GUIDE TO USING THIS COMMENT / RESPONSE TABLE

Ecology received comments from 20 commenters during the public comment period between July 21 and September 10, 2010. The attached table lists the 20 commenter names in the left-hand column at the beginning of each of their letters, e-mails, or oral (hearings) comments. The Comment Number (#) in the left-hand column corresponds to the Response to Comment Number in the right-hand column.

The center column ("Comment") of the table displays the actual public comments in full (verbatim). The comments have been broken out over table rows simply for the ease of viewing and formatting. Attachments to the original comments (such as supporting letters, etc.) have not been repeated here and can be found at http://www.ecy.wa.gov/programs/wq/stormwater/construction/comments.html under "attachments."

Some information or background provided by commenters (center column) does not require a response--therefore, you will see blank spaces throughout the table where the commenter is providing that information. Responses to comments (right column) begin at or near the beginning of a specific question or request.

LIST OF COMMENTERS

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
COMMENTER #1 -- BUILDING INDUSTRY ASSOCIATION OF WASHINGTON	[Received via e-mail at 6:12 p.m. PDT, September 8, 2010.] Dear Ms. Bakeman: The Building Industry Association of Washington (BIAW) appreciates the opportunity to comment on the revised Construction Stormwater General Permit (CSGP). BIAW is the state's largest trade association, with over 10,500 company members in the land development and building trades, many of whom routinely seek coverage under the CSGP. Since the CSGP's expansion to smaller sites in 2005—along with greater requirements and restrictions—BIAW members have done their best to properly apply and comply with the permit. It has not been easy. Understanding and correctly implementing the best BMPs on a variety of sites with unique infiltration and run-off demands is sufficiently challenging for the average small-site contractor. However, adding to this challenge is the paperwork heavy application, monitoring, and termination process. It is this process that should be revised in the current permit. Unfortunately, Ecology has seemingly not chosen to do so. The following comments include recommendations for changes to streamline the permit process, saving Ecology and applicants significant time and money. [1] Commenter #1's Footnote: [1] Notably, Ecology wants to double its water quality account, which is entirely paid for by applicants. Because applicants cannot afford the "Chevy" program that Ecology wants, even in a good economy, Ecology should look to cost-saving efficiencies within the permit that will serve to fund other important needs, like enforcement.	
Comment #1.1	**Page 8, Application** BIAW would like Ecology to adopt an eNOI system, similar to the EPA. This will save significant time and resources, including paper and Ecology FTEs. If Ecology does not plan to adopt an eNOI system, please explain why.	**Ecology Response to Comment #1.1:** Ecology's new "WebDMR" program is a big step moving toward electronic management of the permit processing system. Ecology built WebDMR first because the DMR process itself is more labor intensive for both permittees and Ecology. Permittees can now use WebDMR to file their monthly reports on line. Ecology is reviewing options for an "e-NOI" approach. Given ongoing budget and resource concerns, we cannot estimate when we will complete an e-NOI system.
Comment #1.2	**Page 9, Public Notice** Publishing public notice twice in a paper of general circulation is extremely expensive, unnecessarily burdensome, and questionably valuable. Publishing the recommended template in the Tacoma News Tribune costs $750, for a total of $1500. This is an incredible cost. And in this day and age of online papers and notices, is it the most effective means to reach its intended audience? Ecology should remove the paper requirement and allow online paper notices. [2] Under the EPA's eNOI system, an applicant can	**Ecology Response to Comment #1.2**: 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 State Legislature due to opposition from the business community. Currently, RCW 90.48.170 states:

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	go to work within seven days of the NOI. This is a fresh breath of efficiency. Commenter #1's Footnote: [2] At a recent meeting of the Wastewater Permit Fee Taskforce, Bruce Wishart claimed that People for Puget Sound previously supported this common-sense change.	"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."
Comment #1.3	[Ecology notes: Received via e-mail 9/9/10-- Comment #1-3 is the Commenter's insert to the original comment sent at a later date.] Sharleen-- Upon review, I have amended my comments, submitted September 8th, slightly. Below are the changes. A comment on page 11 is added. The previous comments on page 11 and 13 are clarified. Please add these revisions to my prior comments. Sorry for the confusion. Page 11, Ground Water Discharges Ecology has changed the language such that it suggests that permit holders must sample groundwater discharges to ensure that they "meet the terms and conditions of this CSWGP." Please clarify whether Ecology is asking applicants to sample water prior to infiltration. Page 11, Demonstrably Equivalent Notifying Ecology no less than 60 days prior to the use of a BMP that is demonstrably equivalent is burdensome and all but ensures that only BMPs in Ecology-approved manuals are used regardless of the ability of a BMP to improve stormwater quality. This requirement further stymies the intent and promise of the Stormwater Research Center to promote effective, emerging stormwater technologies.	**Ecology Response to Comment #1.3:** The language has not changed. As before, the permit does not require sampling of stormwater prior to infiltration. However, Condition S3.A prohibits discharges that could cause or contribute to violations of the ground water quality standards, and condition S3.B requires permittees to apply AKART prior to discharging to groundwater. In certain situations, operators sample water before discharging to groundwater to verify that the discharge meets these permit conditions. For example, when operators treat high pH stormwater with CO2 (neutralized), they verify that the pH is within the range of 6.5 – 8.5, prior to infiltration. The Pollution Control Hearings Board granted summary judgment on this issue on Oct 26, 2006 and specifically ordered Ecology to insert this language into the permit during the appeal process of the 2005 permit.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Page 13, Inspections The inspection frequency remains unnecessarily burdensome, especially for sites with continuous discharge (e.g., designed drainage and dewatering sites). The current language suggests that sites with discharges that start and stop multiple times during the week must have multiple inspections. However, one inspection in a week is sufficient to determine whether BMPs are functioning properly, particularly because most permittees will visit the site when raining to get an accurate site assessment and sample. Please strike "any" and/or revise the phrase "and within 24 hours of any discharge from the site." Thank you. Jodi	**See Response to Comment #1.4 below.**
Comment #1.4	**Page 13, Inspections (note from Ecology: see the Commenter's revision above).** The inspection frequency remains unnecessarily burdensome, especially for sites with continuous discharge (e.g., designed drainage and dewatering sites). Inspecting a site one a week is sufficient to determine whether BMPs are functioning properly, particularly because most permittees will visit the site when raining to get an accurate site assessment and sample. Please strike "any" and further revise such that the weekly inspection *should* be within 24 hours of a rain event.	**Ecology Response to Comment #1.4**: Ecology has provided guidance that should clarify the intent, in "How to do Stormwater Monitoring: A guide for construction sites. B. When to conduct inspections." The clarifying text follows --"Inspectors must conduct site inspections once a week and within 24 hours of any stormwater discharge from the site. During periods of continuous discharge, the permit requires one inspection per week. On a site that is temporarily stabilized and inactive you only need to inspect the site once a month." (You can find this document at: http://www.ecy.wa.gov/pubs/0610020.pdf).
Comment #1.5	**Page 14, Reliable Contact** Please give examples of what Ecology determines to be "other reliable method[s]" of contact. BIAW is concerned that this subjective determination exposes the inspector to liability when he or she cannot be contacted.	**Ecology Response to Comment #1.5**: The edited language has been removed; the information requested is now on the Notice of Intent form. This information should enable Ecology to reach someone responsible for stormwater issues in the event of an emergency.
Comment #1.6 **(response continued)**	Page 17, Numeric Effluent Limit As Ecology is well aware, the EPA just withdrew its 280 NTU effluent limitation, stating "the Agency has concluded that it improperly interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support ..." the rule. BIAW believes the 280 NTU numeric effluent limit should be similarly withdrawn from the CSGP. If the EPA is lacking sufficient data to support the limit, then Ecology also lacks credible data needed to support and defend the limit. The CSGP and	**Ecology Response to Comment #1.6:** Ecology incorporated the 280 NTU limit into the draft permit in response to the December 1, 2009, EPA Effluent Limitation Guideline (ELG) Rule that went into effect in February 2010. In August 2010, the EPA submitted an unopposed motion to the

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Fact Sheet do not provide a rationale for the 280 NTU beyond that it is a new requirements of the EPA.	7th Circuit Court of Appeals to have the 280 nephelometric turbidity unit (NTU) limit removed from the rule to allow EPA to revisit its analyses (EPA's Unopposed Motion for Partial Vacature of the Final Rule, Remand of the Record, to Vacate Briefing Schedule, and to Hold the Case in Abeyance, No. 09-4113 [Aug. 13, 2010]). Ultimately, the Court sent the decision for how to handle the 280 NTU limit nationally back to EPA. EPA announced in the Federal Register (November 5, 2010, EPA–HQ–OW–2010–0884; FRL–9222–2]) that it has "stayed" the 280 NTU, effectively removing the limit from the ELG. Therefore, Ecology removed the 280 NTU limit from the 2010 CSWGP.
Comment #1.7	**Page 25, SWPPP General Requirements** The new language in B.1.e ("a *contingency plan* for additional treatment and/or storage of stormwater that would violate the water quality standards if discharged") creates a requirement that the applicant design two SWPPPs—the primary SWPPP and a back-up SWPPP. The previous language suggested that the permit holder have an "action plan"—how he or she will respond if the BMPs are not functioning properly. [3] The new language suggests that the permit holder should have a second SWPPP at the ready with different BMPs to respond to unknown conditions and/or situations. This is the problem. Only when the site is active, rain events are occurring, and BMPs performing can the permit holder determine how to revise the SWPPP to meet run-off requirements. Otherwise, the permit holder is wasting time and money designing a "contingency plan" (secondary SWPPP) based on speculative events or conditions. Commenter #1's Footnote: [3] Oregon has a similar "action plan" approach. Permit holders are required to take immediate action, not prematurely design a plan in the absence of a problem.	**Ecology Response to Comment #1.7:** Ecology added a "contingency plan" as an example of good site planning to respond to the field observations by Ecology inspectors. They have observed that some site operators fail to anticipate large volumes of turbid stormwater when designing sediment control structures, and were unable to respond to violations of water quality standards in a timely manner. The language, as an example, is not intended to change the requirements of the SWPPP process outlined elsewhere in the permit and in the manuals
Comment #1.8	**Page 28, Stabilize Soils** Please define what "if needed" means under 5.c. Will the permittee's decision based on the weather forecast be supported regardless of actual weather and outcome?	**Ecology Response to Comment #1.8:** Aside from minor grammatical edits, Ecology did not change the 2010 permit language from the 2005 permit language. Site operators should make a professional determination that sites are adequately prepared for pending weather conditions. Ecology addresses permit compliance issues, including those related to unforeseen weather, on a case-by-case basis.
Comment #1.9	**Page 33, Termination** The language has been tweaked to clarify what already was: a permittee can terminate the permit (without a transfer) upon sale to the homeowner or upon selling all lots. However, this still leaves the	**Ecology Response to Comment #1.9:** In order to transfer permit coverage from one party to another, both parties must sign the transfer of coverage form. In cases

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	standard developer in a lurch. If the developer has wants to sell a few lots—and desperately needs to do so in this economic climate—but the spec builder(s) or homeowner(s) will not accept transfer, the developer is forced to maintain permit coverage, cost, and liability even though he is not responsible for erosion practices on the site. The responsibility (and enforcement consequences) should be on the builder or homeowner to accept transfer or obtain the permit. Please change the language to allow termination once the developer transfers operational control of the site, lot, or property.	where buyers refuse to sign their half of the transfer form, permit coverage can't be transferred. However, permit condition S10.A.2 allows Permittees to terminate permit coverage once the property is sold and they are no longer the owner. The selling permit holder is no longer responsible for a site s/he no longer owns.
Comment #1.10	**Page 41, Bypass** Please define and/or include the "design criteria" listed under G26.A.	**Ecology Response to Comment #1.10**: Design criteria depend on the engineered structure. For example, the design criteria for a Temporary Sediment Pond are found in Volume II of the Western Washington Stormwater Manual, Chapter 4 on page 4-105. The permit cannot specify the design criteria for all of the possible BMPs permittees can use. Ecology provides this information for permittees in its Stormwater Management Manuals for eastern and western Washington.
Comment #1.11 **Comment #1.11 (continued)**	**Economic Impact Analysis** Ecology correctly concludes that the "general permit has a disproportionate impact on small business." For sites disturbing 1 – 5 acres, Ecology has determined it will cost $4,130 to comply with the permit. ***Yet Ecology has omitted the most expensive parts of the permit from its analysis.*** As in the last permit and supporting EIA, Ecology omits any costs from federal base-line requirements, including SWPPPs and minimum BMPs, pursuant to WAC 173-226-120. However, this WAC and Ecology's omission are inconsistent with RCW 19.85, which is designed to consider all costs to small business of a proposed rule. Ecology voluntarily accepted administration of the CSGP from the EPA, and with it all minimum requirements from the EPA. Thus, Ecology is responsible for accurately assessing and reporting the entirety of costs to a permittee in applying and complying with the CSGP. [4] Only with this accurate assessment can regulators and legislators make reasoned cost-benefit decisions—the intent of RCW 19.85. [Commenter #1's Footnote: [4] Ecology cannot remove minimum requirements to mitigate costs, but by its own numbers, Ecology acknowledges there is at least $4,310 that can be cut.] Of the listed mitigation measures, their scope and effectiveness are limited, and they are heavily outweighed by the cost of the permit. Some of the previous relief measures are no longer, such as phased-in sampling. The erosivity waiver is so limited that very few residential construction sites can use it in Western Washington. Applying and qualifying for the extreme hardship and small business waivers is difficult for the average contractor. Ultimately, Ecology has failed to provide actual cost-saving features, such as online NOIs, fully functioning eDMRs, limited DMRs where appropriate (in months with no discharge), expanded erosivity waivers, and fewer (or online) public notices.	**Ecology Response to Comment #1.11**: A draft general permit is not a proposed rule and, as such, Ecology is not required to perform a cost/benefit analysis per RCW 19.85. As noted in the EIA--The costs associated with requirements of the CSWGP that result from conformity or compliance, or both, with federal or other state laws or regulations are not considered in this EIA. The justification for excluding compliance costs related to these laws and rules is that permit holders cannot be exempt from these laws or rules through the permit process and, therefore, any associated cost impacts cannot be mitigated. Permit holders must comply with existing regulation independent of permit requirements. Ecology has provided the maximum mitigation measures allowable under current law and regulation. As noted in an earlier response, Ecology has constructed a fully functioning WebDMR system, which permittees have started to use.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	BIAW requests that Ecology revise the permit to remove unnecessary and redundant compliance costs. In addition, BIAW would like to see Ecology make a concerted effort to alleviate the burden of this permit on small business with greater exemptions and fewer paperwork requirements. Commenter #1's Footnote: [4] Ecology cannot remove minimum requirements to mitigate costs, but by its own numbers, Ecology acknowledges there is at least $4,310 that can be cut. **Jodi Slavik** Of Counsel Building Industry Association of Washington 111 21st Avenue SW Olympia, WA 98501 (360) 352-7800 office (360) 352-7801 fax jodis@biaw.com	
COMMENTER #2 -- CITY OF YAKIMA	[Received via e-mail at 2:01 p.m. PDT, September 3, 2010.] Sharleen, Please find enclosed comments from the City of Yakima regarding the draft construction stormwater permit.	
Comment #2.1	1. Ecology's revised Construction permit explicitly permits construction runoff to our MS4 (page 6, lines 3-6). This is in direct conflict with the City's Municipal Stormwater Permit that had us adopt an illicit discharge ordinance that makes all non-stormwater discharges to the MS4 illegal. The construction site runoff will contain excessive sediment (and other pollutants), and once it reaches the MS4 it becomes the City's responsibility (and cost) to clean (maintain capacity), prevent reaching the outfall and to take any necessary enforcement actions. **The City proposes that the revised Ecology Construction permit not authorize discharges to the MS4.** If this is not changed, a site could be in compliance with Ecology's Construction permit and in violation of the City's ordinance. The construction runoff can still go to surface water under Ecology authority.	**Response to Comment #2.1:** Ecology has edited the permit to clarify this language and clarify when permittees must obtain written authorization from local sewer system authorities before discharging into storm water system. Please note changes in Special Conditions S1 and S2 to align the language of the permit more closely with the discharge to storm sewer or combined sewers and the discharges noted in the comment.
Comment #2.2	2. The revised Construction permit authorizes non-stormwater discharges that conflict with non-stormwater discharges authorized by the municipal permit (through the City's Illicit Discharge ordinance). **Five types of discharge authorized without conditions in the constructions permit need to be modified to be consistent with the municipal permit to ensure that the**	**Response to Comment #2.2.** The bulleted language noted in the comment has not been changed from the 2005 permit with the exception of a small edit to clarify text.

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	discharges comply with the City's illicit discharge requirements. The discharges are: o Fire hydrant flushing (page 6, line 23) o Potable water including water line flushing (page 6, line 24) o Pipeline hydrostatic test water (page 6, line 25) o Dust control water (page 6, line 30) o External building wash (page 6, line 31) If you have any questions, please let me know. Thank you. Scott Schafer Wastewater Division Manager City of Yakima (509) 249-6815	However, the CSWGP language has been clarified elsewhere to remind Permittees they must obtain written permission from local authorities before they are allowed to discharge to local/municipal sewer systems (see especially S1.C). See also the Response to Comment #2.1, above.
COMMENTER #3: CLARK COUNTY ENVIRONMENTAL SERVICES	Received via e-mail at 10:41 a.m. PDT on September 10, 2010.] I have one comment to make on the draft construction permit.	
Comment #3.1	Consider revising S3.C.2. to specifically include stormwater manuals listed in Appendix 10 of the phase I municipal stormwater permit. **Rod Swanson** Clark County Environmental Services 1300 Franklin, Suite 150 P.O. Box 9810 Vancouver, WA 98666-9810 Phone (360) 397-2121, ext. 4581 Fax (360) 397-2062 rod.swanson@clark.wa.gov This e-mail and related attachments and any response may be subject to public disclosure under state law.	**Response to Comment #3.1:** Thanks for your comment. Ecology will add the following sentence to Section S3.C: "For purposes of this section, Ecology has approved the stormwater manuals listed in Appendix 10 of the Phase I Municipal Stormwater Permit."

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
COMMENTER #4: DOUGLAS COUNTY TRANSPORTATION AND LAND SERVICES	 DOUGLAS COUNTY TRANSPORTATION & LAND SERVICES 140 19TH STREET NW, SUITE A • EAST WENATCHEE, WA 98802 PHONE: 509/884-7173 • FAX: 509/886-3954 www.douglascountywa.net	
Commenter #4	September 10, 2010 Sharleen Bakeman Permit Comments Department of Ecology, Water Quality Section PO Box 47600 Olympia, WA 98504-760	
	Sent via e-mail: sharleen.bakeman@ecy.wa.gov. Subject: Construction Stormwater General Permit – new Draft 2010 (July 21, 2010)	
Comment #4.1	Dear Ms. Bakeman, While it appears that the DRAFT permit has been available for review since July 21, 2010, information was discovered inadvertently while looking for other information on the Construction Stormwater web-page. It is frustrating that information that this DRAFT was available was not provided to permitted NPDES jurisdictions or to developers, contractors and agencies that have been or are currently covered under a Construction Stormwater General Permit.	**Response to Comment #4.1:** While Ecology regrets not contacting everyone who might have an interest in the numerous permits under renewal, please be assured that we do make a significant effort to reach those most closely affected by the permit. To that end, Ecology: • Sent e-mails to everyone signed up on the Ecology listserv for the CSWGP (which can be found at http://listserv.wa.gov/cgi-bin/wa?A0=ECOLOGY-CONSTRUCTION-STORMWATER), including Douglas County. • Sent letters and e-mails to stakeholders, agencies, Tribes. • Sent letters to thousands of current permittees. • Sent e-mails to more than 3,000 CESCLs. • Published the State Register notice. • Held 5 public workshops and hearings around the state. • Extended the 30-day required public comment period to 51 days to accommodate summer work and vacation schedules.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
		There will likely always be gaps in being able to reach everyone interested. Ecology appreciates your input and will consider it when developing future permits.
Comment #4.1 (continued)	Local jurisdictions, including Douglas County, Chelan County, Wenatchee and East Wenatchee have been continuously working with the Department of Ecology Water Quality Section on development and implementation of Stormwater Management Programs to comply with the NPDES Phase II Municipal Stormwater Permit. One of the elements of the municipal permit is that the permittee obtain and comply with the Construction Stormwater Permit for projects. It is frustrating that the Department of Ecology did not provide **outreach** to Municipal Stormwater Permit holders, at least to the same degree that the Department of Ecology expects Permit	
Comment #4.1 (continued)	holders to provide **outreach** to the public as part of the required stormwater program. Would it be acceptable to the Department of Ecology if outreach to the public, including businesses, and developers, were limited to posting of information on a web-site? The Department of Ecology recently held listening sessions in Eastern Washington regarding the process to updated the Eastern Washington Permit. This was an opportunity were those affected by the update of the Municipal Permit could have been notified that the DRAFT of the updated Construction Stormwater Permit was available.	
Comment #4.1 (continued)	While separate, the Construction Stormwater General Permit and the elements within the Stormwater Management Program required by the NPDES Phase II permit do overlap. This overlap has created confusion for the development community, the local jurisdictions and for Ecology staff. The relationship between the Construction Stormwater Permit and the Municipal James R. Barker, Administrator • Douglas Bramlette, PE PLS, County Engineer • Mark Kulaas, AICP, Land Services Director	
Comment #4.2	permits should be evaluated and clarified during the process of updating BOTH the Municipal Stormwater Permit and the Construction Stormwater Permit. It appears that the Department of Ecology Construction Stormwater Permit requirements and timeline exceed federal requirements. EPA provided for implementation in phases, depending upon the size of the activity, the DRAFT does not phase in implementation.	**Response to Comment #4.2:** Please refer to the Response to Comment #1-6, above. The phased implementation was in the context of phasing in the 280 NTU numeric limit over the next four years. Because the 280 NTU numeric limit has been removed from this permit, the issue is no longer relevant.
	The following comments apply to the DRAFT Notice of Intent (NOI) application form.	
Comment #4.3	• Clarification is requested regarding who is qualified to prepare and submit the NOI. Some of the information, including existing site conditions – contaminated soils/groundwater and Discharge/Water Information may require input from a professional in order for the information provided to be accurate, consistent and valuable. What is the intent of the Department of Ecology with regard to preparing the NOI? Keep in mind that while requiring information of a technical nature should warrant the use of a professional that is capable of providing accurate information, this would also increase the time and costs associated with preparing the NOI.	**Response to Comment #4.3**: Box XII of the NOI form is clear in its intent that an officer or senior manager of a corporation or agency must sign the form, attesting under penalty of law that "qualified personnel properly gather and evaluate the information submitted." In these situations, officers or managers often enlist the aid of technical professionals within his or her organization to assure that the information provided is thorough and correct.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #4.4	• Based upon feedback from the development community and experience attempting to coordinate (local agency/state agency) with the Department of Ecology, the requirements associated with the State Environmental Policy Act are frustrating and confusing. The length of the process is problematic to local jurisdictions attempting to prepare for construction during the bidding process in an effort to begin construction as soon as possible after a contract is awarded. Waiting until a contract is awarded to begin the processing of an NOI, (this is when the contractor is identified) is not reasonable and does not serve the public interest in completing projects in a cost effective and timely manner. The same concerns regarding timing associated with SEPA have been expressed to the County from the development community.	**Response to Comment #4.4**: All proposals are subject to this state policy, which requires state and local agencies to consider environmental impacts before approving or denying the proposal. Except for limited exemptions, proposed projects that require coverage under the CSWGP are subject to the SEPA review as well as other applicable rules and law. SEPA requirements are governed by the SEPA law, Chapter 41.23C RCW and regulation Chapter 197-11 WAC, define SEPA requirement, not this general permit. While it is true that SEPA does not allow a project to begin until the proponent has completed the SEPA process satisfactorily, the project proponent can <u>begin</u> the application process for construction stormwater general permit coverage at any time. Ecology, however, does not consider the application <u>complete</u> until the applicant has complied with SEPA. On-site contacts (required on the NOI form) can be indicated as "to be decided" and the site owner can apply for permit coverage. Once a contractor is chosen (i.e., contract is awarded), the permit can be transferred to the contractor.
Comment #4.5	• There are problems with determining the SEPA lead agency. In many instances activities which trigger the need for a Construction Stormwater Permit begin prior to issuance of a permit by the local jurisdiction. The Department of Ecology has asserted that the local jurisdiction is the lead agency. Ecology is the agency issuing the permit, as such Ecology would be the lead agency. Inconsistent information from Ecology and local agencies has frustrated the development community. Conveyance of inconsistent information from the Department of Ecology and the local jurisdiction on this issue impacts the successful implementation of the required local stormwater program. It creates a sense of mistrust from the public and development community as local jurisdictions attempt to work with the public and the development community through education and outreach in order to implement required stormwater program elements.	**Response to Comment #4.5**: SEPA regulations define the Lead agency; this general permit does not. Determining Lead Agency falls under those regulations and guidelines. There is a list of SEPA lead agency contacts; http://www.ecy.wa.gov/programs/sea/sepa/sepacont.html.
Comment #4.6	• While there are not changes proposed to the public notice requirements, this is an area that should be evaluated. The public notice requirement associated with the Construction Stormwater NOI and the SEPA process are costly. Evaluation of the intent and benefits of the public notice process should be conducted and should include analysis of any other options for providing public notice in an alternate manner which could be more timely and cost effective. This may include but not be limited to posting of the NOI's on an Ecology hosted web-site.	**Response to Comment #4.6:** 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 State Legislature due to opposition from the business community. 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

