or transport of untreated wastes to another treatment facility.**
Replace – "untreated waste" *with* – "stormwater"
Replace – "untreated waste" *with* – "stormwater" (King Co)

Response: "Untreated waste" is more broad than "stormwater", and will be retained to address non-stormwater waste streams (e.g., dewatering water, etc.).

Definitions

579. "Applicant" should be defined in this permit, to clarify the legal entity as opposed to "permittee". (King Co)

Response: "Applicant" is someone seeking permit coverage. "Permittee" is someone who has coverage under the permit.

The following definition of "applicant" has been added to Appendix A - Defintions:
Applicant means an *operator* seeking coverage under this permit.

580. Appendix A Definitions – Clarify that "receiving water" is the point of compliance for water quality standards. Clarify that "surface waters of the state" **do not** include curbs, pipes, drain inlets, infiltration facilities, etc. (City of Kennewick)

Response: Discharges to (ground water) infiltration facilities are not discharges to surface waters of the state. However, discharges to storm drains (curbs, pipes, inlets) or other systems tributary to surface waters of the state are technically surface waters of the state. Determining the point of compliance with the surface water quality standards requires a site-specific evaluation by a water quality specialist. Additional clarifying language cannot be added to address all possible discharge scenarios that may be covered under the permit, so no change will be made.

581. **Master-Planned Communities Appendix A** defines the term "common plan of development or sale" as including development projects where individual lots are sold to separate homebuilders. We request clarification regarding the following issues pertaining to such projects where several builders operate separate lots but storm water drains into a common area maintained by the master developer: We believe a homebuilder in a common plan of development or sale who has all controls in place required by its SWPPP should have no responsibility if there is a problem regarding storm water discharge from the common plan of development or sale. Under what circumstances can homebuilders in a common plan of development or sale rely upon the SWPPP and NO1 of the master developer? (Centex Homes)

Response: Each operator of construction activity within a "common plan of development or sale" that is one acre or larger must be covered under the general permit; either individually or collectively under another permit, if the permittee retains operational control of the implementation of the SWPPP and permit (e.g., through a contract, etc.). Discharges from ponds which collect stormwater runoff from several different operators or permittees will be assessed on a case by case basis.

582. Definitions within this section need to be consistent with terms used in other regulations issued by the State of Washington such as Chapter 173-218 WAC (Underground Injection Control Program); Chapter 173-303 WAC (Dangerous Goods) Chapter 173-350 WAC (Solid Waste Handling Standards; Chapter 173-201A (Water Quality Standards for Surface Water); Chapter 173-200 WAC (Water Quality Standards for Ground Water); and permits issued under Chapter 173-220 WAC (National Pollutant Discharge Elimination System) such as Sand and Gravel General Permit; the Industrial Stormwater General Permit; the Phase I Municipal Stormwater Permit; and, the Phase II – Western Washington. (King Co)

Response: Ecology attempted to be consistent with related permits and regulations, but made minor changes to address construction stormwater, as appropriate.

583. ***Best Management Practices*** **(BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other physical, structural and/or managerial practices to prevent or reduce the pollution of waters of the state. BMPs include treatment systems, operating procedures, and practices to control: plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.** This definition needs to be expanded to include innovative BMP as well as source control needs for all types of construction activities such as concrete pouring, painting, vehicle maintenance and repair, etc., beyond the few items currently listed. (King Co)

Response: The definition cannot be expanded to include all the possible BMPs or source control needs that may be present on a construction site. Ecology believes that all BMPs fit into the existing definition. To add clarity and specificity, "plant site runoff" has been replaced with "stormwater associated with construction activity".

584. Bypass means the intentional diversion of waste streams from any portion of a treatment facility. This permit address stormwater not waste *Replace* – "waste" *with* – "stormwater" (King Co)

Response: "Waste" is more broad than "stormwater", and will be retained to address non-stormwater waste streams (e.g., dewatering water, etc.).