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		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.
	James R. Barker, Administrator • Douglas Bramlette, PE PLS, County Engineer • Mark Kulaas, AICP, Land Services Director	
Comment #4.7	• It appears that the NOI and the permit are inconsistent with regard to Electronic Discharge Monitoring Reports (WebDMR). The NOI states that the reports *must* be submitted electronically, while the permit itself provides for a waiver from electronic submission. While electronic submission may not be problematic for local agencies, this requirement could be seen as an additional burden upon a small operator or individual, if they do not have the ability meet the electronic submittal requirement they would be subjected to yet another process in order to comply with the Construction Stormwater Permit.	**Response to Comment #4.7:** Thank you for noting this discrepancy. We have added a link for learning more about the waiver process to the NOI form. Ecology believes that the electronic approach will make filing monthly reports much simpler for the majority of permittees.
Comment #4.8	Another area of frustration with the current and the proposed DRAFT permit is the Termination and Transfer of Permit coverage process. The Termination process to date has been inconsistent. Clearly defined criteria for determination of stabilization to allow for Termination should be identified. Additionally guidance and/or procedures to aid developers to transfer of coverage to the purchasers of parcels created by development activities covered under a Construction Stormwater Permit should be included as part of the permit. Transfer of coverage has been problematic for the development community, this is an area where the Department of Ecology could achieve successful implementation of the permit by providing guidance and education to those impacted.	**Response to Comment #4.8:** Thank you for your suggestions. Ecology feels that termination criteria are straightforward, but acknowledges that unique decisions depend on site characteristics and may be based on best professional judgment, either by Ecology or by the site operator. Ecology will endeavor to address the issue of termination and transfer through education and outreach to permittees. Please also refer to Responses to Comments #5.10, 6.3, 7.3, and 13.1, for more information on stabilization, termination, and transfer issues.

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Comment #4.9	The Economic Impact Analysis has identified many components associated with obtaining and complying with the Construction Stormwater Permit. The labor cost of $32.50 per hour is lower that what would be anticipated for projects (both public and private) in the Douglas County area. Requesting input from public and private developers in Eastern and Western Washington regarding the costs associated with compliance with the existing Construction Stormwater Permit would provide a realistic basis for evaluating the costs of implementing additional requirements in the DRAFT document. This analysis should address situations where monitoring and compliance is addressed by the permit holder and where monitoring is conducted by professionals that specialize in providing these services on behalf of permit holders.	**Response to Comment #4.9:** Please refer to Ecology's Response to Comment #1.11 above.
Comment #4.10	The public education and outreach associated with the comment period for the DRAFT Construction Stormwater General Permit has not been sufficient to ensure that those impacted by the permit have been provided the opportunity to thoroughly review and comment on the permit. Additionally due to the relationship and overlap between the Construction Stormwater General Permit and the NPDES Phase II Municipal Stormwater Permit it would seem that since both permits are at a point that an update and re-issuance is required, these updates should be coordinated to ensure consistency and to provide clarity for issuance and compliance.	**Response to Comment #4.10**: Please refer to our Response to Comment #4.1.
	I look forward to working with Ecology on both the Construction Stormwater General Permit and NPDES Municipal Stormwater Permit processes in order to meet the objectives of complying with state and federal regulations in a manner that efficiently serve the needs of the community.	
	If you have any questions or need any additional information, please feel free to contact me. Sincerely, Jennifer Lange Jennifer Lange, P.E. Assistant County Engineer James R. Barker, Administrator • Douglas Bramlette, PE PLS, County Engineer • Mark Kulaas, AICP, Land Services Director	
COMMENTER #5 -- KING COUNTY	**King County** King Street Center 201 South Jackson Street, Seattle, WA 98104-3855 September 8, 2010	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Sharleen Bakeman Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504 RE: Comments on Draft Construction Stormwater General Permit (National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activity) issued July 21st, 2010 Dear Ms. Bakeman: King County Department of Natural Resources and Parks and King County Department of Transportation have reviewed the Public Notice Draft of the Construction Stormwater General Permit (CSWGP) issued by your group on July 21st, 2010. We wish to thank you for the opportunity to provide comments. Our comments and suggestions on a few topics are listed below.	
Comment #5.1	Many of the changes proposed by Ecology are to bring the Washington State Construction NPDES permit into alignment with the EPA Effluent Limit Guidelines (ELG). This included the adoption of the proposed maximum 280 NTU discharge level for projects with greater than 10 acres of disturbance. If discharges exceeded this number, the project would be in violation of the permit. The ELG 280 NTU discharge level was appealed and EPA made a motion to the court to vacate the 280 NTU discharge level so they can re-evaluate the standard (http://newsletters.agc.org/environment/files/2010/08/epas-elg-motion.pdf).	**Response to Comment #5.1** Thank you for this observation. Please refer to Response to Comment #1.6.
Comment #5.1 (continued)	EPA's motion to the Court was decided on August 24, 2010, and the motion was granted. Ecology is assuming that the 280 NTU limit will be removed by EPA through a process that will include a Federal Register notice. Ecology included the 280 NTU in the first place in response to the EPA's rule; because EPA has cited their own need for re-analysis as one of the reasons to remand the 280 NTU, Ecology feels it is appropriate to remove the related language from the proposed CSWGP. King County is presuming that the 280 NTU limit language will be removed, and the turbidity language will revert back to the language in the current 2005 permit.	
Comment #5.2	The following items are comments specific to the permit language and errata comments found in the review of the permit. • Hyperlink on page 9 (http://ei.tamu.edu) does not work.	**Response to Comment #5.2:** Thanks for noting this problem. Ecology has alerted the EPA to this issue. EPA also has an erosivity ("R factor") calculator web site that will provide the same information:

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		http://cfpub.epa.gov/npdes/stormwater/lew/lewcalculator.cfm. Ecology added this site to the permit.
Comment #5.3	• Why are there two blank cells in Table 3? If those actions are not required, the table should indicate that effect.	**Response to Comment #5.3:** Ecology experienced formatting errors in our tables, which we have corrected in the final document. However, please note that Ecology removed this row of Table 3; it related to the 280 NTU limit (refer to Response to Comment #1.6 for more information).
Comment #5.4	S4.B.5.e requires the CESCL to "note the presence of suspended sediment, turbidity, discoloration, and oil sheen, as applicable." By what measure is the CESCL supposed to assess the level of suspended sediment? Total suspended solids are normally measured in a laboratory setting as opposed to a visual check in the field. If the CESCL is only checking for visual suspended sediment, how is it different than a visual check for turbidity? Acceptable methods of measuring turbidity are discussed elsewhere in the draft permit but suspended solids are not.	**Response to Comment #5.4:** The language simply requires that the CESCL observe the discharge and note the presence of suspended sediment. Ecology believes this to be a reasonable requirement that provides CESCLs with additional information about how well the BMPs are performing. Therefore, the final permit includes the language.
Comment #5.5	• S4.D and S4.D.2 both contain a definition for engineered soils as "amendments including but not 36 *Draft Construction Stormwater General Permit – July 21, 2010* Page 18 limited to Portland cement-treated base [CTB], cement kiln dust [CKD], or fly ash". Rather than defining a term multiple times in the text, it should be defined once, either the first use in the text or in a glossary.	**Response to Comment #5.5:** Thank you for your input. Ecology removed the extraneous definition.
Comment #5.6	• S8.B.2 should be edited to read: (<u>no</u> more than 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or <u>no</u> more than a 10% increase in turbidity when the background turbidity is more than 50 NTU).	**Response to Comment #5.6:** Thanks – Ecology made the change.
Comment #5.7	• S8.B.3.e should be edited as follows: • Continue to sample daily until discharge turbidity meets the water quality ~~meets the water quality~~ standard for turbidity. • Correct typo on line 20 of page 27. • Correct typos on line 36 of page 27.	**Response to Comment #5.7:** Thank you for the comments. Ecology corrected the text. Please note that the section is now S8.C.3.e.
Comment #5.8	• S9.D.9.d requires disposal of wheel wash or tire bath wastewater in a manner that will not result in a discharge to surface or groundwater. However, it lists upland land application as a suitable disposal method. Wastewater that infiltrates in an upland setting will eventually reach groundwater (or possibly sheet flow into a surface water body). The amount of treatment it receives while infiltrating will	**Response to Comment #5.8** Ecology changed the language as follows: d. Discharge wheel wash or tire bath wastewater to a separate on-site treatment system that prevents discharge to surface water, such as closed-loop recirculation or upland land

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	depend on the characteristics of the vadose zone.	application, or to the sanitary sewer with local sewer district approval. Discharges to sanitary sewer or combined sewer systems are not covered by the CSWGP. Permittees must seek permissions from these local entities before discharging into any of their facilities.
Comment #5.9	• Correct typos on lines 1 & 2 of page 32.	**Response to Comment #5.9:** Thanks for pointing out these typos, which Ecology has corrected.
Comment #5.10	• S9.D.11.b requires temporary ESC BMPs to be removed "within 30 days after achieving final site stabilization or after the temporary BMPs are no longer needed." What is the rationale for the 30 day timeline if the alternative is as open-ended as "no longer needed"? How would the requirement change if the 30 day timeline were removed?	**Response to Comment #5.10:** Ecology expects that trained CESCLs on site will use their best professional judgment to determine whether the 30-day timeline is enough time for the BMP to have had its intended effect, and to determine whether the site is ready for BMP removal. The 30-day timeline is an industry-accepted time period that typically equates to final monthly billing by the contractor, and allows a site contractor to pick up the site and remove materials, equipment, trailers, and BMPs, etc., to shut down the project.
Comment #5.11	• Consider rephrasing S9.D.12.a. As written it is awkward.	**Response to Comment #5.11:** Thanks; Ecology clarified the language.
	We wish to express our thanks for the opportunity for this review. We look forward to working with you on the implementation of this permit in a way that provides protection to the environment, using solutions that are effective and attainable by our programs. Sincerely, Douglas D. Navetski Supervising Engineer King County DNRP Ronda Strauch Supervising Engineer King County DOT Cc: Curt Crawford, PE, Stormwater Services Section Manager, WLRD, King County DNRP David Batts, Engineer III, SWSS, WLRD, King County DNRP Mark Wilgus, Senior Engineer, SWSS, WLRD, King County DNRP Jennifer Keune, Environmental Scientist III, RSD, King County DOT Peter Dumaliang, Environmental Scientist III, KCIA, King County DOT Julia Turney, Engineer II, RSD, King County DOT	Thank you very much for taking the time to provide comments on the draft CSWGP.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
COMMENTER #6 -- CITY OF LONGVIEW	The City of Longview Washington September 9, 2010 Ms. Sharleen Bakeman Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504 Re: Comments on Draft NPDES Construction Stormwater Permit Ms. Bakeman, We appreciate both the work that Ecology has expended to draft the new Construction NPDES permit and the difficult issues the department must address. As a current Permittee, we are concerned about its impact.	
Comment #6.1	A. S4.C.2 (a) and (b) Monitoring Requirements, Benchmarks, Reporting Triggers and Limits This section requires sampling weekly when there is a discharge from the site or when it enters waters of the state. There are cases where a discharge infiltrates and or evaporates offsite with no potential of reaching surface waters. Please consider re-wording this to read "when there is a discharge to waters of the state" or add a clause akin to "or the discharge is fully infiltrated offsite under written agreement with the affected parcel owner."	**Response to Comment #6.1:** The language in S4.C.2.a has been clarified to read: "The CESCL must conduct sampling at least once every calendar week when stormwater (or authorized non-stormwater) discharges from the site and enters waters of the state. All discharge locations must be sampled. For sites with 100% infiltration of stormwater (or authorized non-stormwater) to the ground, no sampling is required."
Comment #6.2	B. S8 Discharges to 303(d) or TMDL Waterbodies • S8.A. Change "Numeric Effluent Limits" to "Benchmarks" • S8.B.1 Requiring a construction project to locate and sample (as often as	**Response to Comment #6-2:** Please refer to http://water.epa.gov/lawsregs/guidance/303.cfm -- the term "numeric effluent limit" is correct, is intentionally distinct from the term "benchmark." and has been further

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	daily) the final discharge point of a storm sewer (public or private) raises safety, access, and logistical issues that should not be borne by the project. In Longview, ditch access is limited –most sites are steep, deep, slippery, and next to hazards such as quicksand-like muddy channel bottoms and high flows when pumps are running. • S8.B.2 Requiring a construction site to meet the surface water quality standards for turbidity is silly. Stormwater from clean, well-maintained developed areas often cannot achieve this standard. This should be a benchmark only. Otherwise, the risk of violations and increased legal liability may stifle honest adaptive management and/or discourage development.	clarified in the final permit. Discharges that exceed numeric effluent limits are permit violations, while discharges that exceed benchmarks are triggers for adaptive management, and not considered independent permit violations, unless the operator does not complete the required adaptive management steps to address the problem. The permit does not require operators to sample at the "final discharge point of a storm sewer." Special Condition 4 of the permit notes "Sampling is not required outside of normal working hours or during unsafe conditions." To address challenges to in-stream sampling when assessing compliance with the turbidity standard, Ecology also provides an alternative sampling approach in the language of S8.C.1 related to 303(d)-listed waterbodies that can be used for either 303(d) or *non*-303(d) waterbodies. Ecology expects site operators and CESCLs conducting site sampling (and off-site, where necessary) to use their best professional judgment to conduct sampling safely. This includes finding an area to sample where the CESCL is never in personal danger. Ecology disagrees with City of Longview's opinion that "Requiring a construction site to meet the surface water quality standards for turbidity is silly." This requirement is consistent with the Federal Clean Water Act, State Water Pollution Control Act, and Friends of Pinto Creek v. Envtl.Prot. Agency (*Pinto Creek*), 504 F.3d 1007, 1012 (9th Cir. 2007).
Comment #6.3	C. S9.D.5 <u>Stabilize Soils</u> The City acknowledges that temporary stabilization practices reduce erosion at construction sites. However, the current temporary stabilization criteria are often wasteful and contentious. We have encountered numerous cases when favorable weather did not necessitate the 2 or 7 day thresholds. Contractors resent inspectors when, as all predicted, costly cover is graded over after its application, all under blue skies. Please consider a more common sense approach, and require cover "prior to any measureable precipitation event." Though simple, it is	**Response to Comment #6.3:** Ecology appreciates the effort and costs involved for contractors and Permittees to meet the soil stabilization timeframes. However, Ecology based the current soil stabilization requirements on the Stormwater Management Manuals for Western and Eastern Washington. It would not be in keeping with Clean Water Act requirements to use a less stringent standard. It would also be inconsistent with the municipal stormwater permits, and most local codes. Further, a

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	a stricter standard because it lacks a 2-7 day lag before cover is required.	soil stabilization standard based on predicted rainfall would be difficult to implement and enforce and would ultimately result in more erosion than currently allowed. Federal regulations direct us toward this level of protection: "The longer exposed soil areas are left unprotected, the greater the chance of rainfall-induced erosion. Proper planning such that soil stabilization activities can occur in quick succession after grading activities have been completed on a portion of a site can greatly reduce the amount of sediment and turbidity discharged. In addition, limiting the amount of land that is ``opened up'' at one time to the minimum amount that is needed, as well as limiting soil compaction and retaining natural vegetation on the site, can greatly reduce erosion rates and help maintain the natural hydrology. Also, grading of the site to direct discharges to vegetated areas and buffers that have the capacity to infiltrate runoff can reduce the volumes of stormwater requiring management in sediment controls." (Federal Register, 12/1/2009, V. 74, #229, EPA, 40 CFR Part 450, Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category; Final Rule, Page 62996). Also see http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf, page 54, where the PCHB's finding notes that the timeframes are "neither impracticable nor unreasonable."
Comment #6.4	D. S4.C.5.c Numeric Effluent Limit: Turbidity >280 NTU Please strike this section. As a result, a lawsuit filed by the National Association of Home Builders (NAHB) and petitions filed by both NAHB and the federal Small Business Administration Office of Advocacy (SBA), the Justice Department filed a motion recently with the 7th Circuit Court of Appeals, asking it to vacate the new effluent limitation guidelines (ELGs) for the construction and development industry and place a hold on the litigation until 2012.	**Response to Comment #6.4:** Please refer to Response to Comment #1.6. Ecology has removed the text noted in S4.C.5.c related to the 280 NTU limit from the final permit.
Comment #6.5	If you have any questions, please contact us.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Sincerely, Josh Johnson, PE Street/Stormwater Manager City of Longview josh.johnson@ci.longview.wa.us (360) 442-5210 Jeanette Scibelli Executive Director Lower Columbia Contractors Association lcca@lcca.net (360) 425-8820	
COMMENTER #7: MASTER BUILDERS ASSOCIATION **See also the attachments at http://www.ecy.wa.gov/programs/wq/stormwater/construction/comments.html**	1909-2009 MASTER BUILDERS ASSOCIATION of King and Snohomish Counties 100 Years of Building Community Master Builders Association of King and Snohomish Counties 335 116th Ave. SE Bellevue, Washington 98004 (425) 451-7920 / (800) 522-2209 425) 646-5985 www.MasterBuildersInfo.com September 10, 2010 Sharleen Bakeman – Permit Comments Water Quality Program Washington Department of Ecology P.O. Box 47600 Olympia, WA 98504	
Comment #7.1	Dear Ms. Bakeman, On behalf of the 3,450 member companies of the Master Builders Association of King and Snohomish Counties ("MBA"), I am writing to provide comments on the Department of Ecology's ("Ecology") draft 2010 Construction Stormwater General Permit ("CSWGP").	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #7.1 (continued)	**Special Condition S4.C.5.c – Numeric Effluent Limit: Turbidity greater than 280 NTU** Our primary concern with the CSWGP as presently drafted is with Special Condition S4.C.5.c, found on p. 17 of the permit. The draft 2010 permit incorporates U.S. EPA's new Effluent Limitation Guidelines ("ELG Rule"), specifically a 280 NTU limit for measuring turbidity at sites with 10 or more acres of disturbed land. However, as you are undoubtedly aware, since Ecology released the draft 2010 permit for public comment on July 21, 2010, the U.S. Justice Department has filed a motion with the 7th Circuit Court of Appeals asking it to vacate the numeric limit while EPA goes back and develops a numeric limit that builders can actually comply with.	**Response to Comment #7.1:** Thank you for your comment. Please refer to Response to Comment #1.6.
Comment #7.1 (continued)	The action came as a result of a lawsuit filed by the National Association of Home Builders (NAHB) and the Wisconsin Builders Association and by administrative petitions filed by both NAHB and the federal Small Business Administration (SBA) Office of Advocacy asking EPA to revise its new ELGs for the construction and development industry[1]. Both NAHB and SBA argued that the numeric limit is arbitrary and based on flawed analyses[2]. When asked by the Justice Department to defend the numeric limit, EPA admitted several flaws in the final rule and that it had improperly interpreted the data.	
Comment #7.1 (continued)	Furthermore, NAHB estimates that nationwide, these limits would cost up to $10 billion annually, hurting small businesses and housing affordability, with little additional environmental benefit. EPA itself admits the ELG would control less than one quarter of one percent of all total sediment runoff[3].	
Comment #7-1 (continued)	Given the Justice Department motion cited above and the fact that EPA cannot defend the numeric limit, we urge Ecology to remove the numeric limit portion of the ELG Rule from the draft 2010 permit, since the basis for the ELG Rule is no longer valid[4].	
Comment #7.2	**Special Condition S4.C.5 – Turbidity/Transparency Benchmark Values, Reporting Triggers and Limits** During the last permit update in 2005, MBA questioned how Ecology set and justified the benchmark value for turbidity of 25 NTU when the state water quality standard is 50 NTU. We remain concerned that a benchmark for turbidity of 25 NTU (p. 16) is unreasonable and excessive to determine compliance with applicable water quality standards.	**Response to Comment #7.2:** The state water quality standard for turbidity is not 50 NTU; it is… • No more than 5 NTU over background turbidity, if background is less than 50 NTU, or • No more than 10% over background turbidity, if background is 50 NTU or greater The 25 NTU benchmark was appealed in 2005 and the PCHB determined that it was a reasonable and lawful trigger for the permits' tiered adaptive management process.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #7.3	**Special Condition S10.A.3 – Notice of Termination** It would be helpful for Ecology to clarify what is meant in this new section on p. 33 of the permit and how it would be implemented. Is this for any residential construction project or what size project does this apply to? What exactly needs to be done by the permittee when each individual home is sold?	**Response to Comment #7.3:** The text in question has been adjusted to be clearer. "For residential construction only, the Permittee has completed temporary stabilization and the homeowners have taken possession of the residences." Refer to the definition for temporary stabilization in the permit. The language is intended to allow subdivision developers to terminate their permits when homeowners are in possession of the properties, but may not have finished out their yards, as an example. This provision can be used by any size project, provided that the entire permit area qualifies for termination; partial terminations are not allowed. Ancillary or common portions of the subdivisions (parks, stormwater ponds, streets, etc.) that are not owned by individual homeowners must meet the "final stabilization" criteria in order to be terminated. See also the Response to Comment #1.9.
Comment #7.4	**General Condition G9.A – Transfer of General Permit Coverage** In order to satisfy this permit requirement listed on p. 37, the new discharger must obtain a signature from the current discharger in order to transfer permit responsibility, coverage and liability. This signature is needed for both the Transfer of Coverage Form and the Notice of Intent. However, in today's challenging market there are often times when the new discharger is unsuccessful at locating the current discharger in order to obtain the necessary signatures. An example of this is when a lender takes back the property and none of the notice forms are filled out, which is often the case. Ecology needs to ensure that this issue is resolved in the current permit update, so that projects aren't kept in limbo just because these signatures aren't secured.	**Response to Comment #7.4:** See also the Response to Comment #1.9.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Thank you for the opportunity to provide feedback on the CSWGP. Please do not hesitate to contact Allison Butcher at (425) 460-8223 or abutcher@mbaks.com, or myself at (425) 460-8240 or jjerabek@mbaks.com, should you have any questions. Sincerely, Jennifer Jerabek Snohomish County Manager Attachments: 1. NAHB petition of the ELG, June 10, 2010 2. SBA petition of the ELG, April 20, 2010 3. EPA's ELG Motion, August 12, 2020 4. Court Order Granting Remand of C&D ELG, August 24, 2010	Thank you very much for providing comments on the draft CSWGP.
COMMENTER #8: NORTH CENTRAL HOME BUILDERS ASSOCIATION	NCHBA NORTH CENTRAL HOME BUILDERS ASSN. *"Building Our Future Together"* President *DUSTIN CHRISTENSEN* 1st Vice President *JAY BOLLINGER* 2nd Vice President *RYAN KELSO* Secretary *JIM BLAIR* Treasurer *LISA CARNES* Immediate Past President *STEVE SADLER* September 10, 2010 Sharleen Bakeman – Permit Comments Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504 RE: Public Comment on Draft CSGP Dear Ms. Bakeman: The intent of this letter is to respond to the draft CSGP. I've finally had a chance to read through everything and have the following comments:	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #8.1	National Directors *RANDY GOLD* *JIM BLAIR* **General** *Schedule:* I want to express frustration that we only accidently found out about this at the 11th hour. I've called around the area, and in the greater Wenatchee area *not one engineer, contractor or jurisdiction that I've talked to was aware of this proposed change until last week.* And that only happened by accident while searching the website for the NOI application. While I'm sure you followed the letter of the law, with the ease of mass email the lack of notification is frustrating and leads to distrust.	**Response to Comment #8.1:** Please see the Response to Comment #4.1.
Comment #8.1 (continued)	In addition, the comment window seems very short: only July 21 through September 10. Your workshops were scheduled from August 23rd to September 1, leaving barely a couple weeks for response. Seems pretty tight to me.	
Comment #8.2	*Phase-In:* The EPA anticipated implementation in two phases: sites that disturb more than 20-acres would have 18 months, and then sites that disturb more than 10-acres would have four years. Of course DOE has chosen immediate implementation of everything. Is there a valid reason this can't be phased-in as anticipated by EPA?	**Response to Comment #8.2:** Please see the Response to Comment #1.6.
	Executive Officer *MARC S. STRAUB* marcstraub@nchba.cc 4119 Malaga Alcoa Hwy. P.O. Box 2065 Wenatchee, WA 98807 (509) 665-8195 Office (509) 665-6669 Fax (888) 616-6169 Toll Free *www.nchba.cc*	
Comment #8.3	**Application Form** *Part V. Existing Site Conditions* This is entirely new. What is the purpose of these questions? In eastern Washington it's pretty common for land to be mildly contaminated from prior agricultural uses. So, if we answer 'yes' to either of these questions, then a detailed description of contaminants is required. This can be very expensive, and to what end? How detailed does this need to be as the costs of the evaluation could be a deal killer for small projects? Will this be used for other DOE enforcement actions?	**Response to Comment #8.3:** The purpose for the questions on the Notice of Intent form is to determine if contamination is significant enough to warrant additional or more specific stormwater monitoring or pollution prevention requirements, or the issuance of an individual NPDES permit. The level of detail should be consistent with the project proponent's knowledge or information. It doesn't require the operator to perform new soil testing or mapping beyond what is already in their possession. Ecology plans to use the information during the permitting process to ensure compliance with water quality standards during the construction phase

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #8.4	*Part VIII. Discharge/Receiving Water Information* The second bullet includes: " … *with no potential to reach surface waters under any conditions*." I'm not even sure what that means as ALL water *eventually* reaches surface water. It may migrate 10 miles, but eventually it will reach surface water. It would be better to simply ask: "Will construction runoff be discharged into the ground with 100% infiltration?"	**Response to Comment #8.4:** Ecology disagrees with the suggestion, as it used a similar statement on a previous version of the form, which applicants misunderstood. Ecology is comfortable that the current wording is sufficient to convey the meaning.
Comment #8.5	*Part IX. SEPA* How do you handle projects that don't need SEPA review? SEPA is triggered by a permit, and *if an agency doesn't require a permit then they can't issue a SEPA determination*. Period. For example, many rural jurisdictions don't have a fill/grade permit … and without a permit they can't issue SEPA. In these cases, **since DOE is requesting the permit they then become the lead agency for issuing SEPA**. Is this really what DOE wants?	**Response to Comment #8.5:** All projects require a SEPA review, unless categorically exempt (see WAC 197-11-800). If there is no local permit to be issued, Ecology is required by Chapter 41.23C RCW and Chapter 197-1 WAC to assume Lead Agency status, review the SEPA checklist and make the determination.
Comment #8.6	A simple solution would be to eliminate the SEPA requirement when a local permit is not required. *Part XI. Electronic DMRs* This seems to require that all DMRs be filed electronically. Is this the case, or can they still be filed by mail if necessary?	**Response to Comment #8.6:** See Response to Comment #8.5 above. Eliminating the SEPA requirement would require a legislative change. Regarding electronic filing, as noted in the Response to Comment #1.1, the WebDMR system is now a requirement for permittees to use to submit their monthly reports (DMRs). For Permittees who believe they would experience a hardship using this approach, there is contact information in the permit to request a waiver of the electronic process.
Comment #8.7	**Construction Stormwater General Permit** *Page 8, Application* Is there a reason you can't adopt an eNOI system similar to the EPA? Under the EPA's eNOI system, an applicant can go to work within seven days of the NOI. Is there a valid reason that DOE can't follow the EPA example?	**Response to Comment #8.7:** Please see the Response to comment #1.1 Washington state law requires a 30-day comment period,
Comment #8.8	Item A.1.b requires the NOI to be submitted at least 60 days before discharging stormwater (which effectively means before starting work). And then the same paragraph states the "coverage … will automatically commence on the thirty-first day following receipt, or issuance of the permit." Isn't this contradictory? Besides, 60 days is much to excessive and, quite frankly, will kill many projects that aren't bid until late summer. For example, if a project is awarded in early September, to wait 60 days would put the start date in November --- right in the winter months. This effectively removes 2 months from the building season.	**Response to Comment #8.8:** Regarding the question of contradictory language: The Pollution Control Hearings Board has ruled that the current language in the permit is not inconsistent with Revised Code of Washington 90.48.170, which prohibits discharges for 60 days after application, but does not address the timing for granting of coverage or the start of construction activities.
Comment #8.9	*Page 9, Public Notice* The costs for advertising can be expensive. Here in Wenatchee, each advertisement is typically around $150 for a total cost of $300. However, in other parts of the state the	**Response to Comment #8.9:** Please see Response to Comment #1.2.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #8.9 (continued)	cost is much higher. In this day and age is it the most effective means to reach its intended audience? Rather, why not remove the paper requirement and allow online notices?	
Comment #8.10	*Page 33, Termination* In today's economic climate a developer may desperately need to sell a few lots. However, if the buyer won't accept transfer of coverage the developer is left holding the bag. The responsibility should be on the buyer to accept transfer or obtain the permit. Please consider changing the language to allow termination once the developer transfers *operational control* of the site.	**Response to Comment #8.10:** Please see Response to Comment #1.9.
Comment #8.11	**Economic Impact Analysis** I have a number of questions and problems with this EIA, and quite frankly think it's grossly incomplete. Ecology has determined it will cost $4,130 to comply with the permit for small sites. ***Yet you have omitted several significant costs from the analysis, including: SEPA, Public Notices, NOI permit fees, and – most importantly – the actual SWPPPs and BMPs***. This is clearly inconsistent with RCW 19.85 which requires consideration of ALL costs to small business. Only with this complete information can reasonable cost-benefit decisions be made.	**Response to Comment #8.11:** On page 12 of the EIA, Ecology provides an explanation for this approach: **"Compliance costs excluded from the EIA** The costs associated with requirements of the CSWGP that result from conformity or compliance, or both, with federal or other state laws or regulations are not considered in this EIA. The justification for excluding compliance costs related to these laws and rules is that permit holders cannot be exempt from these laws or rules through the permit process and, therefore, any associated cost impacts cannot be mitigated. Permit holders must comply with existing regulation independent of permit requirements."
Comment #8.12	You're evaluation uses an estimated labor cost of $32.50/hour which seems too low. Generally, in the real world, the onsite foreman has the responsibility of monitoring erosion control who has higher labor cost. The idea that this will be assigned to a junior, off-the-street carpenter just isn't realistic. Throw in prevailing wages and the hourly cost will be higher yet. And, of course, independent consultants would be MUCH higher.	**Response to Comment #8.12:** The EIA used the following source for this information: "Washington State Department of Labor and Industries-**Journeyman** carpenter union wage rate to individuals including benefits," (footnote 8, page 6 of the EIA).
Comment #8.13	Adding these expenses together and not including cost-saving features such as online posting, and you have clearly failed to accurately show the true cost of the work proposed.	**Response to Comment #8.13:** Ecology stands by the results of the EIA. See also the Response to Comment #1.1
Comment #8.14	We appreciate the opportunity to provide comment and your consideration of the North Central Home Builders Association's concerns and suggestions.	**Response to Comment #8.14:** Thank you very much for taking the time to provide comments on the draft CSWGP.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
COMMENTER #9: PORT OF VANCOUVER	Port of Vancouver USA September 10, 2010 Sharleen Bakeman – Permit Comments Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504	
	RE: Port of Vancouver Comments on the Draft Construction Stormwater General Permit Dear Ms. Bakeman: The Port of Vancouver (POV) provides these comments on the draft Construction Stormwater General Permit (draft permit) currently open for public comment. The POV takes environmental stewardship seriously, and it is our commitment to strive for programs and policies that allow nature and industry to successfully coexist. We appreciate the opportunity to submit these comments on the draft permit and look forward to your response.	
Comment #9.1	**S4. Page 12, Line 3, Table 3** Table 3 (Summary of Monitoring Requirements) has been updated to clarify that sites under 1 acre require monitoring only if they are part of a larger Common Plan of Development. There are no entries in the table for the requirements for Weekly Sampling w/Transparency Tube, or Weekly pH Sampling for the sites that disturb 10 acres or more and exceed 280 NTU. ***Recommendation*** For clarity, we recommend the newly added last row of the table (sites that disturb 10 acres or more and exceed 280 NTU), include entries in the last two columns (not required for Weekly Sampling w/ Transparency Tube) and (required for Weekly pH Sampling).	**Response to Comment #9.1:** Thanks for noticing this omission, which Ecology has corrected. Please note, Ecology removed the last row of this table due to the removal of the 280 NTU effluent limit. Please refer to the Response to Comment #1.6 for more detail.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #9.2	**S4.B. Page 12, Line 13** Under S4.B. in the draft permit, "The Permittee must report changes in personnel for responsibilities listed under S4.B of this permit to the applicable Ecology permit administrator." According to the draft permit, the person responsible for carrying out these duties under S4.B. must be a CESCL; however, there is no requirement to name the CESCL when the Permittee submits the NOI. Additionally, there are situations where a CESCL for a project could routinely change such as: a large municipality with many CESCL on staff; a large project with a contractor providing CESCL services for which the contractor may send different CESCLs to the site over time; or the CESCL may go on 3103 NW Lower River Road, Vancouver, WA 98660 ♦ (360) 693-3611 ♦ Fax (360) 735-1565 ♦ www.PortVanUSA.com	
Comment #9.2 (continued)	vacation. All of these examples would create a very burdensome process if Ecology was to be notified each time the CESCL changed at a site. Also note that there is no requirement under the draft permit for Ecology to acknowledge or approve the "replacement" CESCL.	
Comment #9.2 (continued)	***Recommendation*** It does not make sense for a Permittee to be required to notify Ecology of the change in the CESCL for the site since the identity of the CESCL is not required to be disclosed and since it is the responsibility of the Permittee to assure that a CESCL is used. Since Ecology does not review or approve of CESCLs, there seems to be no purpose in requiring this notification. We understand that in many cases the on-site contact is the CESCL but there are also many examples where this is not the case. There is also the possibility to have multiple CESCLs manage a site. Therefore it is recommended that the requirement to Notify Ecology of the change in the CESCL be removed from the permit.	**Response to Comment #9.2**: This language has been removed from the permit; CESCL contact information is required on the Notice of Intent form.
Comment #9.3	**S4. Page 16, Line 1, Table 4** Footnote 2 on Table 4 is confusing. It implies that a single discharge reading can exceed what is termed the "highest allowable daily discharge" since the term "daily discharge" means an average over a calendar day. ***Recommendation*** The footnote should be reworded to avoid misinterpretation.	**Response to Comment #9.3** Please refer to Response to Comment #1.6. Ecology removed this footnote due to the removal of the 280 NTU effluent limit.
Comment #9.4	**S4.C.5.b.v. Page 17, Line 8** The "and/or" terminology in S4.C.5.b.v is confusing. Is sampling required until the turbidity/transparency reading are as indicated AND the CESCL has demonstrated compliance with the water quality limit, or can he CESCL demonstrate compliance without achieving the appropriate specified benchmarks? ***Recommendation*** The "and/or" terminology should be reworded to "or" avoid misinterpretation and unnecessary work.	**Response to Comment #9.4:** Ecology agrees that "or" is more direct and therefore changed the text.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #9.5	**S10. Page 33, Line 16** When the Permittee has completed final stabilization for a portion of a project site, that portion still requires sampling under the current draft permit due to it still being part of the site and the fact there is no mechanism to partially terminate completed and finally stabilized portions of your project site. This is problematic for projects that are phased over long periods of time, especially projects covering large areas with many discharge points.	
Comment #9.5 (continued)	***Recommendation*** After an area of the site has undergone final stabilization and no longer receives runoff from areas of the project still under construction, Ecology should develop a mechanism for partial termination of a project site, potentially those over 10 acres to limit workload, when portions of the site have undergone final stabilization and are no longer receiving 3103 NW Lower River Road, Vancouver, WA 98660 ♦ (360) 693-3611 ♦ Fax (360) 735-1565 ♦ www.PortVanUSA.com	**Response to Comment #9.5:**Although partial terminations are not allowed, please refer to the Response to Comment #1.9 for an explanation of how a permittee can terminate permit coverage for a site s/he no longer owns. If the area that is stabilized has not been sold, the permit remains in force. However, note that S4.C.3.b states: "The Permittee may discontinue sampling at discharge points that drain areas of the project that are fully stabilized to prevent erosion."
Comment #9.5	construction stormwater. Another possible solution is to allow the Permittee to discontinue sampling in these areas and amend their Stormwater Pollution Prevention Plan to reflect these changes.	
Comment #9.6	**Permit Transfers** Currently, Ecology allows partial transfers of permits when another Permittee gains control of a portion of the project site. Ecology issues a new permit number to the new Permittee. However, if the original Permittee regains control of the partially transferred property which is common in development projects, the new permit number is retained by the original Permittee and the entire original site then must be managed with two different permits requiring two SWPPPS, two DMRs, two site visit forms, etc. This is cumbersome and not effective in managing the site's construction stormwater.	
Comment #9.6 (continued)	***Recommendation*** Ecology should come up with a mechanism to allow either the temporary partial trarsfer of a site during the time another party has control of the site (acting as the Permittee) or devise a mechanism to merge the original site and the partially transferred site back into one permit for ease of administration.	**Response to Comment #9.6:** Thank you for the input regarding the administrative process. Ecology will evaluate this process in order to determine if we can make the process simpler and more transparent.
	The Port of Vancouver appreciates the Department of Ecology's consideration of the above comments on the current draft permit. If you have any questions, please contact me at my direct line at 360-992-1125. Thank you for your time.	Thank you very much for taking the time to provide comments on the draft CSWGP.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Sincerely,  Mary Mattix Environmental Specialist	
COMMENTER #10: PUGET SOUND ENERGY	[Received via e-mail 4:58 pm PDT, September 10, 2010.] Dear Ms. Bakeman, Puget Sound Energy, Inc. (PSE) respectfully submits the following comments for consideration by Ecology on the draft Construction Stormwater General NPDES permit (CGP). Our primary concerns have to do with utility relocation work necessary to accommodate road projects managed by city, county or DOT agencies (includes surface streets, highways, bridges, sewer mains, etc.; commonly referred to as Pubic Improvement (PI) projects).	
Comment #10.1	Most PI projects meet the threshold requiring coverage under the CGP, and they commonly require relocation of existing utilities to accommodate the road or other similar types of construction. The utility work can be above ground, under ground, or some combination thereof. For PSE, this can require replacement of underground natural gas mains, electrical distribution or transmission lines, and other appurtenant facilities such as vaults and conduits within or adjacent to the overall footprint of the PI project. Frequently, the utility work is within the area of CGP coverage for the PI project and disturbs a total area that is much smaller than the PI project and typically smaller than the 1-acre threshold that triggers this CGP. Additionally, the utility relocation work typically occurs during course of the PI project construction and within existing TESC measures established by the agency and its contractor. Under current regulations, if the utility work is located outside the area of the PI project and is classified as part of the road project's "common plan of development," then even disturbing an area as small as 25 square feet could require coverage under the CGP. PSE believes that separate and independent coverage in this situation redundant and ineffective and could be adequately addressed at this time.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #10.1 (continued)	Also, on occasion, the need for PSE to relocate existing utilities comes to our attention with only days or weeks of notice from the PI project proponent. In this case, we are typically obligated to relocate our facilities per the conditions of a franchise agreement and may be subject to project delay claims if we do not meet the overall construction schedule. Therefore, the sixty plus days required to perform public noticing and obtain coverage under the CGP can create an unintentional hardship and be difficult to comply with.	
Comment #10.1 (continued)	**PRIMARY REQUEST**: PI projects should be responsible to plan for and obtain CGP coverage for utility relocation work that is a necessary part of the overall project. This is consistent with the implementation of SEPA, where environmental review includes evaluation and consideration of impacts to all associated aspects the proposed action, , including utilities. PSE understands that utility work outside of the PI project area of disturbance may or may not be part of a "common plan of development" for the purpose of triggering this CGP. However in those circumstances where additional utility work occurs outside of the coverage area, but is directly related to the PI project, an abridged and expedited process for obtaining coverage is warranted. This will help reduce project delays and disruption to the traveling public, and reduce project and Ecology costs associated with review processes.	**Response to Comment #10.1**: As you are aware, Ecology is the permitting authority for the Clean Water Act. As the state authority for this federal law, Ecology is not able to make conditional exceptions for permittees under this delegated authority. The issue you outline is not unusual throughout the U.S. -- contractual issues and associated permit requirements are often the source of frustration and confusion among prime and subcontractors for large infrastructure projects. Ecology can only encourage these parties to work together to assure that the construction sites in question are protected as required under environmental laws.
Comment #10.2	**SECONDARY REQUESTS**: ○ It would be beneficial to have a shorter notification period for projects that are accessory to a larger project that will or already has received coverage under the CGP.	**Response to Comment #10.2:** Please note (General Condition G20): Projects that add less than 20% more area to a permitted site do not need to notify Ecology. Please also refer to the Responses to Comments #10.1 and #4.4. State law directs the timeframes associated with the CSWGP, but often do not preclude the applicant from starting some of the contractual timelines.
Comment #10.3	○ Finally, consistent with federal Clean Water Act implementing language, the signature of a Project Manager or Construction Manager (as duly authorized representatives of the company) should be acceptable on the NOI, DMR and other forms required by the CGP. These individuals have direct control of the budget and are specifically responsible for daily construction activities. As a result they have a more tactical ability to ensure regulatory compliance than an	**Response to Comment #10.3:** Federal regulations require applications to be signed as indicated in the text; this signature may be delegated as follows (40 CFR 122.22): "a. For a corporation: by a responsible corporate officer. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	officer of any medium to large sized firm.	principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA)." Please note that the signature is required only for the NOI. Monthly DMRs do not require this signature, although the initial signature does indicate that the executive level signatory understands his or her responsibilities under the permit coverage. See 40 CFR 122.22 for more detail on signature requirements.
	Thank you for the opportunity to comment and for giving this letter consideration. Please do not hesitate to contact me at (425) 456-2550 or andy.padvorac@pse.com with any questions about this matter. Sincerely, **Andy Padvorac** Supervisor MLP Group PUGET SOUND ENERGY Office 425-456-2550 Cell 206-790-8153	Thank you for taking the time to comment on the draft CSWGP.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
COMMENTER #11 SMITH & LOWNEY	**Smith & Lowney, p.l.l.c.** **2317 East John Street** **Seattle, Washington 98112** **(206) 860-2883, Fax (206) 860-4187** September 10, 2010	
See also the attachments at http://www.ecy.wa.gov/programs/wq/stormwater/construction/comments.html	**Via e-mail** (Sharleen.Bakeman@ecy.wa.gov) Sharleen Bakeman – Permit Comments Washington Department of Ecology P.O. Box 47600 Olympia, WA 98504 Re: Comments on Draft Construction Stormwater General Permit	
	Dear Ms. Bakeman: These comments on the draft Construction Stormwater General Permit are submitted on behalf of Puget Soundkeeper Alliance. Puget Soundkeeper Alliance has a number of serious concerns about this draft permit, particularly including its approach to discharges to 303(d)-listed waters, Ecology's failure to satisfy the requirements of Tier II antidegradation analysis, and the lax response provisions for when problems are detected at a permittee's site. In addition, with this draft permit Ecology proposes to miss an important opportunity to ensure that post-construction stormwater control mechanisms are implemented and maintained for development and redevelopment that is not regulated by the Phase I or Phase II municipal stormwater permits.	
Comment #11.1	Antidegradation Ecology has failed to comply with the requirements of the antidegradation policy with regard to the draft permit. Ecology has not done the analysis, developed the adaptive process, or provided the public notice mandated by WAC 173-201A-320, Tier II antidegradation protection.	**Response to Comment #11.1**: Thank you for your input to the CSWGP process. Ecology developed and posted an Antidegradation Plan from October 7 through November 8, 2010, for a 30-day public comment period. Please refer to this Antidegradation Plan, now posted on the Ecology web site, for responses to the comments under the Commenter's "Antidegradation" heading (Comment #11.1).
Comment #11.1 (continued)	Tier II applies whenever a water quality constituent is of a higher quality than a designated water quality criteria (i.e., whenever a waterbody is not on the 303(d) list) and a new or expanded action conducted under an NPDES permit is expected to cause a measurable change in the quality of the water. WAC 173-201A-320(1). New or reissued general permits must undergo an analysis under Tier II when Ecology develops and approves the general permit. WAC 173-201A-320(6).	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.1 (continued)	Tier II analysis requires a determination of whether the discharge to be authorized has the potential to cause a measurable change in the physical, chemical, or biological quality of the receiving waters. WAC 173-201A-320(3). If this determination is affirmative, "then an analysis must be conducted to determine if the lowering of water quality is necessary and in the overriding public interest." WAC 173-201A-320(4). "Information to conduct the analysis must be provided … by [Ecology] in developing a 1	
Comment #11.1 (continued)	general permit …" and must include specified information about social, economic, and environmental costs, as well as "site, structural, and managerial approaches" to prevent or minimize the lowering of water quality. Id.	
Comment #11.1 (continued)	These requirements apply to general permits. As Ecology explained in a January 19, 2006, letter to EPA[1],	
Comment #11.1 (continued)	During the development or re-issuance of a general permit, Ecology will assess the anticipated level of degradation due to new or expanded discharges that are likely to be authorized by the general permit, and that level of degradation will be taken into account during the antidegradation review of the general permit. The permit or fact sheet will contain a determination whether or not the lowering of water quality from the anticipated discharges is necessary and in the overriding public interest.	
Comment #11.1 (continued)	Nowhere in the Fact Sheet or other materials available with the draft permit is any discussion of the anticipated level of degradation due to new or expanded discharges likely to be authorized by the general permit, or of whether the lowering of water quality is necessary and in the overriding public interest. Has Ecology made the assessments and determinations required by WAC 173-201A-320(4)? Where are these discussed?	
Comment #11.1 (continued)	Furthermore, to allow meaningful public participation in the Tier II antidegradation analysis, Ecology explained that it would provide information about all permittees in the public notice process for general permits:	
Comment #11.1 (continued)	A list of the facilities applying for coverage along with a list of the potentially effected (sic) water bodies will be public noticed each time a permit is reissued and each time that a facility applies for coverage under a general permit. The public notice will occur in both a local paper and on Ecology's webpage. The notice will identify the facilities requesting coverage, the receiving water bodies they may affect, and the fact that general permit conditions were established with the expectation that the facilities covered will meet water quality standards; including the antidegradation requirements. A contact name for obtaining more information on the antidegradation review will also be included.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.1 (continued)	Jan. 16, 2006, Ecology letter to EPA. EPA specifically relied on these provisions in its determination approving the changes to the antidegradation regulation as a means to allow antidegradation review on the general permit level, rather than permittee-by-permittee. May 2, 2007, EPA letter to Ecology.	
Comment #11.1 (continued)	[1] January 19, 2006, letter from David C. Peeler, Ecology Water Quality Program Manager, to Michael Gearheard, U.S. EPA Region 10. EPA explicitly relied on Ecology's representations made in this letter in its approval of Washington's 2003 amendments to the antidegradation provisions of the water quality standards. May 2, 2007, letter from Michael F. Gearheard to David C. Peeler. 2	
Comment #11.1 (continued)	It appears that Ecology has not followed these procedures for the draft permit. Has Ecology public noticed on its website and in appropriate local papers the list of facilities applying for coverage and the receiving waters that they may affect? Has Ecology provided a contact name for providing more information on the antidegradation review?	
Comment #11.1 (continued)	Finally, where "information regarding the existence, effectiveness, or costs of control practices for reducing pollution and meeting the water quality standards may be incomplete" because a water quality control program and associated control technologies are "in a continual state of improvement and development," Ecology may satisfy the requirements of Tier II necessity analysis for a general permit by adopting "a formal process to select, develop, adopt, and refine control practices for protecting water quality and meeting the intent" of the antidegradation policy. WAC 173-201A-320(6)(c).	
Comment #11.1 (continued)	This adaptive process must: (i) Ensure that information is developed and used expeditiously to revise permit or program requirements; (ii) Review and refine management and control programs in cycles not to exceed five years or the period of permit reissuance; and (iii) Include a plan that describes how information will be obtained and used to ensure full compliance with [the antidegradation policy]. The plan must be developed and documented in advance of permit or program approval under [WAC 173-201A-320].	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.1 (continued)	WAC 173-201A-320(6)(c). In other words, this adaptive process is one that Ecology must follow to develop and use information about the efficacy of its regulation and the available technology to review and refine general permit requirements and/or other programs in conjunction with the five-year permit cycle, and there must be a documented plan about how this is to be done before the general permit can be issued.	
Comment #11.1 (continued)	While information about the best control practices for reducing pollution from Construction Stormwater General Permit discharges is incomplete, Ecology has no documented plan to comply with these requirements. The Fact Sheet includes a statement on pages 17 - 18 describing a defunct protocol for evaluating emerging stormwater treatment technologies, and identifying some mechanisms that Ecology *may* use to develop and spread information about stormwater control techniques. This	
Comment #11.1 (continued)	constitutes no plan whatsoever to ensure that information about technology for control of construction discharges is developed and used expeditiously to revise requirements in future permits. No description of how such information will be obtained and used to ensure full compliance with the antidegradation policy is presented. No timelines, 3	
Comment #11.1 (continued)	milestones, or schedule is included. How has Ecology complied with the requirements of WAC 173-201A-320(6)(c)?	
Comment #11.2	Post-construction Stormwater Controls This permit should mandate and set standards for permanent post-construction stormwater BMPs for any discharge that is not regulated by the Phase I or II municipal stormwater permits. These provisions should result in BMPs and protections comparable to those resulting from the measures that local governments are mandated to require for new development and redevelopment projects under the Phase I and II permits, including permit conditions that require the use of Low Impact Development ("LID") techniques were feasible. While the Phase I and II permits set standards for post construction	**Response to Comment #11.2**: Ecology is aware of some other states' programs in place for post-construction controls. However, Ecology's budget, staff time and resources are too overwhelmed to address post-construction stormwater controls within the context of this CSWGP.
Comment #11.2 (continued)	stormwater controls, many situations are not included within the scope of the Permits, including: a) construction that takes place outside the geographic coverage area of the Phase I and II permits; b) direct discharges (i.e. construction that will not dischage to municipal storm sewer systems); c) construction under permit thresholds like the 1-acre disturbance threshold in the Phase II permit. Post construction runoff is a serious problem in these situations. The construction stormwater permit provides an opportunity to bring some of these discharges under the CWA's regulatory umbrella and prevent additional degradation of water resources.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.2 (continued)	Other states have begun applying post-construction controls in construction permits. For example, such requirements have recently been imposed in the California construction stormwater general permit (see Order No. 2009-0009-DWQ regarding NPDES No. CAS000002, September 2, 2009, attached, at 37 – 45). They should be imposed in Washington as well.	
Comment #11.3	Condition S1. S1.C.3. concerns non-stormwater discharges and should be tightened up to prevent or minimize the discharge of pollutants in non-stormwater discharges. The permit should explicitly require the application of AKART to all of these discharges. Specifically, there should be restrictions on discharges of water used to control dust – use of such water should be required to be the minimum amount necessary, prohibited when the site is wet, and subject to BMPs. Similar restrictions should be incorporated for routine external building wash down water and landscape irrigation water.	**Response to Comment #11.3:** Ecology believes that the initial caveat in the text is generally sufficient to evoke the approach noted in the comment: "... authorized conditionally, provided the discharge is consistent with the terms and conditions of this permit." However, we have added the language to bullet #3.i as follows: "Water used to control dust. Permittees must minimize the amount of dust control water used." Please note the language following the non-stormwater discharge bullets as well: "The SWPPP must adequately address all authorized non-stormwater discharges, except for discharges from fire fighting activities, and must comply with Special Condition S3." In addition, the AKART requirements in S3B explicitly apply to authorized non--stormwater discharges, it is not necessary to restate it as suggested. In addition, the language of General Condition 12 is clear in its requirement that all Permittees must follow all requirements of the permit, the Clean Water Act, and applicable federal regulation, as noted: "All other requirements of 40 CFR 122.41 and 122.42 are incorporated in this permit by reference." (The CFRs are for conditions applicable to all permits.)
Comment #11.4	The limitations on coverage of S1.E. should be revised to be consistent with the prohibitions of 40 C.F.R. § 122.4. As clarified and explained by the Ninth Circuit Court of Appeals in 2007, § 122.4(i) "is very clear that no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards [that resulted in the inclusion of the receiving waters on the 303(d) list]," unless both requirements of § 122.44(i)(1) and (2) are satisfied. *Friends of Pinto Creek v. US EPA*, 504 F.3d 1007, 1012 (9th Cir. 2007). 4	**Response to Comment #11.4:** Thank you for your comment. Ecology changed the text of the 303(d)/TMDL section of the CSWGP to add the new prohibitions. The following text can be found at S8.B.3: Limits on Coverage for New Discharges to TMDL or 303(d)-listed Waters Operators of construction sites that discharge to a 303(d) listed water body are not eligible for coverage under this permit