585. **Common plan of development or sale** *Add* – This term is not intended to capture basin wide planning programs such as watershed or stormwater basin plans, TMDLs, groundwater management plans or linear projects such as road development projects that are non-contiguous. (King Co)

Response: The existing definition is consistent with the EPA Phase II Rule and guidance and will not be expanded as suggested. EPA's "Construction General Permit Frequently Asked Questions" addresses non-contiguous projects, and the same guidelines will be applied in Washington State:

What if the "Common Plan of Development or Sale" Actually Consists of Non-Contiguous Separate Projects?

There are several situations where discrete projects that could conceivably be considered part of a larger "common plan" can actually be treated as separate projects for the purposes of permitting:

A. A public body (e.g., a municipality, State, Tribe, or Federal Agency) need not consider all their construction projects within their entire jurisdiction to be part of an overall "common plan." For example, construction of roads or buildings in different parts of a state, city, military base, university campus, etc. can be considered as separate "common plans." Only the interconnected parts of single project would be considered to be a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.)

B. Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed. For example, two oil and gas well pads separated by 1/4 mile could be treated as separate "common plans." However, if the same two well pads and an interconnecting access road were all under construction at the same time, they would generally be considered as part of a single "common plan" for permitting purposes. If a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 1/4 mile apart, the two trunk line projects could be considered to be separate projects.

586. Appendix A – Definitions, page 43 – the definition for the "Common plan of development or sale" needs to be clarified and when stormwater permit needs to be submitted. (Yakima Co)

Response: The existing definition is consistent with the EPA Phase II Rule and guidance and will be retained as-is. Special Condition S1.B.1.a requires a permit for clearing, grading and/or excavation on sites smaller than one acre which are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more, and discharges stormwater to surface waters of the state.

Additional clarity can be found on EPA's "Construction General Permit Frequently Asked Questions" website:

My Project Will Disturb Less Than One Acre, But it May Be Part of a "Larger Common Plan of Development or Sale." How Can I Tell and What Must I Do?

In many cases, a common plan of development or sale consists of many small construction projects. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs.

If your smaller project is part of a larger common plan of development or sale that collectively will disturb one or more acres (e.g., you are building on 6 half-acre residential lots in a 10-acre development or are putting in a fast food restaurant on a 3/4 acre pad that is part of a 20 acre retail center) you need permit coverage. The "common plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request,

computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

However, where only a small portion of the original common plan of development remains undeveloped and there has been a period of time where there is no ongoing construction activities (i.e., all areas are either undisturbed or have been finally stabilized), you may re-evaluate your individual project based on the acreage remaining from the original "common plan." If less than five but more than one acre remains to build out the original "common plan" a permit may still be required, but you can treat your project as part of a "small" construction activity and may be eligible for the waivers available for small construction activities (e.g., one of six lots totaling 2 acres in a 50 acre subdivision can be treated as part of a 2 acre rather than 50 acre "common plan"). If less than one acre remains of the original common plan, your individual project may be treated as part of a less than one acre development and no permit would be required.

587. *Add* - Municipal Separate Storm Sewer (MS3) system means a conveyance, or system of conveyances (including drainage systems associated with roads and municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (King Co)

Response: The term Municipal Separate Storm Sewer (MS3) is not used in the permit and the suggested definition is not necessary. The permit uses and defines “storm drain” and “storm sewer system”. The definition of “storm sewer system” has been revised to be consistent with the definition of MS3, but without the requirement for the system to be “owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA”.

Storm Drain means any drain which drains directly into a *storm sewer system*, usually found along roadways or in parking lots.

Storm Sewer System means a means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains designed or used for collecting or conveying stormwater. This does not include systems which are part of a *combined sewer* or Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

588. Storm Sewer – delete and replace with municipal storm sewer system (MS3). (King Co)

Response: Please see response to Comment 587 above.

589. ***Pollutant* means the discharge of any of the following to waters of the state: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, domestic sewage sludge (biosolids), munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste. This term does not include sewage from vessels within the meaning of section 312 of the FWPCA, nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the FWPCA.** "Other construction related pollutants" need to include pollutants such as oils, paints, cleaners, sanding solids, tile cutting washwater. Or, instead of trying to list what a pollutant is, state only uncontaminated stormwater can be discharged. (King Co)

Response: This definition is taken directly from 40 CFR and cannot be modified. Authorized discharges (construction stormwater, etc) are listed in Condition S1.C.