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.4 (continued)	When a new discharge is proposed that would add a pollutant of concern to a 303(d) listed waterbody, it is proper to presume that the addition would contribute to the violation of water quality standards. As the PCHB has held in an appeal of a previous version of the Construction Stormwater General Permit, in the context of 40 C.F.R. § 122.4:	unless the operator: 1) Prevents exposing stormwater to pollutant(s) for which the water body is impaired, and retains documentation of procedures taken to prevent exposure onsite with its SWPPP; or 2) Documents that the pollutant(s) for which the water body is impaired are not present at the site, and retains documentation of this finding with the SWPPP; or 3) Provides Ecology with data indicating the discharge is not expected to cause or contribute to an exceedance of a water quality standard, and retain such data onsite with the SWPPP. The operator must provide data and other technical information to Ecology sufficient to demonstrate: a. For discharges to waters without an EPA-approved or -established TMDL, that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the water body; or b. For discharges to waters with an EPA-approved or -established TMDL, that there are sufficient remaining wasteload allocations to allow construction stormwater discharge and that existing dischargers to the water body are subject to compliance schedules designed to bring the water body into attainment with water quality standards. Operators of construction sites are eligible for coverage under this permit if Ecology issues permit coverage based upon the Permittee's affirmative determination that the discharge will not cause or contribute to the existing impairment. See also the Response to Comment #11.20.
Comment #11.4 (continued)	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.	
Comment #11.4 (continued)	*Puget Soundkeeper Alliance, et al. v. Ecology*, PCHB No. 00-173, Order Granting Partial Stay (August 29, 2001); *see also, Associated General Contractors, et al. v. Ecology*, PCHB Nos. 05-157 through 05-159, Findings of Fact, Conclusions of Law, and Order (June 4, 2007) at 51 – 52.	
Comment #11.4 (continued)	Pollutants that are likely to be present in construction stormwater discharges include turbidity, suspended and settleable solids, pathogens, metals, organic compounds, and nutrients. 74 Fed. Reg. 62996, 63010 – 011 (December 1, 2009). Thus, in issuing coverage to new or expanded construction sites, Ecology must abide the prohibition of 40 C.F.R. 122.4 with respect to discharges to waters that are 303(d) listed for impairment of virtually any water quality criteria or sediment management standard.	
Comment #11.4 (continued)	As interpreted by the Ninth Circuit, 40 C.F.R. § 122.4 prohibits new discharges of pollutants of concern to 303(d) listed waterbodies unless "a TMDL has been performed and the owner or operator demonstrates that *before the close of the comment period* two conditions are met, which will assure that the impaired waters will be brought into compliance with the applicable water quality standards. The plain language of this exception to the prohibited discharge by a new source provides that the exception does not apply unless the new source can demonstrate that, under the TMDL, the plan is designed to bring the waters into compliance with applicable water quality standards." *Friends of Pinto Creek*, 504 F.3d at 1012 (emphasis in original).	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.4 (continued)	Neither in S1.E. nor elsewhere in the permit appears any indication that Ecology intends to limit coverage under the permit in compliance with 40 C.F.R. § 122.2. Under the prohibition of this regulation, Ecology may not issue NPDES permit coverage for a new construction site that discharges to a 303(d) listed waterbody if the discharge may include a pollutant of concern unless § 122.2(i)(1) and (2) are satisfied. Since none of the waterbodies currently on the Washington 303(d) list also have TMDLs, it is not possible for these requirements are to be satisfied. As a result, Ecology may not issue NPDES permit coverage for a discharge to a 303(d) listed water unless Ecology determines that no pollutant of concern will be discharged. 5	
Comment #11.4 (continued)	Does Ecology disagree with this analysis? If so, why and how? How does Ecology intend to abide by the 40 C.F.R. § 122.2 prohibition with respect to new construction sources and how does the permit reflect this?	
Comment #11.4 (continued)	Consistent with the discussion of post-construction stormwater controls above, S1.E.1. should be modified to require continued coverage for permittees outside Phase I or II municipal stormwater permit coverage areas.	
Comment #11.5	Condition S2. S2.C. concerns the erosivity waiver. S2.C.2.b. provides for no timeframe restrictions for "sites east of the Cascades Crest, within the Central Basin." "The Central Basin is defined as the portions of Eastern Washington with mean annual precipitation of less than 12 inches." This definition is imprecise and susceptible of differing interpretation. How is the mean annual precipitation to be determined? What is the appropriate reference for this? The permit should either precisely identify the areas within the Central Basin or the definition should be made more definite.	**Response to Comment #11.5:** See http://www.ecy.wa.gov/pubs/ecy070202.pdf for a map which shows the Central Basin (Region 2).
Comment #11.6	In S2.C.3.b., the certification should also require a statement that AKART will be provided to any discharge.	**Response to Comment #11.6:** The conditions under S.2.C.3 are sufficient in the case of a project that meets the requirements of the Erosivity Waiver and therefore would not be subject to CSWGP coverage.
Comment #11.7	Condition S3. The last sentence of S3.A. includes a double negative, is unclear, and should be revised. What is the meaning of a permit statement that a discharge is "not authorized"? Is this the same as "prohibited"? The essence of S3.A. is that "Discharges that cause or contribute to violation of these standards are prohibited," and PSA suggests that this last sentence be changed to this text.	**Response to Comment #11.7:** This text has not changed since the 2005 permit. Ecology believes that the meaning is clear. Yes, a discharge that is not authorized is prohibited.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.8	Condition S4. The last row of Table 3 is confusing and should be deleted. It could be read to indicate that sites that disturb 10 acres or more but that do not exceed 280 NTU need not do the monitoring specified, or that weekly pH monitoring is not required of sites of 10+ acres. As indicated by the actual text of S4., all sites of 5 acres or more are subject to the same monitoring requirements and the bottom table row is thus unnecessary and potentially confusing to readers of the permit.	**Response to Comment #11.8:** Thank you for noting this error. Ecology experienced formatting errors in the tables for the draft permit, which it has corrected in the final document. Ultimately, the nature of this last row in the table has also changed with the removal of the 280 NTU ELG. Refer to the Response to Comment #1.6.
Comment #11.9	S4.B.1. specifies what a permittee must do when an inspection reveals a problem. The timeline provided in S4.B.1.a. and b., 7 days to review and revise the SWPPP and 10 days to fully implement and maintain appropriate BMPs, is inappropriate. First, as conditions at construction sites are very fluid and often rapidly changing, it is important and reasonable that a permittee should act as soon as possible to figure out what to do about a problem detected either during an inspection or as a result of sampling. Second, the permit already requires implementation of appropriate BMPs at all times (S9.). The draft S4.B.1. language would allow a problem detected by a permittee, no matter how 6	**Response to Comment #11.9:** The language within the text has been updated to emphasize that the site operator is responsible for: "... Immediately beginning the process of fully implementing and maintaining appropriate source control and/or treatment BMPs as soon as possible, addressing the problems no later than within 10 days of the inspection. ....." (S4.1.b) (emphasis added). The Pollution Control Hearings Board ruled in January 2007 to add the following language to the permit, indicating an understanding of the level of effort it sometimes takes Permittees to bring a site into compliance: "Ecology may approve additional time when an extension is requested by a Permittee within the initial 10-day response period."
Comment #11.9 (continued)	serious, to continue for nearly a week without even requiring the permittee to start to figure out what to do about it. Many phases of construction or construction tasks that cause the problems detected will be finished by the time that this permit language would require a permittee to do anything about the problems. This language also potentially creates a shield against enforcement of the S9. requirement to implement BMPs all the time. Permittees are likely to argue that there is no permit violation for inadequate BMP	
Comment #11.9 (continued)	implementation as long as the S4.B. timeline has not expired. This language should be changed to require shutdown of all construction activities until the problem has been corrected with restoration of proper and adequate function of existing BMPs or the implementation of additional BMPs. This is a common provision of local government construction stormwater ordinances and programs and, as Ecology is charged with ensuring that AKART is applied, should include comparable strict requirements in this permit.	
Comment #11.10	S4.B.2. sets the frequency of inspections at at least once every calendar week and within 24 hours of any discharge. To ensure that BMPs are in place and properly functioning, inspections should be required every day that there is precipitation and at the end of each day on which there is any chance of rain in the forecast for the evening or following day.	**Response to Comment #11.10:** (Please also refer to Responses to Comment #1.4 and 6.3, which provide information on inspections.) Ecology believes that the requirements within this permit and the SWPPP, based on BMPs in the manuals, are sufficient as stated in the permit. See also

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
		http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf -- page 54.
Comment #11.11	Condition S5. S5.C.1. allows sampling using a turbidity tube instead of a turbidimeter for sites of less than 5 acres. A turbidimeter is an easily used machine that should be standard equipment for all contractors with sites of an acre or more. Since the water quality standards are in turbidity, it is reasonable and appropriate to require all permittees to monitor turbidity.	**Response to Comment #11-11:** Ecology will continue to allow smaller sites to use a turbidity tube, a professionally accepted and less expensive tool, to measure turbidity. See also http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf p34-35
Comment #11.12	S5.C.2. sets a sampling frequency of at least once every calendar week. This is inadequate given the importance of sampling and benchmarks to the permit, the potential for discharges to cause or contribute to violations of water quality standards, and the ease of monitoring for turbidity or transparency. Sampling should be required every day that there is a discharge from a site.	**Response to Comment #11.12:** Please refer to page 39 of http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf.
Comment #11.13	In S5.C.5., a 33 cm transparency benchmark is used. This benchmark was included in the previous permit based on a study that found 33 cm transparency to be equivalent to 25 NTU. That study examined data from only some areas of the state and may not be valid in other areas. The transparency benchmark value should be reexamined and updated to reflect more up to date and complete information if appropriate.	**Response to Comment #11.13:** Please refer to page 34 of the PCHB ruling: http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf
Comment #11.14	S5.C.5.a.v. and vi., which appear to be misnumbered, and S5.C.5.b.ii. and iii. include a 7 day/10 day response to benchmark exceedences schedule comparable to that for inspections in S4.B.1. PSA's comments on this schedule in the above discussion of S4.B.1. are applicable here as well. Furthermore, while S4.B.1. requires that "based on the results of the inspection the Permittee *must correct the problems identified* by:" 7	**Response to Comment #11.14:** Thanks for noting the typographical errors in S5; Ecology had document formatting challenges when sending out the draft and has corrected these bullet/numbering errors. Please refer to http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf , page 36, page 40 (lines 17-19), page 42 (lines 12-14), page 44 (lines 2-4 and 16-21), page 45 (lines 1-13).
Comment #11.14 (continued)	reviewing the SWPPP and fully implementing and maintaining BMPs, these S5.C.5.a. and b. provisions say nothing about correcting problems or bringing discharges to below benchmarks. It is simply inadequate to require a permittee that has exceeded a benchmark to merely review the SWPPP to make sure that it complies with permit conditions and to fully implement BMPs within ten days, which is already required by the permit for all permittees all the time. What is the permittee required to do to fix a discharge of muddy water if its SWPPP satisfies permit requirements and all appropriate BMPs are already implemented and maintained?	**Response to Comment #11.14:**

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.15	PSA is pleased to see the inclusion of the federally-mandated 280 NTU effluent limitation in S5.C.5.c., but this limitation should be applicable to all permittees instead of just those with sites of 10 acres or more. While it could conceivably be reasonable to tie the applicability of the effluent limitation to the volume of the discharge, it makes no sense to attach it to the total size of the site. A 10 acre site may have four or five points of discharge with relatively small areas of drainage and corresponding discharge volume compared to a five acre site with a single point of discharge.	**Response to Comment #11.15:** Please refer to Response to Comment #1.6. Ecology has removed text related to components of the 280 NTU limit requirement from the final 2010 CSWGP, as explained in that response.
Comment #11.15 (continued)	S5.C.5.c.i. seems not to make sense. Why does the numeric effluent limitation "not apply during periods of time when fewer than 10 acres of soil are disturbed, but not yet fully stabilized"? The effluent limitation should apply when soil is not yet fully stabilized.	
Comment #11.16	For S5.C.5.c.ii., how is the "local 2-year, 24-hour storm event" to be determined?	**Response to Comment #11.16:** Please refer to Response to Comment #1.6.
Comment #11.17	S5.C.5.c.iii. allows for averaging of sample results collected over the course of a day for purposes of determining compliance with the effluent limitation. This does not take into account the relative flow at the times of sample collection and thus does not ensure that the average is representative of the day's discharge. To be conservative and protective of water quality, all samples should be individually compared to the effluent limitation to determine compliance.	**Response to Comment #11.17:** Please refer to Response to Comment #1.6.
Comment #11.18	S5.D. effectively defines "significant concrete work" as "greater than 1,000 cubic yards of poured concrete or recycled concrete." This is arbitrary an inappropriate. A smaller concrete pour can cause a pH problem and pH is particularly easy and inexpensive to measure. What is the basis for this threshold? Why doesn't Ecology include a more conservative threshold to provide greater protection to water quality?	**Response to Comment #11.18:** This definition is Ecology staff's best professional judgment based on input from the Washington State Department of Transportation. This threshold was affirmed by the PCHB http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf p34-35
Comment #11.19	S5.G.3. concerns providing records to Ecology and S5.G.3.a. concerns responses to requests for access to records made by the public. S5.G.3.a. should be renumbered S5.G.4., and S5.G.3.a.i. and ii. should be renumbered S5.G.4.a. and b. Alternatively, S5.G.3. should be S5.G.2.a., and S5.G.3.a. should be S5.G.2.b.	**Response to Comment #11.19:** Thanks for your observations. Ecology has corrected these formatting errors.
Comment #11.20	Condition S8. To the extent that discharges containing pollutants of concern may be authorized to 303(d) listed waterbodies in compliance with 40 C.F.R. § 122.2 (see discussion of 8	**Response to Comment #11.20:** Ecology edited Condition S8 to more clearly indicate the requirements of site operators in the vicinity of a 303(d) waterbody.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.20 (continued)	S1.E. above), S8.A., B., and C. fail to satisfy the requirements of state law with respect to regulation of such discharges. S8.A., B. and C. should be entirely rewritten.	Please see edits throughout these sections of the permit to clarify the language.
Comment #11.20 (continued)	RCW 90.48.555(7) mandates that this permit "require compliance with appropriately-derived numeric water quality-based effluent limitations" for discharges to 303(d) listed waters. Since construction stormwater discharge has potential to include virtually any pollutant and thus may contribute to violation of water quality standards in receiving waters impaired for any pollutant, this means that this permit must include numeric water quality-based effluent limitations for discharges to all 303(d) listed waters. On what basis has Ecology determined not to include numeric effluent limitations for discharges to waters 303(d) listed for all other pollutants and parameters?	The RCW subsection cited refers to industrial sites. However, Ecology has edited the language within the construction general permit to indicate numeric effluent limits related to 303(d)-listed waters and to be more consistent with other permits. See the response to the parameters question below.
Comment #11.20 (continued)	S8.A. appears to concern only discharges to waters listed for turbidity, fine sediment, high pH, and phosphorus. Not only does this not satisfy the requirement of state law that all 303(d) listings be addressed, but there are no listings for "fine sediment" and it ignores that nutrients contribute to dissolved oxygen impairment.	Please refer to the Findings of Fact at page 55-56 and in the summary. The PCHB ruled that Ecology can use turbidity as a surrogate parameter for phosphorus. The language in the finding also highlights the PCHB agreement that the permit meets the other requirements noted in your comment through S9.D.9. http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf .
Comment #11.21	The language of S8.B. and C. seems to attempt to set numeric effluent limitations but it is unclear and ambiguous. The permit writer should please see examples in other NPDES permits for language establishing effluent limitations, and consult with Ecology enforcement staff.	**Response to Comment #11.21:** Ecology has clarified the language, which should satisfy the concern.
Comment #11.21 (continued)	It is unclear what it means for "a discharge to exceed the water quality standard for turbidity" (S8.B.3). S8.B. also reads more like a benchmark and adaptive response provision than as a numeric effluent limitation. Where is it made clear that a discharge that has more than a specified turbidity level is a violation of the permit? It appears that a permittee need only do the same (inadequate) response to a high turbidity reading under this section as is required for benchmark exceedences and inspection findings.	
Comment #11.21 (continued)	Similarly, nowhere does S8.C. unambiguously state that a discharge outside the range of 6.5 to 8.5 s.u. is a violation of the permit. Instead, the same (inadequate) response is required as if the pH "limitation" were a benchmark.	
Comment #11.21 (continued)	S8.'s Table 5 does not remedy this problem. Nowhere does the table include the words "effluent limitation," and it is unlikely to be interpreted so as to add substance to the text of S8. given this omission.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.22	What are the 303(d) receiving waters that will be discharged to under this permit? What permittees discharge to 303(d) listed waters? This information should be provided in the fact sheet.	**Response to Comment #11.22:** The full list of 303(d)-listed waters in the state is available for review at http://www.ecy.wa.gov/programs/wq/stormwater/construction/impaired.html. Individual applicants and sites that may be covered under the construction stormwater general permit over the course of its permit cycle cannot be determined in advance of these applications coming in to Ecology. The NOI public notice requirement for each permit application will serve to provide this information to the agency and the public.
Comment #11.23	S8.D., concerning discharges to receiving waters with TMDLs, is also inappropriately limited to TMDLs for turbidity, fine sediment, high pH, and phosphorus. If any TMDL for any pollutant or parameter includes provisions applicable to construction stormwater discharges, this permit should provide for their effectuation. Why does this permit propose to exclude any such TMDLs from the limitations of S8.D.? 9	**Response to Comment #11.23:** Please refer to the PCHB's ruling, pages 55-56. http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf The Notice of Intent form requires the site operator to acknowledge contaminants at the site. If a site discharges to a 303(d) impaired water (verified by Ecology staff at the time Ecology receives the permit application materials), and the contaminant noted is one of the contaminants listed as contributing to the impairment in the TMDL, the applicant must certify that s/he would not be discharging that parameter to the water body. Therefore, the numeric effluent would be 0 for that site for that pollutant. In order to be covered under the CSWGP, that applicant would have to demonstrate that s/he would not discharge the pollutant in question.
Comment #11.23 (continued)	To allow meaningful evaluation and public comment on this provision, Ecology should state in the fact sheet which TMDLs fall into the categories identified in S8.D.1.a. – d. Are there any TMDLs that set specific waste load allocations or requirements for discharges authorized by the Construction Stormwater General Permit? Which are these? Are there any TMDLs that establish a general waste load allocation for construction stormwater discharges without identifying specific requirements? Which are these? Are there any TMDLs that do not specify a waste load allocation for construction stormwater discharges without excluding these discharges? Which are these? Are there any TMDLs that specifically preclude or prohibit discharges from construction activity? Which are these?	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #11.23 (continued)	The fact sheet at p. 23 explains that Ecology will review the applicable TMDL to determine whether any additional requirements apply "where an operator indicates on its application for coverage form that the discharge is to one of these waters." What if the applicant omits that information? How will Ecology detect that omission? The permit coverage timeline of S2.A., which provides for a grant of permit coverage automatically after the expiration of a certain period of time "unless Ecology responds to the complete application in writing," should be inapplicable to applications for discharges to waters with TMDLs or to 303(d) listed waters. Permit coverage for discharges to these waters should require an affirmative determination by Ecology that permit coverage is appropriate and that any receiving water-specific permit requirements are identified, conveyed to the discharger, and included in the documents granting permit coverage.	When Ecology receives permit applications, Ecology staff checks the site location against the 303(d)-listed waterbodies mapping database (in ArcView GIS) to determine the proposed project area's status and assure that the information is correct in the application materials.
Comment #11.24	Condition S9. S9.D.5.b. includes the same problematic definition of "the Central Basin" as discussed in the section of this letter addressing S2.C.2.b.	**Response to Comment #11.24:** Please see Response to Comment #11.5.
Comment #11.25	S9.D.5.c. requires that soils be stabilized at the end of the shift before a holiday or weekend "if needed based on the weather forecast." The permit should require that soils be stabilized at the end of every shift. What does "if needed based on the weather forecast" mean? Does a forecast 40% chance of drizzle mean that soil stabilization is needed? What about a 20% chance of rain? What about 10%? What about a forecast that says it may rain the following afternoon after the next shift begins unless it is called off for some unrelated reason?	**Response to Comment #11.25:** Please see the Response to Comment #6.3. Also refer to http://www.ecy.wa.gov/programs/wq/stormwater/construction/appeal/FindingsofFact.pdf at page 54, beginning at line 20.
Comment #11.26	S9.D.11.a. requires that BMPs be maintained and repaired "as needed to assure continued performance of their intended function in accordance with BMP specifications." How does this fit with the provisions regarding responses to deficiencies detected in inspections and to benchmark exceedences? If this condition requires BMPs to be maintained and repaired as needed to assure continued performance at all times, why is a permittee allowed ten days to maintain and repair BMPs when it exceeds benchmarks? 10	**Response to Comment #11.26:** Please refer to the Response to Comment #11.9.
Comment #11.27	Condition S10. Consistent with the discussion of post-construction stormwater controls above, S10.A. should be modified to prohibit permit termination for permittees that are not regulated under municipal stormwater permits.	**Response to Comment #11.27:** Please refer to the Response to Comment #11.2.

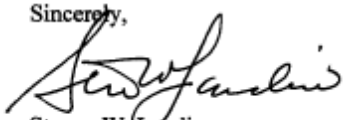
COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Very truly yours, s/ Richard A. Smith Richard A. Smith	
COMMENTER #12 **NOAA**	**UNITED STATES DEPARTMENT OF COMMERCE** **National Oceanic and Atmospheric Administration** NATIONAL MARINE FISHERIES SERVICE Washington State Habitat Office 510 Desmond Drive SE, Suite 103 Lacey, WA 98503	
	Mr. Michael A. Bussell Director, Office of Water and Watersheds U.S. Environmental Protection Agency, Region 10 (OWW130) 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140	
	Construction General Permit Comments Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504	
	Mr. Kelly Suswind Department of Ecology Water Quality Program Manager P.O.Box 47600 Olympia, WA 98504	
	Dear Mr. Bussell, Mr. Suswind, and Ecology staff: The State of Washington Department of Ecology (Ecology) has recently issued a Public Notice requesting review and comment on the Modification of the Construction General Permit. The National Marine Fisheries Service (NMFS) offers the following comments on the proposed permit modification pursuant to our role as providers of biological and technical assistance under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (ESA) and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*). We are sending these comments to the U.S.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Environmental Protection Agency (EPA) because of EPA's acknowledged oversight role in the issuance of this permit under Section 402(d) of the Clean Water Act (CWA), and acknowledged responsibility to comply with Section 7(a)(2) of the Endangered Species Act (ESA). In addition, these comments are provided per the processes outlined in the Memorandum of Agreement between the EPA and the NMFS regarding enhanced coordination under the CWA and ESA (hereafter "MOA") (May 22, 2001, 66FR 11202-11217).	
	With the CWA authority delegated from the EPA, Ecology proposes to re-issue the Construction General Permit for Washington State on December 16, 2010.	
	2 The geographic area covered by the permit overlaps the range of 15 federally-listed threatened or endangered salmon, as well as designated critical habitat for 13 of these populations. The permit area overlaps areas addressed by the Puget Sound Shared Strategy Recovery Plans, Lower Columbia River Fish Recovery Board, the Upper and Lower Mid-Columbia Fish Recovery Boards, the Governor's Salmon Plan, and the Puget Sound Partnership. Most of these plans have identified stormwater runoff and water quality as significant factors in reaching salmon recovery. In addition, the Puget Sound Partnership has developed recommendations for addressing stormwater effects with the goal of achieving a healthy Puget Sound by the year 2020. Also, a recent report supported by your agency, identified stormwater runoff as the greatest contributor of the worst pollutants in Puget Sound (Hart Crowser, Inc. et al. 2007).	
	Background: Effects of Sediment on Listed Salmon The following paragraphs describe the general effects to listed salmoinds from typical discharges from construction sites. The severity of the effect of turbid discharges depends on numerous factors including the proximity to the water, extent of ground-disturbing activity, slope, and weather. Sediments settling out of turbid water introduced into streams can degrade spawning and incubation habitat, and negatively affect primary and secondary productivity. Turbid water can disrupt feeding (Bash et al 2001; Berg and Northcote 1985; Bisson and Bilby 1982; Waters 1995).	
	The vast majority of literature reports negative consequences from anthropogenic or naturally induced sediment regime changes. Turbid conditions cause physiological stress and reduce growth, and adversely affect fish survival. Important factors influencing the effects of turbid water on fish are the season, frequency, and the duration of the exposure (not just the Total Suspended Sediment (TSS) concentration) and the life stage of the species (NMFS 2005c).	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Fine sediment deposition near redds can act as a physical barrier to fry emergence (Cooper 1959, 1965; Wickett 1958; McNeil and Ahnell 1964), and McHenry et al. (1994) found that fine sediment (greater than 13 percent of sediments less than 0.85mm) resulted in intragravel mortality of salmonid embryos due to oxygen stress and metabolic waste build-up. Deposited sediment can cover intragravel crevices that juvenile salmonids use for shelter, in turn decreasing the carrying capacity of streams for juvenile salmon (Cordone and Kelley 1961; Bjorn et al. 1974). Particulate materials physically abrade and mechanically disrupt respiratory structures (fish gills) and respiratory epithelia of benthic macroinvertebrates (Rand and Petrocelli 1985).	
	Fine sediment can also affect food for salmonids. Embedded gravel and cobble reduce access to microhabitats (Brusven and Prather 1974), entombing and suffocating benthic organisms. When fine sediment is deposited on gravel and cobble, benthic species diversity and densities have been documented to drop significantly (Cordone and Pennoyer 1960; Herbert et al. 1961; Bullard 1965; Reed and Elliot 1972; Nuttall and Bilby 1973; Bjorn et al. 1974). Reduced prey availability could reduce growth and survival of juvenile PS Chinook.	
Comment #12.1	3 We support Ecology's objectives in permitting construction stormwater activities, and we have identified beneficial permit conditions, as well as, two core areas that will strengthen the permit: • Recommended Permit Improvements, and • Innovative Approaches.	**Response to Comment #12.1:** Thank you for your support and for taking the time to provide this valuable information.
Comment #12.1 (continued)	Existing beneficial permit conditions Ecology has done an excellent job through the permit of requiring coordination with local jurisdictions, from public notice requirements and NOI submittals to additional documentation required in the SWPPP Special Condition 9. This special condition lays out specific requirements which range from providing the technical basis for selecting a specific BMP, to the requirement that the Permittee must modify the SWPPP after an inspection from a local jurisdiction or other state regulatory authority. In addition, Ecology does not authorize a mixing zone in this general permit. The pH monitoring and the ensuing adaptive Best Management Practices (BMPs) (Special Condition S4.D) required in the permit are very protective of listed species because it proscribes existing BMPs that effectively adjust pH levels to regulatory standards. Finally, Ecology is also implementing the effluent limitation guidelines in one phase (i.e. permit issuance date) for all sites that disturb ten or more acres at one time which is a significant improvement.	**Response to Comment #12.1:** Thank you for your support. Regarding the effluent limitation guidelines, please refer to the Response to Comment #1.6.
Comment #12.2 (continued)	Recommended Permit Improvements The permit uses the concept of benchmarks (e.g. 25 Nepholometric Turbidity Units (NTU)) and action levels (levels of contaminants that will require the permittee to take further actions) to show permit compliance. NMFS' feels that this benchmark is protective of listed salmonids.	**Response to Comment #12.2:** Thank you for your comment.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #12.3 (continued)	Although in a typical scenario, when the benchmark criteria is exceeded, the permittee is expected to revise the Stormwater Pollution Prevention Plan within 7 days and/or fully implement the appropriate BMPs as soon as possible, or within 10 days of the discharge. If the turbidity discharge is between 26 -249 NTU's, the permittee is required to call Ecology's Environmental Report tracking system and review/revise the SWPPP with the same time period described above. If the discharge is over 280 NTU, the permittee is required to complete non-compliance notification requirements that include developing a report for Ecology on corrective actions taken. The factors influencing the effects of turbid water on fish are the season, frequency, and the duration of the exposure. Over the course of seven days, there is a high likelihood that significant exposure to listed salmonids from turbid discharges greater than 25 NTU's could occur before corrective action is taken.	**Response to Comment #12.3:** Thank you for your comment. See also the Response to Comment #11.9.
	NMFS' has identified a number of recommendations that would correct the situation described above as well as significantly improve the permit and contribute to conditions that protect listed salmon. These recommendations are summarized below:	
Comment #12.4	• NMFS' recommends that the permit be more specific about the types of erosion control BMPs that reduce turbid discharges down to the 25 NTU benchmark. This specificity	**Response to Comment #12.4:** The permit uses language frequently to refer the Permittee to the Stormwater Management Manuals to update their BMPs and their SWPPP. Ecology believes these reminders are sufficient.
	4 would be similar to the types of BMPs (i.e. dry ice or CO2 sparging) that can be incorporated to adjust pH levels in stormwater discharges.	
Comment #12.5	• NMFS recommends Ecology utilizing only the 25 NTU benchmark value for all sites (i.e. equal to and above 1 acre) as the sole reporting trigger and remove the 280 NTU effluent limit.	**Response to Comment #12.5:** Ecology uses the 25 NTU benchmark as the guidance for well-maintained sites; the 250 NTU reporting trigger guides sites back to the 25 NTU. Even without the 280 NTU effluent limit, 98-99 percent of data points collected over the life of the 2005 permit indicate that permittees are reporting sampling results well within the 25-250 NTU range.
Comment #12.6	• NMFS' recommends decreasing the number of days a permittee is allowed to revise their SWPPP to three and full implementation of BMPs within seven days of exceeding the benchmark.	**Response to Comment #12.6:** The Pollution Control Hearings Board ruled in January 2007 to add the following language to the permit, indicating an understanding of the level of effort it sometimes takes Permittees to bring a site into compliance: "Ecology may approve additional time when an extension is requested by a Permittee within the initial 10-day response period." See also the response to Comment #12.3 above. Nevertheless, Ecology has added language to the Permit to clarify that the Permittee is

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
		expected to begin addressing any discharge concerns immediately (that is, not wait until the end of a 10-day period to fix a problem).
Comment #12.7	• NMFS' recommends prescribing a specific distance downstream of the construction discharge where Permit Condition *S8 Discharges to 303(D) or TMDL waterbodies* applies to the permittee.	**Response to Comment #12.7:** This issue is subject to legal interpretation and is currently evaluated on a case-by-case basis. The Clean Water Act currently refers to impaired "segments," which are defined physically at the water body. Distances from discharge may depend on the boundaries of these 303(d) segments of the water body or other factors.
Comment #12.8	• NMFS' recommends a permit condition that allows the inspector to place an immediate *stop work* on the site until the non-compliance event is corrected and/or the site is stabilized with additional erosion control BMPs.	**Response to Comment #12.8:** In the event that an Ecology inspector observes a non-compliant discharge at a construction site, the inspector would direct the site operator to cease the discharge immediately and redirect site efforts to fixing the source of the violation. The inspector has the discretion to work with the Permittee to fix the problem, considering the specific circumstances, before levying fines and penalties at the site.
	Innovative approaches NMFS Washington State Habitat Office encourages innovative approaches in protecting listed species and solicits feedback from stakeholders in order to improve these ideas. Due to the relative short-term nature of construction projects, it is imperative that timely improvements be incorporated in situations where operators are out of compliance. NMFS' encourages Ecology to incorporate the innovative approaches summarized below into the reissued Construction General Permit.	
Comment #12.9	• Ecology requires that the owner/operator purchase erosion control bonds offered by the local jurisdiction or a state-wide non-interest bearing account to ensure that emergency/non-compliance events are expeditiously taken care of.	**Response to Comment #12.9:** Thank you for your input;. Ecology does not have the authority to require the owner/operator to purchase such bonds; this effort would require statutory changes or rule-making for which Ecology does not have the resources.
Comment #12.10	• Ecology incorporates a "graduated" permit fee schedule (i.e. 100.00$ per acre for sites from 1 to 5 acres and 200.00$ per acre for sites 5 acres or greater) to ensure adequate funding for personnel to inspect construction sites all over the state at a greater frequency, thus decreasing non-compliance events.	**Response to Comment #12.10:** Fees for construction permits are set through a legislative process, and promulgated under WAC 173-224-040 "Permit Fee Schedule," which can be reviewed at http://apps.leg.wa.gov/WAC/default.aspx?cite=173-224-040
Comment #12.11	• Ecology incorporates a permit condition that requires the permittee to submit photo-documentation of the site as stabilized before submitting a *Notice of Termination* to the Department.	**Response to Comment #12.11:** Permittees sometimes provide photo documentation of the site, which is useful. Ecology will consider the role photo documentation plays in permit termination. While the language

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
		in the permit will not change, Ecology inspectors have the latitude to determine the appropriateness of this approach on a case-by-case basis. Thank you for your input.
	We thank you for the opportunity to provide these comments under the process identified in the MOA. We look forward to continued coordination with EPA and Ecology on NPDES permits in Washington State, in part to meet the needs of listed salmon. Please call me at (360) 753-6054 if you would like to discuss this issue further. Sincerely,  Steven W. Landino Washington State Director for Habitat Conservation 5	Thank you very much for providing comments on the draft CSWGP.
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COMMENTER #13: WALLA WALLA COUNTY PUBLIC WORKS **Comment #13.1**	[Received via e-mail at 11:30 a.m. PDT on September 10, 2010] Walla Walla County Public Works would like to comment on final termination procedures, outlined in S10. Notice of Termination (Page 33). In eastern Washington, the most appropriate form of final stabilization generally consists of re-vegetating the site following completion of construction. For rural road projects, irrigation is unavailable, and seeding and planting the site will often fail if done before mid- to late-September. Summer thunderstorms will cause germination, and then subsequent dry weeks will kill the seedlings. For us, it is a hardship to be unable to close out a project (and receive reimbursement and/or reallocate funds) until fall if a project is completed in summer, as closing a project is contingent upon termination of our stormwater permit. We are requesting either an alternate means to achieve final stabilization, or some way to terminate the stormwater permit with the condition that hydroseeding or other re-vegetation is accomplished as soon as climate conditions are favorable.	**Response to Comment #13.1:** Ecology agrees that, in arid parts of the west, it is often challenging to establish a stand of permanent vegetation sufficient to control erosion. However, federal regulations require permit coverage from the "commencement of construction activities" until "final stabilization." Ecology can't grant permit termination based on a commitment from the permittee that it will complete hydroseeding, or some other form of revegetation in the future. Operators should follow Ecology's guidance for seeding during the optimal seeding window, which for Eastern WA is October 1 through November 15th, and check with local Conservation Districts on techniques that will improve the likelihood of vegetation stand survival. Seeding is not recommended from May 1 through August 31 unless irrigation is available for the reasons described in the

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	Thank you for this opportunity to comment on the draft Construction Stormwater General Permit. Joy Bader Walla Walla County Public Works Stormwater Program Manager PO Box 813 Walla Walla, WA 99362-0254 (509) 524-2727	comment (summertime germination followed by stand failure before cool fall weather sets in).
COMMENTER #14: WASHINGTON DEPARTMENT OF FISH AND WILDLIFE	State of Washington Department of Fish and Wildlife *1701 South 24th Avenue • Yakima, Washington 98902-5720 • (509) 575-2740 FAX (509) 575-2474*	
	September 10, 2010 Sharleen Bakeman – Permit Comments Water Quality Program Washington Department of Ecology PO Box 47600 Olympia, WA 98504 **RE: Comments on Draft Construction Stormwater General Permit**	
	Dear Ms. Bakeman: Thank you for the opportunity to comment on the draft update of the Construction Stormwater General Permit. Additionally, I appreciated the opportunity to talk with you directly at the public hearing in Yakima on August 31, 2010 about my concerns with the Construction Stormwater General Permit (CSWGP) and habitat restoration projects. We are am looking forward to working with you in the future to reduce or eliminate permitting redundancies and increase permitting efficiency, while maintaining and protecting water quality and aquatic resources.	