590. *Add*- "Runoff" means that portion of water originating from rainfall and other precipitation that flows over the surface or just below the surface from where it fell and is found in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands, and shallow groundwater as well as on ground surfaces. (King Co)

Response: The proposed definition of runoff appears is not necessary and could add confusion. The permit contains an appropriate definition of *stormwater*:

> *Stormwater* means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

591. **Significant Amount means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention or treatment; or an amount of a pollutant that has a reasonable potential to cause a violation of surface or ground water quality or sediment management standards.** Under this definition, discharge pollutants in amounts that do not violate surface water, groundwater, or sediment standards, but are amenable to treatment, would be considered a "significant amount." This would be true, even if the permittee is complying with all permit conditions. As a

result the discharger would be considered a "significant contributor" and may be required to obtain a permit, even though the discharger is below the one acre threshold. The definition should be modified to clarify that mere discharge of a pollutant is not automatically considered a significant amount just because the pollutant is amenable to available and reasonable treatment. It appears to create a standard that is below the relevant water quality and sediment quality standards. Within the current definition of significant amount, an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment that is not violating any standard would create a significant contributor.

Delete – "an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or" (King Co)

Response: This language ("an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or…") is included in the definition of "Significant Amount" and remains from the previous permit. It is also included in the Industrial Stormwater General Permit. This language could be used to declare a site a "significant contributor" because a discharger did not apply "all known and reasonable methods of prevention, control and treatment" (AKART). A fundamental requirement of the Ground Water Quality Standards is that AKART must be applied to all discharges to ground water, regardless of the quality of the water.

According to the Surface Water Quality Standards (WAC 173-201A-020):

> *AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.*

A site-specific and fact-specific AKART determination could be independent of demonstrating an actual or potential violation of numeric criterion in the applicable water quality standards.

The "significant contributor" condition has been used by Ecology very rarely (one time during the previous permit cycle), and it is expected to be used even less in the future since the permit threshold has now dropped from five acres of disturbance to one acre. No additional change to the permit.

592. **<u>Significant Contributor</u> of Pollutant(s) means a facility determined by Ecology to be a contributor of a significant amount(s) of a pollutant(s) to waters of the state of Washington.** What are the standards and conditions that Ecology uses to determine a

significant amount? What are the determining criteria that Ecology will use to decide that a facility is a significant contributor? (King Co)

Response: The term "*significant contributor*" is from the federal Clean Water Act and have not changed from the previous version of the permit. EPA has not established a definition of "significant contributor".

A plain reading definition from the CWA is "contributes to a water quality standards violation" or is a "significant contributor". The dictionary definition for significant is: having or expressing an meaning – meaningful; hence "significant amount" could be defined as meaningful contribution of pollutants to waters of the state. In this case meaningful contribution would in all likelihood be a site and fact specific determination.

The "significant contributor" condition has been used by Ecology very rarely and we anticipate it will be used less in the future since the permit threshold has now dropped from five acres of disturbance to one acre.

593. ***Add - Stormwater*** **means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.**
Replace with - "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system into a defined surface waterbody, or a constructed infiltration facility. There has been a lack of consistency between permits and other regulations issued by Ecology. The term "stormwater" should have one definition across all permits and regulations. This should apply to all definitions, terms, acronyms or even concepts generated by Ecology irregardless of what law, regulation, or permit the word or term is located. (King Co)

Response: The permit contains an adequate definition of "stormwater".

594. ***Add - Threat to human health or the environment*** means when discharges cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), sediment management standards (Chapter 172-204 WAC), or human health based criteria in the National Toxics Rule (40 CFR Part 131.36).' (King Co)

Response: The suggested change was not made to remain consistent with federal language.

595. Appendix A-Definitions. Page 43. Common plan of development or sale. The definition of "common plan of development or sale" raises significant tracking problems. Many independent builders purchase individual lots smaller than one acre from a common plan

of development many years after a development is approved. The requirement that stormwater rules apply to these lots less than one acre creates an unreasonable significant administrative burden. Will there be a requirement to record the stormwater rules on the lots less than one acre that are part of a "common plan of development or sale.?

CWHBA is concerned that under the definition, virtually every subdivided parcel under one acre will be required to seek a Permit. (CWHBA1)

Response: Operators of construction activity within a "common plan of development or sale" that is one acre or larger must be covered under the general permit; either individually or collectively under another permit, if the permittee retains operational control of the implementation of the SWPPP and permit (e.g., through a contract, etc.). Discharges from ponds which collect stormwater runoff from several different operators or permittees will be assessed on a case by case basis.

596. Three different terms are used throughout the permit creating inconsistency. These terms should defer to the term commonly used throughout the NPDES permit program. The three terms are: Storm drain systems; Storm sewer systems; and, Storm water conveyance system. These terms should be replaced with the commonly used term of "municipal separate storm sewer system (MS3)." Terminology and definitions, used in the Construction permit, need to be consistent across all permits. (King Co)

Response: This was addressed by revising the definition for storm sewer system, adding a new definition for storm drain; and deleting the definition of stormwater conveyance system. There is no need to define MS3; this permit applies to all discharges to surface waters via storm sewer systems, not just those that meet the MS3 definition. MS3s only include systems which are "*owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA*".

Fact Sheet

597. We believe that the statement in the Fact Sheet at page 16 with regard to "no grandfathering" of water quality standards is an incorrect interpretation of "compliance" under. the CWA We understand that under the CWA, if a discharge is existing at the time of the permit issuance, Ecology may grant a compliance schedule to meet new water quality standards This approach seems reasonable because to meet more stringent water quality standards, new BMPs may be required. Because new BMPs would probably take some time to select and implement, a compliance schedule would be appropriate. (Sound Transit)

Response: A compliance schedule is not necessary because the standards for construction related water quality parameters (e.g., turbidity, phosphorus, pH) are not changing.

598. The fact sheet that accompanies the draft permit includes additional detail that appears to be regulatory in nature rather than informational. Because fact sheets have no regulatory enforceability, Ecology should adopt these regulatory provisions as agency rules or fold them into the permit as requirements to give them regulatory effect. If Ecology does add requirements to the permit, we would encourage Ecology to provide another opportunity for review and comment before the final permit is approved. (King Co)

Response: The fact sheet does not contain any enforceable requirements which are not in the general permit. Revisions to the draft permit will be consistent with the requirements of Chapter 173-226 WAC.

599. Pages 22, Item #4 - Training requirements in the Fact sheet, under the QLP, are very vague. (King Co)

Response: <u>All QLP provisions have been deleted.</u>

600. **Local program inspections (Fact Sheet page 21, part 2).** The minimum number and frequency of site inspections by qualified local program should be specified in the permit. (People For Puget Sound)

Response: <u>All QLP provisions have been deleted</u>.

601. According to the draft fact sheet (p. 8), "[i]f erosion and sediment control measures are inadequate to prevent the discharge of suspended sediment, phosphorus is likely to contaminate the stormwater. Generally, if turbidity and TSS are controlled with [BMPs], phosphorus will not be discharged in a significant amount." Collection and analysis of stormwater samples for total phosphorus should be required when turbidity or transparency monitoring indicates that BMPs are not well-functioning. (Puget Soundkeeper)

Response: Ecology has determined that it would not be appropriate to require permittees to conduct sampling for total phosphorus. The surface water quality standards for phosphorus are lake nutrient criteria, which is based on the range of ambient total phosphorus in various classes of lakes. Therefore, the standards for total phosphorus should not be applied directly to a stormwater outfall to evaluate compliance with the water quality standards. Based on the relationship between nutrients (phosphorus, etc.) and suspended sediment (TSS, turbidity, etc.), Ecology believes that turbidity is an appropriate surrogate parameter to determine whether or not a specific construction site is causing or contributing to a violation of total phosphorus criteria in a receiving water (lake) which is 303(d)-listed for phosphorus. <u>Therefore, these sites will be required to perform turbidity sampling, rather than total phosphorus; unless a total phosphorus allocation has been established through a</u>

TMDL that can be used to evaluate a single sample taken by a NPDES permitted construction site.