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	We work with several other partners (Conservation Districts, Yakama Nation, Regional Fisheries Enhancement Groups, Non-governmental organizations) throughout the Yakima Basin on habitat restoration projects through the Yakima Tributary Access and Habitat Program (YTAHP). Since 2002, this dedicated group has worked with private landowners to install fish screens at more than 50 irrigation diversions, restored fish access to more than 60 stream miles, and planted nearly five miles of riparian vegetation. These projects are largely funded by grants for salmonid restoration and water quality improvements. Most projects have been of relatively small scale, but recently projects have become larger, often triggering the CSWGP for overall project footprints greater than one acre of disturbance and near surface waters of the state.	
	My role with YTAHP is to work with project sponsors to obtain all of the environmental permits necessary for project implementation. Each project requires Endangered Species Act (ESA) consultation, Clean Water Act (CWA) Section 404, CWA 401, State Environmental Policy Act (SEPA), Hydraulic Project Approval (HPAs), and local review for compliance with Shoreline Master Programs (SMP) and Critical Areas Ordinances. In each of these consultations, impacts to water quality are required to be addressed and best management practices (BMP) and conservation measures (CM) are employed to minimize and monitor short and long term impacts. These consultations apply to the overall project disturbance, including site access routes, material and equipment staging	
	Page 1 of 3 WDFW Region 3 CSWGP comments to S. Bakeman September 10, 2010 areas, and instream and riparian disturbance. In each case, conditions of numerous permits and authorizations require that disturbance of adjacent uplands, riparian, and sensitive areas be kept to a minimum.	
	Many of these projects receive funding from Ecology through Clean Water Act funds due to their benefits to water quality. It is ironic that these funds are not allowed to be used to pay the fees associated with obtaining a CSWGP that is required under the same Act that funded the project proposal. Thus, due to permit fees, monitoring costs to hire Certified Erosion and Sediment Control Lead (CESCL), and associated public notice fees; less funding can be applied to the very project designed and intended to protect water quality.	
Comment #14.1	While there is no disagreement regarding the need for the water quality protection provisions, there should be exceptions if the provisions and performance standards required in a CSWGP are already required and included in other permits and project designs for restoration projects. Among all habitat restoration project proposals requiring a CSWGP that we are aware of, there has been significant redundancy in the requirements of the CSWGP and other required permits with respect to site-specific water quality protection. Thus, there is little or no apparent value added regarding resource protection through obtaining a CSWGP. It is not our intent to circumvent resource	**Response to Comment #14.1**: (See also Response to Comment #10-1.) As noted in our response to comment #10.1, Ecology does not have the latitude to make exceptions to federal law. While your suggestions have merit, Ecology does not have the budget, staff, or other resources to create a division that would oversee the cumulative management of multiple permit requirements.

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	protection needs and responsibilities, but to assure that resources (water quality, fish life, etc.) will be protected to the same or higher standards through other existing permit processes and/or help incorporate any requirements of the CSWGP into other consultations that Ecology already participates (ie: CWA 401, SMA, GMA, CWA grant programs). For example, Ecology often does not require Temporary Water Quality Modification permits if Hydraulic Project Approvals already require similar provisions. WDFW can include specific water quality related provisions suggested by Ecology into the Hydraulic Project Approval. If stormwater BMP'S were automatically required and included in all state restoration project proposals (which they should be) requiring additional permitting processes compromises funding that could be otherwise directed towards other restoration projects Below are some additional comments for consideration in the 2010 CSWGP:	We look forward to continuing to evaluate opportunities and open dialogues to streamline our permit processes to the extent we are allowed to do so under our purview as a delegated authority for the Clean Water Act.
Comment #14.2	• For many projects, Ecology's 401 has been incorporated into the Corps 404 review. Internal coordination of the CSWGP and the CWA 401 should occur early for projects that will require both and one set of conditions should be provided to the applicant.	**Response to Comment #14.2**: Please refer to Response to Comment #14.1.
Comment #14.3	• Incorporate WAC 173-27-040(2) (o) and (p) into the CSWGP as they clearly define restoration projects and their exemptions from the Shoreline Management Act under certain criteria, including approval by WDFW for habitat restoration projects. This same language could be incorporated into the CSWGP.	**Response to Comment #14.3:** Please refer to Response to Comment #14.1. The Construction Stormwater General Permit is governed by: • Chapter 173-201A WAC • Chapter 173-220 WAC • Chapter 173-224 WAC • Chapter 173-226 WAC • Chapter 90.48 RCW
Comment #14.4	• On page 6 under *S1.C.-Authorized Discharges*, add Habitat Restoration Projects as approved by WDFW to the list of Non-Stormwater Discharges. Conditions and/or provisions could be added here to ensure that the appropriate BMPs are applied and ensure that Ecology has an opportunity to review and approve plans.	**Response to Comment #14.4:** Please refer to Response to Comment #14.1.
Comment #14.5	• In *S2.C.-Erosivity Waiver*, include inwater work associated with habitat restoration projects approved by WDFW that have all of the other applicable permits and authorizations. In the application for a waiver, the applicant could Page 2 of 3 WDFW Region 3 CSWGP comments to S. Bakeman September 10, 2010 provide project plans, other permits received, and a SWPPP for review. EPA allows inwater work under their Rainfall Erosivity Waiver.	**Response to Comment #14.5:** Please refer to Response to Comment #14.1.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #14.6	• In *S2.C.-Erosivity Waiver*, consider increasing the R Factor to 8 for approved restoration projects to account for the late irrigation season in the Kittitas Valley that disrupts "normal" hydrograph of many streams.	**Response to Comment #14.6:** The R Factor for determining whether a site would qualify for the erosivity waiver is codified in 40 CFR 122. Ecology cannot allow EWs for projects with R factors higher than 5. R factors are not based on stream hydrographs, and are unaffected by irrigation activity.
Comment #14.7	• In *S4.-Monitoring Requirements, Benchmarks, Reporting Triggers and Limits*, allow water quality monitoring and reporting by a designated biologist and/or project sponsor rather than a CESCL for habitat restoration projects.	**Response to Comment #14.7:** The CESCL certification is required for all projects covered by the CSWGP for a number of reasons that will require skill sets that differ from biological expertise, and which in fact focus more on managing the stormwater discharged from a site using the BMPs outlined in Ecology's stormwater manuals. While it's understood that biologists are key to the success of a habitat restoration projects, Ecology does not agree that it necessarily follows that a biologist's training includes construction site stormwater management.
Comment #14.8	• In *S6.-Permit Fees*, waive fees for approved restoration projects where performance standards in other permits align with those of a CSWGP. If this is not possible, allow restoration projects to pay monthly fees rather than annual fees for permit coverage.	**Response to Comment #14.8:** Thank you for your comment. We will pass along the suggestion to our Fees Unit for their consideration.
Comment #14.9	• In *S9.-Stormwater Pollution Prevention Plan* (SWPPP), the SWPPP should be submitted with the NOI for Ecology's review and approval prior to issuing a permit for all projects. For projects where we've received coverage under the CSWGP, our SWPPP was never requested and there have been no compliance checks from Ecology to ensure we applied BMPs. Early review and comment from Ecology will improve the applicants' use of BMPs to better protect the resource.	**Response to Comment #14.9:** Ecology does not have the resources to review and approve SWPPPs during the permitting process; it would add considerable cost and delays to the permitting process. Instead, Ecology specifies the SWPPP requirements in the permit and provides guidance manuals and templates to ensure high rates of compliance. Inspectors review SWPPPs on site at construction projects, and can ask for the information at any time. Ecology assumes that the site operators are following the permit requirements, as required by state and federal law.
Comment #14.10	• For *S10.-Notice of Termination*, a site inspection should be required for project sites prior to effective termination to ensure the site is stabilized appropriately.	**Response to Comment #14.10:** Ecology inspectors make termination inspections a high priority. The Ecology inspector has the authority to make these decisions and enforce Ecology's requirements; it is important to allow inspectors flexibility to do their jobs as they deem appropriate in the field. Thank you for your input to the process.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	While the Construction Stormwater General Permit is a critically important process necessary to protect water resources for standard development proposals, there appear to be other appropriate means and venues to provide equivalent water quality protection for restoration and enhancement projects. Thank you again for the opportunity to comment and I look forward to collaborating with you on ways to streamline project review and permitting processes specifically for habitat restoration projects.	
	Sincerely,  Jennifer Scott	
	WDFW – South Central Region Fish and Wildlife Biologist, Habitat Program (509) 457-9307 jennifer.scott@dfw.wa.gov	
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COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
COMMENTER #15 WASHINGTON STATE DEPARTMENT OF TRANSPORTATION	 **Washington State Department of Transportation** **Paula J. Hammond, P.E.** Secretary of Transportation **Transportation Building** 310 Maple Park Avenue S.E. P.O. Box 47300 Olympia, WA 98504-7300 360-705-7000 TTY: 1-800-833-6388 www.wsdot.wa.gov September 10, 2010 Sharleen Bakeman Water Quality Program Washington Department of Ecology P.O. Box 47600 Olympia, WA 98504–7600 **RE: Comments on the Draft Construction Stormwater General Permit**	
	Dear Ms. Bakeman: The Washington State Department of Transportation (WSDOT) appreciates the opportunity to provide comments on the draft Construction Stormwater General Permit (Draft). WSDOT has a strong interest in working with the Washington Department of Ecology (Ecology) because the Construction Stormwater General Permit (CSWGP) substantially impacts WSDOT policy and construction operations. WSDOT appreciates the challenges of preparing a CSWGP that satisfies federal and state laws, Pollution Control Hearings Board decisions, and the many stakeholders.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Attached to this letter, WSDOT comments have been organized into the following sections: • **Priority Concerns** (High importance to WSDOT) • **General Comments** (Considering the draft documents as a whole) • **Specific Comments** (Specified line-by-line) • **Draft Fact Sheet Comments** (Specified line-by-line) Thank you for the opportunity to provide input regarding the draft permit and fact sheet. Please direct questions regarding these comments to Elsa Piekarski, WSDOT Statewide Erosion Control Lead at 360-570-6654 or piekare@wsdot.wa.gov. Sincerely,  Megan White, P.E., Director Environmental Services Office MW:ep Enclosure	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.1	WSDOT Draft Permit Comments September 10, 2010 Page 1 of 14 **PRIORITY CONCERNS** **S4.C. Turbidity/Transparency Sampling Requirements** **Priority Concern (reference #PC.1):** The new language throughout this subsection requiring CESCL certification will be ineffective for meeting the presumed objective of improving the quality of samples collected by permittees. WSDOT disagrees with the language (p 34, lines 5-6) of the Fact Sheet, that "CESCL courses provide hands-on training on transparency, turbidity and pH sampling and analysis". WSDOT Erosion Control Lead, Elsa Piekarski, recently attended a CESCL certification course and received no meaningful training on water quality sampling. Other evaluations of these courses report inconsistent quality, permit inaccuracies, and broad generalizations that will be harmful to WSDOT procedural administration. Another certification requirement will not assure that quality samples will be collected and reported. **Note on Concern:** All WSDOT personnel that collect samples are required to take an 8 hour Construction Site Erosion and Sediment Control course, which details approved sampling methods. An agency or industry specific course, such as the internal course developed by WSDOT, is more appropriate and effective than a generalized CESCL certification course because:	**Response to Comment #15.1**: Ecology has a standard process by which entities may submit requests to become CESCL trainers. The process typically involves Ecology developing a Memorandum of Understanding with the entity and determining whether the curricula submitted to Ecology will fill the required needs. WSDOT is welcome to provide such a curriculum. After being approved for the process, all CESCL trainers are listed on the Ecology web site at http://www.ecy.wa.gov/programs/wq/stormwater/cescl.html
Comment #15.1 (continued)	1. It can include important agency or industry specific detail about how to comply with other permits and certifications. CESCL courses do not cover the complexities associated with overlapping permits and requirements.	
Comment #15.1 (continued)	2. Course curricula can be developed using Ecology guidance. WSDOT's internal course was developed using the WSDOT Highway Runoff Manual which was approved as equivalent to the Ecology stormwater manuals and utilizes the same sampling procedures. Internal courses can change easily as requirements change. Permittees that have taken proactive measures to develop quality training courses should not have to abandon effective programs.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.1 (continued)	3. There are many other factors involved in Ecology receiving quality data from permittees that should be considered. Our internal course covers important agency specific procedures that would be missing in a generalized CESCL certification course, including how to: a. Record the data properly in the Water Quality Monitoring database. b. File Environmental Compliance Assurance Procedure (ECAP) reports. c. Get the Contractors to take action using agency Standard Specifications. d. Develop and update the TESC (SWPPP) plan. e. Manage the unique nature of linear projects. f. Access ongoing support from agency Erosion Control Leads and regional environmental contacts.	
Comment #15.1 (continued)	WSDOT Draft Permit Comments Page 2 of 14 September 10, 2010 **Recommendations:** WSDOT appreciates the need for requiring QA/QC sampling methods in the CSWGP and the importance of quality data. WSDOT has three recommendations: • Provide language in the CSWGP that will outline an approval process for getting other training approved as equivalent. • Audit current CESCL courses to make sure they actually provide "hands-on training on transparency, turbidity and pH sampling and analysis" as mentioned in the Fact Sheet. • Allow a phasing-in period so permittees can prepare for this requirement by getting personnel certified and developing CESCL equivalent training.	It would not be appropriate to include permit language to address the process for reviewing or approving CESCL courses. Contact the Water Quality Program for information on the administration of the CESCL program. Ecology staff audits current CESCL courses as time, budget, and resource constraints allow. We welcome observations from any students of CESCL classes.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.2	**Priority Concern PC.2:** On August 13, 2010, EPA filed an unopposed motion with the U.S. Court of Appeals for the 7th Circuit, asking the court for an order vacating portions of EPA's final rule that includes the turbidity numeric effluent limitation. On August 24, 2010, the federal appeals court granted the EPA's request for remand of said portion of the stormwater construction rule so the agency can determine whether it needs to revise the discharge limits for construction sites. As such, there is no need for the CSWGP to incorporate the 280 NTU numeric effluent limit at this time as EPA will pursue further rulemaking on this topic over the next 18 months. Our comments here will focus on the Ecology Draft language as currently written, and are offered for consideration in case Ecology proposes to modify the re-issued permit in the future to include a numeric limit. (p 17, Line 19-20) The Draft language "Permittees with 10 or more acres of disturbed land at any one time must comply with a 280 NTU numeric effluent limit…" does not provide detail about applicability on linear construction projects. The 280 numeric effluent limit unnecessarily competes with the existing 250 NTU benchmark. An exceedance benchmark coupled with a numeric effluent limit makes the implementation of this permit difficult, especially for projects where the acreage disturbed is always changing.	**Response to Comment #15.2:** Please refer to Response to Comment #1.6.
Comment #15.2 (continued)	**Note on Concern:** There are numerous examples that make the applicability of the numeric effluent limit unclear. If 10 acres or more of disturbed soil has been determined as the threshold for elevating the risk of turbid discharges, the 280 NTU limit should only apply where 10 acres or more of disturbed soil are draining and discharging to the same receiving water body. Estimating when the 10 acre threshold is met will be difficult to determine in the field. The linear nature of WSDOT projects means projects can extend for several miles, and include multiple corridors and drainage basins.	
Comment #15.2 (continued)	WSDOT Draft Permit Comments September 10, 2010 Page 3 of 14 The numeric effluent limitation does not take into account any efforts by the permittee to comply with the adaptive management requirements in the Draft, including eliminating a discharge (p 17, line 17).	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.2 (continued)	**Recommendations:** Remove the numeric effluent limit from the Draft. If removing the numeric effluent limit is not possible, WSDOT recommends removing the 250 benchmark phone reporting trigger on projects that are required to meet the 280 NTU limit, to minimize reporting process confusion. Further consideration about the unique nature of linear projects needs to occur. If the numeric effluent limit remains in place, WSDOT recommends an appendix providing detail pertaining to linear construction applicability. Also, increase overall clarity about the applicability of the numeric effluent limitation. For example, tie the 10 acre threshold to actual discharge locations with language such as (p 17, lines 19-21) "Permittees with 10 or more acres of disturbed soil at any one time must comply with a 280 NTU numeric effluent limit at all points from the site affected by the 10 acres of soil disturbance that discharge into any on-site surface waters of the State".	
Comment #15.3 (continued)	**Priority Concern PC.3:** (p 17, Line 26-29) Using averages to measure compliance is problematic because it provides a disincentive to quickly respond to and stop a high turbid discharge. Using averages may result in reliance upon calculations to demonstrate compliance rather than improved erosion/sediment control practices. Also, the applicability of using averages to evaluate compliance is questionable. It is currently unclear if the intent is to use the average of all measurements taken in a day, or if the intent is to derive separate averages for each discharge location.	**Response to Comment #15.3:** The EPA rule outlined and used the averaging approach. Please refer to the Response to Comment #1.6.
Comment #15.3 (continued)	**Recommendations:** Remove the numeric effluent limit from the Draft. If removing the numeric effluent limit is not possible, WSDOT recommends including language that will allow for contingency plans that work to immediately eliminate discharges over 280 NTU. Develop a condition similar to that used in S4.C.5.b.v.d. (p 17, line 17) which will provide an alternative to the averaging method. This will allow permittees a chance to eliminate discharges before a violation occurs. Options that allow flexibility will encourage a working relationship between Ecology and permittees. Also, WSDOT recommends clarifying how the averaging is done; either a combined average or separate averages for individual discharge locations. Lastly, provide information about how to report the numerous sample measurements and averages in the Discharge Monitoring Reports.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.4	WSDOT Draft Permit Comments September 10, 2010 Page 4 of 14 **S4.D. pH Monitoring: Sites with Significant Concrete Work or Engineered Soils** **Priority Concern PC.4:** (p 18, line 7) There is no guidance for determining a "curing period".	Curing periods can vary for a few days to a month or longer, depending on factor including temperature, cement type, mix proportions, admixtures, etc. Therefore, Ecology has decided against setting a standard curing period in the permit. WSDOT and other permittees will need to apply professional judgment to determine the curing periods for their concrete work.
Comment #15.4 (continued)	**Note on Concern:** WSDOT has developed pH monitoring policy and procedures around the *Instructions and Frequently Asked Questions for Completing the DMR Forms* guidance document provided by Ecology. The document provides guidelines for a curing period. The data provided by WSDOT referenced in the Fact Sheet (p 37, line 28) was used in developing the CSWGP pH monitoring triggers and also supports the information provided in the guidance document stating a 30-day curing period.	
Comment #15.4 (continued)	**Recommendation:** Incorporate into the CSWGP the guidelines in the *Instructions and Frequently Asked Questions for Completing the DMR Forms* document.	**Response to Comment #15.4:** The DMR Frequently Asked Questions (FAQ) is being updated to clarify that the intent of the language was not to have project sites avoid sampling for pH. The intent of the guidance was to clarify typical curing periods. The PCHB states that 1,000 cubic yards of concrete poured is considered a significant amount of concrete. With this significant amount of material and its potential to be associated with high pH comes the responsibility to sample for pH to assure that waters of the state and the environment within those waters are protected.
Comment #15.5	**Priority Concern PC.5:** (p 48, Line 43) The definition for 'significant concrete work' has new wording, "over the life of a project". The concern with the new definition is that it changes the meaning of the phrase 'significantly' and that it will devalue the effort currently taken by WSDOT to encourage phasing project construction. The intent of the added wording is unclear because the body of the Draft does not contain this new definition, nor are there any evident changes in requirements regarding pH monitoring. **Note on Concern:**	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.5 (continued)	Current WSDOT policy utilizes Ecology guidance given in the *Instructions and Frequently Asked Questions for Completing the DMR Forms* document. Number 8 in this document includes the following language which WSDOT has incorporated into its pH monitoring procedures: For poured concrete, the 1000 cubic yard threshold is met if a single or multiple concrete pours on the site results in greater than 1000 cubic yards of concrete curing at the same time. Typical curing time is less than 30 days. If individual concrete pours smaller than 1000 cubic yards occur more than 30 days apart, pH sampling is not required unless required by Ecology order. These instructions provide clear guidance which could no longer be used under the new definition. The new definition makes Ecology's stance on pH unclear and inconsistent.	
Comment #15.5 (continued)	WSDOT Draft Permit Comments September 10, 2010 Page 5 of 14 **Recommendations:** WSDOT recommends returning to the old definition and incorporating the aforementioned language from the DMR guidance document, which provides specific parameters about the curing period and pH monitoring. Also, the definition in the appendix should be consistent with the wording for 'significant concrete work' throughout the Draft and the Fact Sheet. Also see comments PC.4 and SC.15.	**Response to Comment #15.5:** Ecology will continue to use the language "over the life of a project" in the permit. Ecology corrected the inconsistencies in the language of the draft, which you noted. Ecology added this language based on reports from its inspectors that some site operators in the state were using the 30-day curing time as a way of phasing pours to avoid pH sampling. Ecology believes that the intent of the permit language is to assure that pH sampling takes place, especially on large sites pouring "significant" amounts of concrete. The language is also consistent with the 2007 PCHB ruling on concrete pours, in which Ecology was ordered to add the language in bold: 1. Modify S4.D.1: "For sites with significant concrete work, the pH monitoring period shall commence when the concrete is first poured and exposed to precipitation, and continue weekly throughout and after the concrete pour and curing period, until stormwater pH is in the range of 6.5 to 8.5 su.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
		Ecology has also added the following to the permit: "4. Slurry materials and waste from shaft drilling." as part of the Prohibited Discharges list under Special Condition S1.D.4, based on feedback from the field on the disposal concerns regarding processed concrete slurries.
Comment #15.6	**GENERAL COMMENTS** **General Comment (Reference #GC.1):** There are noticeable changes that improve readability and WSDOT appreciates Ecology's effort to make the CSWGP 'reader friendly'.	**Response to Comment #15.6:** Thanks for your feedback.
Comment #15.7	**General Comment GC.2:** There are several definitions in the Draft Fact Sheet that are missing in the Draft.	**Response to Comment #15.7**: The Fact Sheet, which has much greater detail than the General Permit, will naturally have more definitions.
Comment #15.8	**General Comment GC.3:** A definition of "process water" is needed because personal interpretations of the term hinder WSDOT's ability to consistently manage this kind of water (see SC.38 below for a possible definition). While the current or proposed CSWGP does not regulate process water, Ecology inspectors use the term and provide guidance on how it should be managed. Whether a definition is included in the proposed CSWGP or not, WSDOT requests clarification on the relationship of process water to the CSWGP, possibly in the Fact Sheet.	**Response to Comment #15.8**: According to 40 CFR *"Process wastewater* means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product." Because the final permit defines and addresses two categories of process wastewater (*concrete wastewater*, and *wheel wash wastewater*), Ecology has decided not to define or address *process wastewater* in a more generic fashion. The following definitions will be added to the Glossary: <u>*Concrete wastewater*</u>: Any water used in the production, pouring and/or clean-up of concrete or concrete products, and any water used to cut, grind, wash, or otherwise modify concrete or concrete products. Examples include water used for or resulting from concrete truck/mixer/pumper/tool/chute rinsing or washing, concrete saw cutting and surfacing (sawing, coring, grinding, roughening, hydro-demolition, bridge and road surfacing). When stormwater comingles with concrete wastewater, the resulting water is considered concrete
	The following information is intended to provide detail about the current misunderstanding and need for clarification:	
Comment #15.8 (continued)	• It is WSDOT's understanding that stormwater which contacts curing concrete is not process water, although it may become high pH stormwater. Ecology Inspectors have told WSDOT personnel that stormwater can become process water. The same confusion surrounds ground water.	
Comment #15.8 (continued)	• It is WSDOT's understanding that infiltration of high pH water can be used as a treatment BMP. WSDOT uses this method in designated areas, which are chosen based on site specific criteria including soil characteristics, depth to ground water, location of sensitive areas and other factors.	
Comment #15.8 (continued)	• Contractors need different disposal options that are appropriate for site conditions and the volume of process water being managed.	
Comment #15.8 (continued)	• WSDOT personnel have reportedly been told that neutralization and infiltration is not allowed by language in the draft permit. It is not clear to WSDOT if that is accurate.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
(Comment #15.8 (continued)	• The Stormwater Management Manual for Western Washington does not provide clear or consistent instruction on this issue. For example, BMP C252 makes no distinctions between slurry, process water and wastewater, while BMP C152 does make a distinction between slurry and process water.	wastewater and must be managed to prevent discharge to waters of the state, including ground water. *Wheel wash wastewater:* Any water used in, or resulting from the operation of, a tire bath or wheel wash (BMP C106: Wheel Wash), or other structure or practice that uses water to physically remove mud and debris from vehicles leaving a construction site and prevent track-out onto roads. When stormwater comingles with wheel wash wastewater, the resulting water is considered wheel wash wastewater and must be managed according to condition S9.D.9. Stormwater that comes into contact with poured, cured or recycled concrete is considered stormwater (not concrete wastewater) and can be treated (neutralized) for pH and discharged to surface waters or groundwater. Under certain circumstances, high pH stormwater can be infiltrated (per SWMMWW Vol V, Chapter 7), or dispersed (per SWMMWW BMP T5.30 Full Dispersion). The "prohibited discharges" section of the permit has been revised: S.1.D. Prohibited Discharges: The following discharges are prohibited. 1. Concrete wastewater. 2. Wastewater from washout and clean-up of stucco, paint, form release oils, curing compounds and other construction materials. 3. Process wastewater as defined by 40 Code of Federal Regulations (CFR) 122.1 (see Appendix A of this permit). 4. Slurry materials and waste from shaft drilling. 5. Fuels, oils, or other pollutants used in vehicle and

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.8 (continued)	• Ecology guidance has acknowledged the use of infiltration as a treatment BMP. The Draft Permit (p 30, line 38) includes "upland land application" as a treatment BMP for process water from washing activities. The Fact Sheet also mentions in several places that infiltration can provide water quality improvement benefits (p 49, lines 44-46; p 50, lines 8-9; p 53, 5-7).	equipment operation and maintenance. 6. Soaps or solvents used in vehicle and equipment washing. 7. Wheel wash wastewater, unless discharged according to Special Condition S9.D.9.d.). 8. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed according to Special Condition S9.D.10.
Comment #15.9	**General Comment GC.4:** WSDOT encourages Ecology to continue to develop additional guidance. With such a detailed CSWGP, guidance from the regulatory agency is vital for permittee compliance. Examples, templates, checklists, guidelines and definitions are solid foundations for effective permit implementation and will minimize consistency problems associated with misused terminology and the human element of translation and interpretation.	**Response to Comment #15.9:** Thanks for your input. Ecology dedicates energy and resources to regular updates of guidance and resources via classes, technology evaluation, web-based information, manuals, meetings, and other public outreach. Our guidance documents have hundreds of pages of information available to our permittees.
Comment #15.10	**SPECIFIC COMMENTS** **S1. PERMIT COVERAGE** **S1.B. Operators Required to Seek Coverage Under this General Permit** **Comment (reference #SC.1):** (p 28, lines 4-15) In the Draft Fact Sheet there is language describing a special condition pertaining to ground water which is not included in the Draft Permit. It is unclear if this special condition was inadvertently left out of the Draft Permit. Add Special Condition, S1.F Coverage for Discharges to Ground Water, to the permit.	**Response to Comment #15.10:** Please refer to the draft CSWGP (S3.D), for the same information. The fact sheet is intended to provide more specific technical or procedural detail on topics raised in the permit.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.11	**S1.D.6. Prohibited Discharges** **Comment SC.2:** (p 7, lines 4-14) The term 'wastewater' should be defined in the Draft so there is no more questions about what it includes or does not include. Wastewater is a term often used in association with sewage waste and adds confusion to the Draft. While the term 'process water' is not used in the Draft, the term is used by the construction industry and Ecology	**Response to Comment #15--11:** Please see the Response to Comment #15-8, above.
Comment #15.12	WSDOT Draft Permit Comments Page 7 of 14 September 10, 2010 Inspectors. Wastewater and process water are not always the same thing and definitions are needed. Also see comments GC.3 and SC.33. **Recommendations:** Define 'wastewater' as it pertains to the CSWGP. Add 'process water' to the Prohibited Discharge special condition and provide a definition in the appendix. See comment SC.33 for possible definition.	**Response to Comment #15.12**: Please see the Response to Comment #15.8, above.
Comment #15.13	**S1.E. Limitations on Coverage** **Comment SC.3:** This section does not include language about sanitary sewer coverage that is consistent with the new language (p 15, lines 16-18) which limits reporting requirements to Ecology. **Recommendation:** Format problem: Add language which will state that discharges to a sanitary sewer, covered by a permit obtained from the owner of the facility, are not covered by the CSWGP.	**Response to Comment #15.13**: Ecology agrees that this language should be clarified and has made the changes to do so where appropriate in the document. TEXT CHANGE: "Please note that discharges to sanitary sewer or combined sewer systems are not covered by the CSWGP. Permittees must seek permissions from these local entities before discharging into any of their facilities." For construction facilities that discharge entirely to municipal combined sewer or sanitary sewer systems (with prior authorization from the municipal sewage authority), Ecology does not require coverage under this permit, unless the site is determined to be a significant contributor of pollutants:

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.14	**S2. APPLICATION REQUIREMENTS** **S2.A.1.b. Notice of Intent/Timeline** **Comment SC.4:** There is no space for the permittee to include a billing address on the draft Notice of Intent application form. Consider adding an area for this information on the form to prevent misdirected mail.	**Response to Comment #15.14:** Because this is an issue for only a handful of the thousands of Permittees covered by the CSWGP, Ecology will leave the NOI form as is. If you have any questions at all regarding how best to assure that fee invoices for the permit are directed to the correct office, please contact the Ecology fee office at 360-407-7330.
Comment #15.15	**S4. MONITORING REQUIREMENTS, BENCHMARKS, REPORTING TRIGGERS AND LIMITS** **S4. Table 3. Summary of Primary Monitoring Requirements** **Comment SC.5:** (p 12, Table) The last row in the table could be improved. The language in the lower left quadrant and the associated superscript [1] could be interpreted differently than the language (p 17, line 19) which states "...10 or more acres of disturbed land at any one time..." The empty fields in the table are confusing. The weekly pH sampling column says "required" which is misleading because there are thresholds involved.	**Response to Comment #15.15**: Thanks for bringing this to Ecology's attention. Ecology has fixed the table-formatting problems. Refer to the Response to Comment #1.6. Ecology has removed the language throughout the draft permit associated with the 280 NTU limit; this action has also removed the last row of Table 3. Footnote 3 of the table now includes the words "as applicable."
Comment #15.16	WSDOT Draft Permit Comments Page 8 of 14 September 10, 2010 **Recommendations:** Add "at any one time" to the above referenced language in Table 3. The superscript [1] should be changed to say "size of soil disturbance is calculated by adding all areas currently affected by construction activity". Change the language in the weekly pH sampling column to "required if thresholds are met". Include "N/A" in the currently empty fields for weekly sampling with transparency tube and pH.	**Response to Comment #15.16**: See Response to Comment #15.5.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.17	**S4.B. Site Inspections** **Comment SC.6:** (p 12, lines 14-16) The new language requiring permittees to report changes in CESCL personnel adds another notification trigger and will require training to be implemented. The current requirement of having CESCL personnel information updated in the SWPPP is sufficient (p 13, lines 26-27) and the new reporting requirement is unnecessary and onerous. **Recommendation:** *Consider removing the new reporting requirement.*	**Response to Comment #15.17**: This language has been removed from the permit and remains on the Notice of Intent form. The intent of the language is to keep contact information current.
Comment #15.18	**Comment SC.7:** (p 13, line 16) The new language "where construction activities are occurring" is misleading and should be consistent with the language on p 12, line 11. **Recommendations:** Change the language to "in all areas disturbed by construction activities, all BMPs, and all stormwater discharge points". It would also be helpful to add information pertaining to areas within the project limits that do not require inspections such as areas that have not been disturbed yet and areas that have been fully stabilized.	**Response to Comment #15.18**: Ecology has edited the language for consistency.
Comment #15.19	**S4.C. Turbidity/Transparency Sampling Requirements** **Comment SC.8:** (p 14, Line 32) the Draft language in S.4.C.2.a., "when it enters waters of the state", and similarly (p 15, Line 9) in S.4.C.3.a., "where it enters any on-site surface waters of the state", have the potential to cause confusion. The language is inconsistent and will create misunderstanding. The language can be interpreted to suggest in-stream sampling, which does not capture the true turbidity measurement of a discharge.	**Response to Comment #15.19:**

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.19 (continued)	WSDOT Draft Permit Comments September 10, 2010 Page 9 of 14 **Recommendation:** Remove the language "when it enters" and "where it enters any" and replace both with "prior to entering any".	**Response to Comment #15.19:** Thank you for your comment. Ecology believes that the suggested edit would change the meaning of the text, but will clarify the language as follows: " The CESCL must sample all discharge locations at least once every calendar week when stormwater (or authorized non-stormwater) discharges from the site or enters any on-site surface waters of the state (for example, a creek running through a site)."
Comment #15.20	**Comment SC.9:** (p 16-17) The benchmark values are not adequate based on the readings given by standard turbidimeter models. The CSWGP requires certain action if the turbidity is 26-249 NTU, but it is not clear what the permittee is required to do if the turbidity sample is 25.5 NTU or 249.5 NTU. **Recommendation:** Adding tenth values to the benchmark ranges (i.e. 25 to '25.0'and 26 – 249 to '25.1-249.9') will minimize ambiguity.	**Response to Comment #15.20:** Ecology has clarified this language.
Comment #15.21	**Comment SC.10:** (p 16, line 26) Condition "i" states "Telephone the applicable Ecology Region's Environmental Report Tracking System (ERTS) number within 24 hours, in accordance with Condition S5.F." Not providing numbers may lead to permittees not reporting. Please include the ERTS numbers for all Ecology regions in an appendix.	**Response to Comment #15.21:** The permit now includes the ERTS numbers. Central Region (Okanogan, Chelan, Douglas, Kittitas, Yakima, Klickitat, Benton): (509) 575-2490 Eastern Region (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman): (509) 329-3400 Northwest Region (Kitsap, Snohomish, Island, King, San Juan, Skagit, Whatcom): (425) 649-7000 Southwest Region (Grays Harbor, Lewis, Mason, Thurston, Pierce, Clark, Cowlitz, Skamania, Wahkiakum, Clallam, Jefferson, Pacific): (360) 407-6300

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.22	**Comment SC.11:** (p 17, lines 11-16) This language continues to create confusion about the difference between benchmarks and water quality standards. If benchmarks are used as indicators of compliance, that principle should be consistent throughout the CSWGP to prevent confusion. The language also creates confusion because it can be interpreted to require in-stream sampling and the CSWGP provides no guidance for in-stream sampling. In-stream sampling methods can vary greatly depending on site specific factors and often there are access and safety concerns that need to be considered. **Recommendation:** Remove option c. (p 17, lines 11-16).	**Response to Comment #15.22:** The language in question provides flexibility for the site operator and CESCL to determine the approach that works best for their site and conditions. The "and/or" notes within the alphabetized bullets on lines 9-17 of page 17 provide the Permittee with a choice of compliance options.
Comment #15.23	**Comment SC.12:** (p 17, lines 18-32) The Draft language consistently uses the term "numeric effluent limit" while the language associated with Table 4 (p 16) uses the term "Maximum Daily Discharge Limitation" and neither is defined in the appendix. We suggest selecting one term, using it consistently to prevent confusion, and defining it in the appendix.	**Response to Comment #15.23:** Ecology has removed this language because of the removal of the numeric effluent limit in the final permit.
Comment #15.24	WSDOT Draft Permit Comments Page 10 of 14 September 10, 2010 **Comment SC.13:** (p 17, lines 24-25) Guidance is needed for determining the 2-year, 24-hour storm event. Select a source for weather data and provide that information in the CSWGP or Fact Sheet.	**Response to Comment #15.24** **As noted in the SWMM, Section 2.3.1, paragraph 2:** Isopluvial maps for the 2, 5, 10, 25, 50, and 100-year recurrence interval and 24-hour duration storm events can be found in the NOAA Atlas 2, "Precipitation - Frequency Atlas of the Western United States, Volume IX-Washington." Appendix II-A provides the isopluvials for the 2, 10, and 100 year, 24-hour design storms. Permittees can obtain other precipitation frequency data through Western Regional Climate Center (WRCC) at Tel: (775) 674-7010. WRCC can generate 1-30 day precipitation frequency data for the location of interest using data from 1948 to present (currently August 2000).

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.25	**S4.D. pH Monitoring: Sites with Significant Concrete Work or Engineered Soils** **Comment SC.14:** It will add clarity to include language in S4.D.1 that will tie pH sampling requirements to specific discharge locations. For example "Permittees with significant concrete work must sample for pH at all discharge points where stormwater may be affected by the concrete work".	**Response to Comment #15.25:** This issue is addressed in S4.D.4.
Comment #15.26	**Comment SC.15:** Make sure the definition for "significant concrete work" is consistent in the body of the Draft, the definitions appendix, and the Fact Sheet. Also see comment PC.5.	**Response to Comment #15.26:** Thank you for your comment. Ecology changed the text so the definitions and the fact sheet are consistent.
Comment #15.27	**S5. REPORTING AND RECORDKEEPING REQUIREMENTS** **S5.D. Recording Results** **Comment SC.16:** It is unclear what the difference is between the "individual who performed the sampling or measurement" (p 19, line31) and the "individual who performed the analyses" (p 20, line 1).	**Response to Comment #15.27:** Ecology believes the text is clear; there may be cases among our 2,500+ permitted sites where the two tasks are handled by different people, especially in cases where a permittee sends their samples to a lab for analysis.
Comment #15.27 (continued)	**Note on Concern:** It will generally be the same person doing these actions and they should be performing analysis immediately after sampling. This is especially important in the case of pH because temperature changes in the sample can change pH measurements.	
Comment #15.27 (continued)	**Recommendation:** Please add clarification or combine the elements into one requirement which states "The first and last name(s) of the individual(s) who performed the sampling, measurement and analysis".	
	S9. STORMWATER POLLUTION PREVENTION PLAN **S9.D.4. Install Sediment Controls**	
Comment #15.28	**Comment SC.17:** (p 28, lines 4-5) This language could be made more meaningful if the importance of the action was clarified. For example, "Where feasible, design outlet structures that withdraw impounded	**Response to Comment #15.28:** Ecology has added this useful edit. Thanks.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.28 (continued)	WSDOT Draft Permit Comments September 10, 2010 Page 11 of 14 stormwater from the surface to avoid discharging sediment that is still suspended in the water column".	
Comment #15.29	**S9.D.5. Stabilize Soils** **Comment SC.18:** (p 29, lines 1-5) Consider breaking the sentence into smaller sentences as it is hard to comprehend. **S9.D.9. Control Pollutants** **Comment SC.19:** (p 30, line 25) The wording is redundant and grammatically awkward, remove "at a minimum". **Comment SC.20:** (p 31, lines 11-14) The third sentence of the paragraph does not appear to provide any new information from the first sentence. Rewording redundant statements will create confusion. Remove the third sentence.	**Response to Comment #15.29** Comments noted; thank you.
Comment #15.30	**S9.D.10. Control Dewatering** **Comment SC.21:** (p 31, line 20) The language in S9.D.10.a, which states that dewatering water with "characteristics similar to stormwater runoff", is vague and the applicability is unclear. The Fact Sheet comments on the difficulty of characterizing stormwater discharging from construction sites (p 7, lines 29-31; p 18, lines 27-28). If Ecology acknowledges the difficulty in characterizing stormwater, expectations should be provided. **Recommendation:** Provide guidance for characterizing dewatering water.	**Response to Comment #15.30:** Please refer to Response to Comment #15.8 for definitions and clarification of process and other waters on a typical construction site. Otherwise, we believe that site operators and CESCLs will understand the meaning of the terminology in the cited sentence. The intent was to avoid comingling relatively clear dewatering water with relatively muddy stormwater. This situation creates a larger volume of water that must be managed or treated. The same concept is true of comingling relatively muddy dewatering water with relatively clear stormwater: "keep the clean water clean" is the intent. CESCL judgment will be required to avoid contaminating relatively clear water with muddy water; and, when appropriate, manage and discharge them separately.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.31	**S9.D.11. Maintain BMPs** **Comment SC.22:** (p 32, lines 7-9) See comments below for S.10 Notice of Termination. Some biodegradable BMPs are used for temporary erosion control but are designed to be left in place. Exceptions to this requirement should be considered when biodegradable BMPs are used.	**Response to Comment #15.31:** See #15.32 below.
Comment #15.32	WSDOT Draft Permit Comments Page 12 of 14 September 10, 2010 **S.10. NOTICE OF TERMINATION** **Comment SC.23:** (p 33, line 13-14) The language "removed all temporary BMPs" does not take into consideration new biodegradable BMP technologies that are becoming more favorable. Compost socks, wattles, berms and blankets are often used for temporary erosion control with the intention of being left in place. Leaving these BMPs in place can improve soil quality and encourage vegetation to grow. Also, removing such BMPs after they are impregnated with vegetation is very disruptive and can create erosion problems. Ecology has acknowledged the value of biodegradable BMPs and has allowed some BMPs to be left in place on a case-by-case basis. If guidelines were in place for the allowance of certain BMPs to be left in place at final stabilization, it would save time and money for permittees and produce a better environmental result.	
Comment #15.32 (continued)	**Recommendation:** Add language to S.10.A.1 which states "BMPs made of fully biodegradable materials can be left in place as part of final stabilization".	**Response to Comment #15.32:** Ecology's Stormwater Management Manual for Western Washington has examples of BMPs that Permittees may leave in place at the end of the project, assuming local regulations permit the site operator to do so. See examples in Volume II, page 4-22, and 4-95. However, we have also edited this language to allow Permittees to leave biodegradable materials on site as part of stabilization.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.33	**G2. SIGNATORY REQUIREMENTS** **Comment SC.24:** (p 34, lines 13-14) The signatory requirements are too restrictive. Applying G2.A.4 to WSDOT would require the region administrator (the principal executive officer of the region) to sign all Notices of Intent for coverage under the CSWGP. This level of signature authority is not necessary.	**Response to Comment #15.33:** Please refer to Response to Comment #10.3.
Comment #15.33 (continued)	**Recommendation:** The signatory requirement should read "...by either a principal executive officer...or their designee." which would allow a project engineer or region environmental manager to sign the NOI.	
Comment #15.34	**APPENDIX A – DEFINITIONS** **Comment SC.25:** Format problem: Define 'discharge' or 'discharge point'. Suggested definition: discharge point is the point at which water is released from the construction site, beyond the project limits, or into waters of the state.	**Response to Comment #15.34:** Thank you for your input; Ecology believes that "discharge" is clear throughout the permit; it is also defined in the Fact Sheet.
Comment #15.35	WSDOT Draft Permit Comments September 10, 2010 Page 13 of 14 **Comment SC.26:** Define the term or terms 'disturbed' or 'soil disturbance'. Suggested definition: soil disturbance includes all areas currently undergoing clearing, grading, grubbing and/or excavation, or any other construction activity that disturbs the surface of the land or its vegetative cover.	**Response to Comment #15.35:** Ecology believes that "disturbed" and "soil disturbance" are clear, given that they are basic to site construction and all Permittees should understand these words.