602. Several points in the fact sheet in regard to best practices appear to need restatement or clarification. Washing out cement trucks or any containers with cement is illegal… Storm drain filters are a last defense BMP- they should not be used as the major component of a SWPP- they are not effective against fine materials. … The use of straw bales is problematic as they degrade and contribute to water quality problems. … Maintenance and removal must be stressed even more than in the document. There should be reference to guidance on proper maintenance and removal. (RE Sources)

Response: The fact sheet is not an exhaustive list of all BMPs and has not been revised to address the items listed. The intent was to summarize the primary technical basis for each of the twelve elements of stormwater pollution prevention plans. Ecology's Stormwater Management Manuals for Eastern and Western Washington provide detailed BMP design, installation, and maintenance specifications. The permit (Condition S3) requires operators to implement BMPs from Ecology's manuals or "demonstrably equivalent" BMPs.

Economic Impact Analysis

603. While the economic analysis assumes that use of stormwater best management practices (BMPs) is already commonly in practice, in point of fact, the lack of broad enforcement by Ecology has probably resulted in a minimal effort to fully comply on the part of some operators. A vigorous enforcement of the more proscriptive standards of this revised permit would clearly compel the expanded use of BMPs, and probably will require increased measures to remove suspended solids from some stormwater discharges. This will translate to a more significant increase in project costs than stated in the economic analysis, both for project proponents as well as for Ecology enforcement activities. (Dept. of Corrections)

Response: Ecology generally agrees with the increased inspections and enforcement could increase the cost of permit compliance (appropriate BMPs, etc). However, according to the WAC 173-226-120(4) - Economic Impact Analysis (EIA), the cost of BMPs to comply with the water quality standards or applicable federal laws and rules is not to be included in the EIA:

> (4) The following compliance costs associated with a general permit shall not be included in the economic impact analysis:
>
> (a) The costs necessary to comply with chapters 173-200 [**Ground Water Quality Standards]**, 173-201 [**Surface Water Quality Standards**]…; and
>
> (b) The costs associated with requirements of the general permit which result from conformity or compliance, or both, with federal law [**Clean Water Act**] or regulations [**Phase I and II Stormwater Rule**].

604. What is the average cost of permit compliance for sites under one acre? How much does it cost to prepare an acceptable SWPPP for a site under one acre? (Master Builders)

    Response: Ecology does not know the average cost of permit compliance for sites under one acre. Sites under one acre would only require permit coverage if they were part of a larger common plan of development or sale. Typically the developer of the common plan has already designed and installed sediment controls (perimeter control, stormwater ponds, etc.). SWPPPs for many small sites involve basic erosion control (mulch, blankets, silt fence); and may not require professional engineering. Ecology has developed a SWPPP template which can be used by <1 acre Permittees. Also, Ecology encourages builders within a common plan of development to use and/or modify the existing SWPPP prepared for the original common plan of development.

    EPA conducted a cost-benefit analysis for the Phase II Stormwater Rule. They modeled per home compliance cost estimates for single family detached to the median and mean cost of a new home. Compliance costs of approximately $400 to $650 per home equaled 0.22% to 0.43% of the price of a new home.

DRAFT Notice of Intent (NOI)/Permit Application

605. Section IX, "State Environmental Policy Act" ("SEPA") provides in pertinent part: SEPA requirements must be complied with prior to submittal of the stormwater permit application. If exempt, provide documentation that justifies SEPA exemption. This section is vague because it does not clearly explain what documentation "justifies" the SEPA exemption. This section should more clearly explain to the applicant what documentation is required that will justify SEPA exemption (BIAW)

    Response: A copy of the local code which lists the categorical SEPA exemption would suffice.

606. Notice of Intent Application Form, Section IX, page 3, reads: "SEPA requirements must be complied with prior to submittal of the stormwater permit application. If exempt, provide documentation that justifies SEPA exemption." There is no explanation as to what documentation is required that "justifies SEPA exemption." The Applicant should know what documentation is acceptable to justify SEPA exemption. (CWHBA1)

    Response: A copy of the local code which lists the categorical SEPA exemption would suffice.