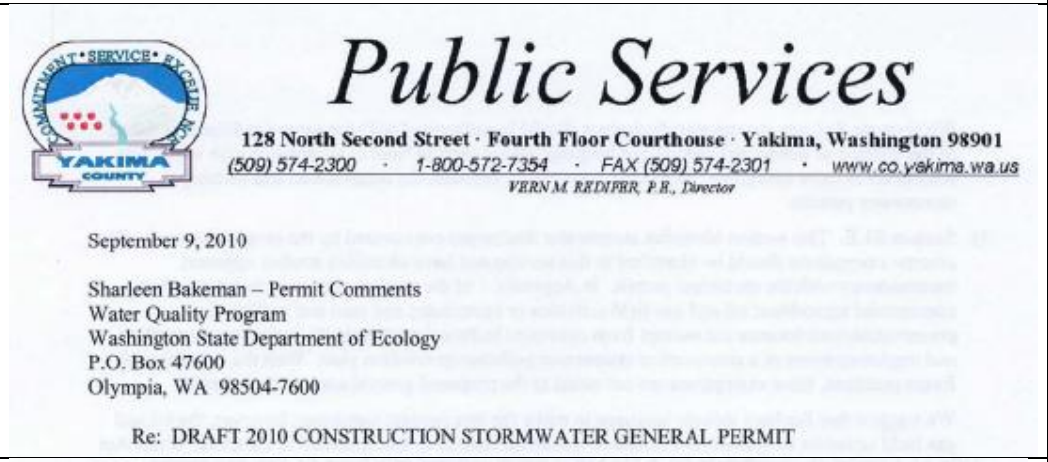
COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.36	**Comment SC.27:** (p 46, lines 26-28) The definition for 'final stabilization' should be made more clear so permittees can prepare better for Notice of Termination requirements. **Recommendation:** Define a percentage requirement for vegetated cover, which would also provide a quantitative expectation that permittees can prepare for. Ecology inspectors have used various percentages for vegetated cover when inspecting sites, usually in the range of 70% - 80%, which seems like a reasonable requirement to have in the CSWGP.	**Response to Comment #15.36:** Ecology staff understands that many states use the 70-80% cover range. As noted in the CSWGP definitions (page 46, line 26), and discussed at length throughout various parts of the SWMMs, established permanent vegetative cover to prevent erosion is the goal of the permit conditions. To state a percentage less than 100% may not take into consideration unique characteristics of a site. The manual, in Section 1.5, describes at length the consequences of erosion and lack of vegetation on a site. Ecology inspectors have the authority and discretion to determine whether the permanent vegetation sufficiently prevents erosion that could impact water quality.
Comment #15.37	**Comment SC.28:** (p 31, line 37) The term 'outfall' is used only once in the Draft. The term outfall has a legal meaning and is defined in 40 CFR 122.26. The definition for 'outfall' listed in the Draft is not consistent with other legal definitions of the term. The terms 'discharge' and 'discharge point' are used throughout the Draft but not included in the definitions.	**Response to Comment #15.37:** Ecology replaced the term outfall with discharge.
Comment #15.37 (continued)	**Recommendation:** Remove the definition for 'outfall', and replace with a definition for 'discharge point', and use "discharge point" consistently throughout the permit and associated documents.	
Comment #15.38	**Comment SC.29:** (p 30, line 32) Define 'secondary containment' as a required component to control pollutants, and describe what structures, materials, sizing or practices would constitute adequate secondary containment for on-site fueling tanks.	**Response to Comment #15.38:** Ecology added a more specific description of secondary containment to the text in this location of the permit.
Comment #15.39	**Comment SC.30:** (p 49, line 10-12) The definition for 'stabilization' is not necessary and may add confusion with the defined terms 'final stabilization' (fully stabilized) and 'temporary stabilization'. The definition for 'stabilization' should be removed.	**Response to Comment #15.39:** Thanks; the definition will remain in the permit.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.40	**Comment SC.31:** The definition for 'temporary stabilization' would benefit from some detail about expectations so permittees can better evaluate when it has occurred. The underlined language should be	
Comment #15.40 (continued)	WSDOT Draft Permit Comments Page 14 of 14 September 10, 2010 added to the current definition: "Seeding alone is not considered temporary stabilization until germination has occurred and vegetation covers the soil".	**Response to Comment #15.40:** Ecology believes that the definition is clear as is. Please also see the Response to Comment #6.3.
Comment #15.41	**Comment SC.32:** (p 20, line 24) Any new terms used in the Draft associated with the numeric effluent limit should be included in the definitions appendix. The term 'upset' is an example. Also see comment SC.12.	**Response to Comment #15.41:** "Upset" is defined on page 38, line 16, under G15--"Upset."
Comment #15.42	**Comment SC.33:** The term 'wastewater' is confusing because has been associated with sewage. **Recommendations:** Define 'wastewater' as it pertains to the CSWGP, or replace the term with 'process water' where applicable. Also see comment SC.2.	**Response to Comment #15.42:** Refer to the Response to comment #15-8 above.
Comment #15.42 (continued)	Suggested definition: Process water is water used in a manufacturing or treatment process or in the actual product manufactured. Examples would include water used for washing, rinsing, direct contact, cooling, solution make-up, chemical reactions, and gas scrubbing in industrial and food processing applications. For purposes of this permit, a distinction is made among process water, stormwater, and wastewater (such as from a POTW).	
Comment #15.43	**DRAFT FACT SHEET COMMENTS** The following are comments on the Fact Sheet: • (p 15, lines 16-26) WSDOT disagrees with Ecology's decision not to incorporate phasing deadlines for implementing the numeric effluent limitation. While the sampling methods and monitoring requirements are not new, the fact that an exceedance of the numeric effluent limit represents a permit violation is a noteworthy change which will require new strategies for maintaining compliance and preventing penalties. We suggest phasing deadlines. (Note: this comment is dependent on Ecology's decision vis-a-vis Comment PC.2 herein.)	**Response to Comment #15.43:** Please refer to Response to Comment #1.6 above.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #15.44	• (p 71, line 20) The definition for 'significant concrete work' is not consistent with the Draft. Ecology should develop and use a consistent definition throughout the Fact Sheet and CSWGP. Also see comment PC.5.	**Response to Comment #15.44:** Thank you.
COMMENTER #16 WILLIAM DICKSON COMPANY	**Construction Stormwater General Permit** **August 25th Public Hearing in Tacoma, Washington** Let the record show that it is 2:19 PM on August 25th, 2010, and this public hearing is being held at the Pierce County Parks Sprinker Recreation Center, located at 14824 C Street South, Tacoma, Washington. The primary purpose of this hearing is to receive public comments regarding the issuance of the construction stormwater draft general permit. The legal notice of this public hearing was published in the Washington State Register, Issue Number 10-15-087. Ecology also directly notified the following: construction stormwater permit holders and interested parties, the Tribes, various state and federal agencies, as well as posting the hearing information on the Construction Stormwater General Permit website, the agency listserv and Ecology Public Events Calendar.	
	At this point in time, we have one person who signed in, indicating that he would like to present testimony. That is Mr. Richard Dickson. Mr. Dickson, if you would just give your address, you may go ahead and begin speaking, Sir.	
	About 5 minutes? That's OK. I am Richard Dickson, with William Dickson Company. I'm a professional engineer, registered through the State of Washington. I own a construction company. We have a gravel pit in – just out of – the city limits of Tacoma. It's a 40-acre site, so we have a sand and gravel permit with the Department of Ecology.	
Comment #16.1	My big complaint is – it doesn't matter how stringent these laws become, if the regulation is not enforced equitably. The first example is Sound Transit, Seattle. A five-mile stretch of Martin Luther King was constructed by Sound Transit. Every time it rained a half inch or more, according to NPDES permit, they were required to test. A typical test would result in 20 samples that exceeded either the turbidity limit or the pH limit. All the water headed to Lake Washington, so there were 422 exceedances at the half way point of the job or somewhere around there. All of a	**Response to Comment #16.1:** Thank you for taking the time to provide comments on the 2010 Construction Stormwater General Permit. Ecology is aware that enforcement issues will tend to require more resources than the agency or the state of Washington is able to afford. In these situations, Ecology inspectors must focus on correcting impacts to the environment as quickly as possible to protect

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	$4000 citation. So, a little less than $10 per exceedance was the cost, and that was appealed by Sound Transit. One reason that the Department of Ecology said in their inter memos was that they allowed this because the work had to go on. They couldn't stop it. And, they'd get in real trouble if this got out to the public that they were doing it, which it did.	waters of the state. The fines and citations associated with permit exceedances may not always reflect the level to which the Ecology inspector has worked with a site operator to correct numerous issues over time.
	Anyway, so that was one example. But, the Department of Transportation is another good example, like on Wax Road, they are about the only guys that get away with dumping their street waste and street sweepings with no testing, no parameters. Same with the street sweepings and the catch basin waste in Pierce County. Pierce County has special privileges so that they can dump their wastes at Prairie Pit. And, all private entities are required to dump their catch basin wastes down at the tide flats in one or two places.	
Comment #16.2	So now we go to the gravel pits next. The biggest gravel pit in Pierce County is 480 acres. They are supposed to do water monitoring because they have both a gravel pit and a rock quarry and they have more than 50 acres exposed – or I call it a pit floor. They – the ground slopes towards the northeast, which is the same direction as the Puyallup River, which is in close proximity to the pit. Since they did no water monitoring for the Department of Ecology between '99 and '04, until somebody from the Department sent them a letter. Then, they monitored for a year or two and then since 2007, they have not monitored anything at that pit or any other of 14 pits.	**Response to Comment #16.2**: Thank you; we will pass along your comments to Ecology's Sand and Gravel permit manager.
	Jason Shira at the Department of Ecology did an inspection pointing out these 14 sites. It was determined that 5 of them were inactive and of course Pierce County said more were inactive. Altogether it's over a thousand acres of pits. Much more than any private entity has. We only have 40 acres. And, anyway, they have done no monitoring, even though in the last three years – at any of the sites – even though 9 of the sites are active. And, by active, I mean that either they are backfilling, mining, stockpiling crushed rock or solid waste such as recycled asphalt.	
	Any reclaiming makes it active, so these nine sites were active for various reasons, as Jason Shira pointed out, who no longer works at the Department of Ecology. The Department of Ecology fired him for actually trying to enforce the law against any public agency. So, that is the bottom line again. If you are public, then there is no enforcement.	Mr. Shira is still a valuable Department of Ecology employee and has moved to a different office. Thanks for your concern.
Comment #16.3	I have never seen a significant fine issued to any public agency. So, what good does it do to have all these laws if you're only going to enforce them against private agencies.	**Response to Comment #16.3:** Please refer to the Response to Comment #16.1 above.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	So, I expect this law to have teeth, where it guarantees that the public agencies, including the State of Washington, will be treated just as the private individuals or companies or entities. That is the end of my comments. Thank you.	
COMMENTER #17 **CITY OF SEATTLE** **Comment #17.1**	**Construction Stormwater General Permit** **August 25th Public Hearing in Tacoma, Washington** I need your name and your address for the record, please. Maureen Meehan. Seattle Department of Transportation. It's 700 5th Avenue, Seattle, Washington, 98104. I'm hoping this permit will clarify whether or not construction sites that are totally within the combined stormwater system have to get a permit. I've been told they do. I have been getting permits for those construction sites. It is quite expensive overall for staff time and submittals for the contractor, but when Ecology visited the site, there were problems there and they were going to proceed with enforcement and then we were informed that they can't because they don't have any jurisdiction over waters that are going to the sewage treatment plant vs. going to the sound. So, it seemed like a lot of money and time spent for not any results. So, I'm hoping that's clarified.	**Response to Comment #17.1:** If storm water from the site is discharged only to a combined sewer system that leads to a wastewater treatment plant, construction stormwater permit coverage is not required. Clarifying language has been added to the final permit (S1.B.2): "2. Operators of the following activities are not required to seek coverage under this CSWGP (unless specifically required under Special Condition S1.B.1.b. above): a. Construction activities that discharge all stormwater and non-stormwater to ground water, sanitary sewer, or combined sewer, and have no point source discharge to either surface water or a storm sewer system that drains to surface waters of the State."
Comment #17.2	I'd also like to get clarified…there's a new checkbox on the form about SEPA exemption that's very unclear. I've called and asked what that means and Ecology wouldn't answer and SEPA wouldn't answer. And, I'd like some clarification on when a project has to get an NPDES permit but can be exempt from SEPA. Especially since getting a permit triggers SEPA. So, that needs to be explained very clearly, so that we know when we cannot do SEPA. Thank you.	**Response to Comment #17.2:** All projects subject to the CSWGP are also subject to a SEPA analysis unless the projects meet the criteria of the exemptions listed on the NOI form. The NOI language on projects exempt from SEPA also have the regulatory notation on the form: • Watershed Restoration & Fish Habitat Enhancement Exemption (RCW 43.21C.0382). • Infill Development Exemption (RCW 43.21C.229). • Planned Action Exemption (RCW 43.21C.031). • Categorical Exemption. The Revised Code of Washington (RCW) (available online) explains the details of each exemption. The form then asks: "Under what section of the SEPA Rule (WAC 197-11-800) is it exempt? _____ (for example, WAC 197-11-800(1) Minor New Construction)."

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
		If your project falls into one of the exemption categories, it may be exempt from the SEPA requirements. However, please note that a construction project exempt from the SEPA evaluation may still need coverage by the Construction Stormwater General Permit.
COMMENTER #18: YAKIMA COUNTY PUBLIC SERVICES	 **Public Services** **128 North Second Street · Fourth Floor Courthouse · Yakima, Washington 98901** (509) 574-2300 · 1-800-572-7354 · FAX (509) 574-2301 · www.co.yakima.wa.us *VERN M. REDIFER, P.E., Director* September 9, 2010 Sharleen Bakeman – Permit Comments Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504-7600 Re: DRAFT 2010 CONSTRUCTION STORMWATER GENERAL PERMIT	
Comment #18.1	Yakima County would like to thank the Department of Ecology for the opportunity to comment on the proposed permit. We offer the following comments: 1) Section S1.C.1. This section authorizes "discharge of stormwater associated with construction activity to surface waters of the State or to a storm sewer system that drains to surface waters of the State from a designated construction site". We request that Ecology remove the authorization to discharge to storm sewer systems that are regulated by the NPDES municipal stormwater permit for the following reasons: • Municipal permittees are responsible for their regulated municipal separate storm sewer systems (MS4s); • Permit overlap reduced. The municipal and construction permits would only overlap when a site discharges to both surface waters of the State and a regulated MS4.	**Response to Comment #18.1**: Please refer to Response to Comment #2.1.

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #18.2	2) Section S1.C.3. This section authorizes certain non-stormwater discharges. The following authorized discharges are also found in the Eastern Washington Phase II Municipal Stormwater Permit, however, the municipal permit contains specific conditions not found in the draft construction permit such as: • Fire hydrant flushing • Potable water including water line flushing • Pipeline hydrostatic test water • Dust control water • External building wash • Landscape irrigation water	**Response to Comment #18.2:** Please refer to the new language in S1.C.3 edited to respond to this comment. In addition, we have edited the text throughout the permit to assure that Permittees understand their responsibilities when discharging to local storm sewer or combined sewer systems owned by local entities.
Comment #18.2 (continued)	In general, local jurisdictions have adopted municipal stormwater permit language in their illicit discharge detection and elimination (IDDE) ordinance. To further complicate matters, non-stormwater discharges covered by another NPDES permit such as industrial, CAFO and others, are allowed, without condition, under the municipal stormwater permit, and therefore under Yakima County code. The end result is that, without stormwater permit conditions, a site can discharge to the Yakima County MS4 under the proposed Ecology construction general permit at a lower standard than otherwise allowed by the stormwater permit and local code. *Yakima County ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For questions regarding Yakima County's Title VI Program, you may contact the Title VI Coordinator at 509-574-2300.* *If this letter pertains to a meeting and you need special accommodations, please call us at 509-574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll free relay service 1-800-833-6388 and ask the operator to dial 509-574-2300.*	
Comment #18.2 (continued)	We propose that non-stormwater discharges should be authorized with the same conditions as found in the municipal stormwater permit and language added such as "and in accordance with local code, whichever is more restrictive" to provide consistency between the construction and municipal stormwater permits.	
Comment #18.3	3) Section S1.E. This section identifies stormwater discharges not covered by the proposed permit. We assume exemptions should be identified in this section and have identified another apparent inconsistency with the municipal permit. In Appendix 1 of the municipal permit, forest practices; commercial agriculture; oil and gas field activities or operations; and road and parking area preservation/maintenance are exempt from minimum technical requirements, including preparation and implementation of a construction stormwater pollution prevention plan. With the exception of forest practices, these exemptions are not noted in the proposed general construction permit.	Response to Comment #18.3: The jurisdictional issues vary between the municipal and construction general permits and there will be inconsistencies as a result. The authorizations and prohibitions listed in the permit are appropriate for a construction stormwater general permit. Ecology has edited the language as appropriate throughout the document to caution Permittees regarding any type of discharge to sewer systems owned by local entities.
Comment #18.3 (continued)	We suggest that Ecology include language to make the two permits consistent, however, the oil and gas field activities or operations exemption should be limited to that specified in the Clean Water Act Title 33, Chapter 26, Subchapter IV, § 1342(l)(2) which exempts only those oil, gas, and mining operations that consist of conveyances not contaminated by overburden, raw material, intermediate products, finished product, byproduct, or waste products.	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	If you have questions regarding our comments, please contact Brian Cochrane, (509) 574-2354. Sincerely, Donald H. Gatchalian, P.E., Assistant Director Yakima County Public Services c: Terry Keenhan, Yakima County Jim Bridges, City of Sunnyside Dennis Henne, City of Union Gap Scott Schafer, City of Yakima Joe Walsh, Central Washington Homebuilders Association	
COMMENTER #19 NATIONAL ASSOCIATION OF HOME BUILDERS **See also the attachments at http://www.ecy.wa.gov/programs/wq/stormwater/construction/comments.html**	**National Association of Home Builders** 1201 15th Street NW Washington, DC 20005 T 800 368 5242 F 202 266 8400 www.nahb.org NAHB September 10, 2010 Sharleen Bakeman – Permit Comments Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504 Sharleen.Bakeman@ecy.wa.gov RE: Draft Construction Stormwater General Permit for Washington State	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	Dear Ms. Bakeman, The National Association of Home Builders ("NAHB") appreciates this opportunity to provide comments on the Washington Department of Ecology's *Construction Stormwater General Permit*, hereafter referred to as the "Draft Permit." NAHB is a trade association representing more than 175,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. Known as "the voice of the housing industry," NAHB is affiliated with 800 state and local home builders associations around the country. NAHB's builder members will construct about 80 percent of the new housing units projected for 2010.	
	NAHB members comply with the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) permitting requirements to minimize erosion and sedimentation, and manage stormwater discharges. Our members must comply with established state and local permit requirements for erosion and sediment control and develop Stormwater Pollution Prevention Plans (SWPPPs) that allow for the selection of appropriate Best Management Practices (BMPs) to minimize adverse environmental impacts.	
Comment #19.1	NAHB commends Washington Department of Ecology for the timely renewal of the existing permit. However, NAHB is concerned that the Draft Permit includes EPA's 280 NTU numeric effluent limit which was part of the final Construction and Development Effluent Limitation Guidelines (C&D ELG).[1] Due to legal [1] *40 CFR Part 450 - Effluent Limitation Guidelines and New Source Performance Standards (NSPS) for the Construction and Development Point Source Category* in the *Federal Register* at 74 F.R. 229 (Dec. 1, 2009).	**Response to Comment #19.2:** Please refer to the Response to Comment #1.6.
Comment #19.1 (continued)	challenges, and an admission by EPA that it improperly interpreted the data, the calculations in the record are inadequate to support the 280 NTU. Thus, EPA has recently put the 280 NTU limit on hold. As a result, the Washington Department of Ecology should remove the portions of the rule dealing with the numeric effluent limit from the Draft Permit. (See EPA Motion Attached)	

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #19.1 (continued)	NAHB and the Wisconsin Builders Association (WBA) filed a lawsuit questioning the basis of the numeric limit following the issuance of EPA's final C&D ELG rule. EPA subsequently filed a motion with the court asking it to vacate the numeric effluent limit portion of the C&D ELG due to flaws in the database used to develop the limit. The court granted the motion and remanded the case back to EPA. EPA must now go back and develop a numeric limit that is based on defensible data by February 15, 2012. The Washington Department of Ecology is not legally obligated to adopt this rule since the portion of the ELG dealing with the numeric limit has been put on hold. Indeed, if EPA is unable to defend the adoption of 280 NTU, absent of any new data or analysis, the Washington Department of Ecology is similarly limited.	
Comment #19.1 (continued)	Additionally, NAHB and the U.S. Small Business Administration's (SBA) Office of Advocacy filed petitions with EPA highlighting several problems with the 280 NTU limit and asking EPA to reconsider the ELG rule. Concerns were raised regarding the data and modeling methodology used to derive the numeric standard; effectiveness and feasibility of the intended control methodologies; and the impacts that will accrue to small businesses who must attempt to meet the overly stringent and under-tested standard. The petitions point to the numerous flaws in the development of the 280 NTU limit that EPA will need to review prior to adopting a new numeric effluent limit. SBA concludes that a properly calculated limit based on the data in the record would be 793 NTU (see SBA Petition Attached.)	
Comment #19.1 (continued)	In light of the all the issues with the 280 NTU numeric effluent limit of the final C&D ELG, and in particular the lack of sufficient justification, NAHB strongly urges Washington Department of Ecology to remove the 280 NTU limit from the Draft Permit.	
	Thank you for the opportunity for NAHB to review and provide comments on the *Draft Construction Stormwater General Permit.* We hope these comments will be helpful to you in your review and in your future considerations. If you have any further questions or comments regarding NAHB's comment, please contact me at easfaw@nahb.org or 202-266-8124. Best regards, Etayenesh (Ty) Asfaw Environmental Policy Analyst NAHB	
COMMENTER #20: Jay Kobza Comment #20-1:	[Received via e-mail at 1:03 p.m., August 23, 2010.] I would like to comment on the new Construction Stormwater Permit. I am a builder and land developer in Thurston County, and I have recently had to obtain a Construction Stormwater permit. I have done a number of projects near State waters in the past and never had to get this	**Response to Comment #20-1:** Thank you for your comment. The requirement for sites 1 acre or greater in size to obtain permit coverage went into effect in 2005. Because there were numerous comments on this

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
Comment #20-2:	permit before. I was informed though, that the requirements have been changed from an area of five acres disturbed down to one acre disturbed. This encompasses a lot more projects, including the small residential projects that I normally do. It also will include a lot of single family home construction projects. I don't know if the Department of Ecology realized how many more projects this will include. Because of the economy, there is very little residential activity right now but when things recover there will be a huge increase in the number of these permits issued. Since the disturbed area requirement was just recently reduced, I think that the DOE is missing a lot of projects that now require permits. Specifically, they don't catch a lot of the single family residence constructions that disturb one or more acres. I am confident that over time they will implement a procedure that will pickup these projects. This along with increased building activity will cause an exponential increase in the number of permits issued as compared to the five acre requirement. This creates two problems. First The DOE will be using a shotgun approach of regulating a very large number of small projects with very little ecological impact rather than concentrating on the large projects with much larger potential for adverse impact. It seems to me that the best approach would be to change the requirement back to five acres in order to allow the DOE to more effectively monitor and regulate the bigger projects. The second problem with the disturb area reduction is that it is creating another regulatory burden on builders and small developers when they can least afford it. This was illustrated to me by a DOE employee who said that a lot of the properties that are under permit are now owned by banks and they don't know how to administer them. If the DOE insists on increasing the regulatory burden on builders, they need to figure out how to work with banks because they'll be owning a lot more projects. I am not implying that the financial well being of builders or developers is the concern of the DOE. But their regulations do make their survival more difficult. It is the job of State agencies to a least consider the needs of everyone in the State not just environmentalists. I would like to request that the permit requirement be raised from one acre back to five. There is another aspect of this permit that I would like to comment on. That is that they can run perpetually the way they are currently implemented. The permit that I currently have is for a large lot subdivision of five lots. The project is done and the site is stabilized but my permit is still in effect. I have been informed that I have to keep this permit in place until the houses are built on the lots. I have tried to show that because of the location of the building sites this construction will not impact the wetlands. Apparently because of the nature of the permit, this doesn't matter. I do not plan on building the houses. I am currently trying to sell the lots. I have no control over the construction of these homes or any idea when that will occur, if at all. I myself have built on lots that have been platted over a hundred years ago. I	change at that time, please refer to the discussion on this topic Responses to Comments on this issue at the following web site. The discussion addresses your comments. http://www.ecy.wa.gov/programs/wq/stormwater/construction/responsetocomments.pdf 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 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 • Allowance for an inexpensive and simple stormwater sampling method (transparency tube) to meet RCW 90.48.555 • Erosivity waiver (permit exemption) for eligible sites. **Response to Comment #20-2:** The construction stormwater general permit coverage must

COMMENTER	COMMENT	ECOLOGY RESPONSE TO COMMENT
	have also recently sold lots to people younger than myself who plan on building when they retire. There are over 700 five acre parcels for sale in Thurston county right now. With the current economy these lots will probably not be built on in a very long time. In the mean time I have to maintain this permit including paying the fees, monitoring and reporting for years on a stabilized site where nothing is happening. I discussed earlier the fact that there is going to be a huge increase in the number of these permits. If they all run on for a period of tens of years as mine will there will be an unbelievable number of these permits. My project which is now be causing absolutely no environmental impact has to meet the same standards as a project that has five acres of disturbed ground next to State waters. As part of this public evaluation process, I would request that you consider a process to actual conclude this permit. Thank you. Jay Kobza 360-507-3068	continue until the site has undergone final stabilization -- when it is built out and fully stabilized. If the sites are dormant and inactive (from a construction perspective), the sites qualify for a reduced annual permit fee and monthly inspections rather than weekly inspections.