Testimony From Public Hearing in Mt. Vernon, WA

My name is Wendy Stefenson. I'm the North Sound Bay Keeper with Resources, and I want to start by thanking you all for having this here and for making an improvement in the permit thus far. I speak as the North Sound Bay Keeper, and with some degree of experience in stormwater construction sites. I'm going to read to you the first paragraph of a press release that was put out

February 7, 2005. It's titled "Stormwater Team Results," sediment runoff remains a problem at construction sites around the county and Lake Whatcom. The Stormwater Team released its initial findings on construction sites today, after one year of doing assessments on Best Management Practices in stormwater. Dirty water running offsite was found during 15 percent of construction site visits given 338 site visits throughout the year at 194 sites. A majority of these sites were in Sudden Valley. Results also showed that Best Management Practices, designed to keep sediment contained on-site and out of area creeks and lakes, were not adequately implemented for at least half of the sites. So, I've spent a fair bit of time in the construction stormwater trenches, looking at sites and seeing that what we have now is not being effective, and while I recognize that this permit is an improvement, I'm not sure that it's going to really get us to where we need to go. I will have additional comments later, but I've shortened my comments some from our discussion. In regard to the fact sheet, there are a couple of things that concern me. There was no mention of the practice of washing out cement trucks or cement containers, and I think that should be mentioned because that's something that we've definitely seen on construction sites as a problem. The use of storm drain filters; sometimes folks use storm drain filters and they think that's sufficient, when clearly they are not and they should be used as a last defense, and I think that needs to be reiterated in the fact sheet. Additionally, the problems associated with straw bales was not mentioned in the fact sheet, and I believe that should be mentioned as well, because if it's in the fact sheet, I fear that people will say, well, it's in the fact sheet, it must be a good thing, when in case, straw belts degrade over time and can contribute to water quality problems. Fourthly, maintenance and removal must be stressed even more then in the present fact sheet. Basically, we often see, obviously, things are not being maintained and folks leave their construction sites and they're also not returning the site properly, and so I think that should be emphasized. Doing what I do with a team of volunteers and interns, there are a couple things that we need to make our job easier, which in turn, definitely helps water quality and helps staff at Ecology. We definitely need more access to information in order to _____ these construction projects effectively, and I'm not talking about what we have right now, I'm talking about what is listed in the permit right now, so, if you guys are going to a one-acre and greater, all of those sites have to be listed with Ecology so we have access to them, regardless of if they're with a qualified local program or if they believe that they're exempt because they discharge to ground. A member of the public has to be able to verify that for themselves and we definitely stay on public right-of-ways. So, that's not a concern. In regard to projects less then one acre, I realize that this is a very difficult issue, but we suggest that, at the minimum, in addition to the planned units, that a SWPPP, BMP installation maintenance and _____ group be required for all sites, and that's because using like Whatcom as an example, we have massive build-out of an area that is draining to a 303D listed water body, and this is all piecemeal, but all of the construction is happening right now, and we need to have some way to address that. In addition, as we go out to see construction projects, for the public, it would be useful if all construction sites were posted with the project name, the name of the contractor and the Ecology permit number or other permit number, if that's applicable. I've heard that most of the burden is going to be on the permittee. It sounds like you're going to be getting extra workload as well, and so I would actually like to see, in the permit, more about inspection and enforcement, because there's really not very much about what Ecology's role is going to be in terms of oversight of the permit, and if you guys get DMRs, who's going to make sure the DMRs are there, who's going to look at them, things like that. So,

these are my initial concerns. Again, I thank you for having this hearing and thank you for listening.
(Wendy Steffensen, RE Sources)

> **Response:** Thank you for providing testimony and written comments on the draft permit. The issues raised regarding BMPs (cement, storm drain inserts, and straw bales) were included in responses to your written comments. Discharges from cement truck wash out is not authorized by the general permit. No changes to the fact sheet were made, because BMP technical specification and maintenance requirements are fully addressed in the Stormwater Management Manuals for Western Washington. The fact sheet provides the basic technical basis for the 12 elements of Stormwater Pollution Prevention Plans, and cannot an exhaustive list of all BMP requirements. responses to written comments. The permit provides public access to SWPPP and other required records and plans for all sites under permit, including sites one acre and larger. Discharge Monitoring Reports (DMRs) will be entered into Water Quality Permit Life Cycle System for review and analysis by Ecology staff, including regional inspectors. DMR data is also available to the public.

Testimony From Public Hearing In Richland, WA

My name is Clarence Barnett. I represent the Central Washington Homebuilders Association in Yakima, WA, and I appreciate the opportunity to speak to you today on some of the issues relating to stormwater. The Central Washington Homebuilders has concerns with the provisions of the proposed Construction Permit that increase the cost of home construction for the small builder and are unreasonable for our arid climate inn the central basin. Further, there is little, if any, provision in the Construction Stormwater General Permit to allow the flexibility that we feel is necessary to meet extenuating circumstances, although you did bring out some of those issues on those 12 elements which will modify that statement somewhat. I am presenting to you our written comments at this time, if I may.

[Jeff Killelea, Ecology]: Yes, you may.

But I do not intend to discuss all the comments at this public hearing.

[Jeff Killelea, Ecology]: All right, we appreciate that.

One of our main concerns relates to S2.F on page 10, as it relates to the rainfall erosivity waiver window. The waiver window does not reflect rainfall conditions in the Central Basin, Region 2. The attached total monthly precipitation data of the principle cities in the Central Washington Basin, clearly demonstrates that the waiver window is far too restrictive for the Central Basin. The monthly total precipitation data in the attachment includes the spring showers of May and June that Ecology has indicated, was not included in the rainfall erosivity calculator. The data that I have presented to you is from the Western Regional Climate Center, Washington Climate Summaries. The Central Washington Homebuilders Association is concerned that the rainfall map was eliminated "because it was too complicated to fit into the doable application process." We believe that the EPA-approved _____ should be allowed and is sufficiently accurate for the

Central Basin. Most construction activity occurs in the urbanized areas of the Central Basin, has less then ten inches of rainfall. Ecology should not attempt, in our opinion, to establish a waiver window for the entire area of the Cascade Crest, and I've included a map from the stormwater manual that shows that that area that comes from Wenatchee, Ellensburg, Yakima, down into the Richland area, is all in that ten inches or less rain and therefore we should not be stuck with the requirements for the entire map of Eastern Washington, so we feel that this requires considerable reconsideration on the part of Ecology. Another area of our concern relates to Appendix A, Definitions, page 43, on the terminology definition of common plan of development or sale. We appreciate the fact that this is from the federal regulations. However, it's going to raise significant tracking problems, and we are concerned whether Ecology or the MS4s will have the personnel to attract these items for many years. Many of the developments in the large subdivision have a, say, 20-30 lots that are less then one acre, and it just is implemented the way we read the definition, then someone might have to track that lot down for 10-15, or 20 years, prior to the time that there is a building on that lot, so we feel that a requirement for the stormwater rules on lots less then one acre that are part of a common planned development or sale, is going to have to have some other means in order to get around that federal definition. The Notice of Intent application form, Section 9, page 3 reads: SEPA requirements must be compiled prior – I'll start over – SEPA requirements must be complied with prior to the submittal of the stormwater permit application. If exempt, provide documentation which justifies SEPA exemption. There is no explanation as to what documentation is required that justifies SEPA exemption. The applicant should know what documentation is acceptable to justify SEPA exemption. Now, the City of Yakima Municipal Code, this ____ for SEPA categorical exemptions in there for the City of Yakima, and if a developer attaches that categorical exemption from the City of Yakima to the NOI, the question is, is that going to be adequate, sufficient justification when you submit the application. Those are the only points that I will talk – well, I do have one other point, I'm sorry, and that relates to the second supplemental letter that I gave you, and that is, the Construction Stormwater General Permit is scheduled to be effective in December of 2005, that the MS4s will be in June, 2006, and then they have several years to implement many of those functions. Who is going to give the direction, or who, what I will call a void? We are concerned that during that void there could be delays if Ecology is going to take over that function prior to the time that it's implemented by the MS4s. Thank you very much.
(Clarence Barnett, CWHBA)

> **Response**: Thank you for providing testimony and submitting written comments on the draft permit. All issues raised (erosivity waiver, common plan of development, SEPA, and relationship between Construction Permit and MS4 Permit) were also submitted in writing. Responses to all issues raised are addressed separately and included in this document.