

Appendix A: Response to Comments

On the

Municipal Stormwater Permits

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

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

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

Washington Department of Ecology

August 1, 2012

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

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

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

I-1.3 Permits exceed federal requirements

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

Summary of the range of comments

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

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

Response to the range of comments

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

I-1.4 Support permit requirements or request stronger requirements

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

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

Summary of the range of comments

Support for protection from stormwater impacts

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

Request stronger requirements

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

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

Response to the range of comments

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

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

I-1.5 Solutions beyond current permit requirements

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

Summary of the range of comments

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

Response to the range of comments

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

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

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

I-1.6 Other general comments

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

Summary of the range of comments

Permit requirements for smaller and larger communities

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

Implementation and compliance

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

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

Stormwater utilities and funding

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

Response to the range of comments

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

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

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

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

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

I-3.1 General Comments on Permit Coverage

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

Summary of the range of comments

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

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

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

Response to the range of comments

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

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

I-4 S2 Authorized Discharges

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

I-4.1 Exemption for discharges from emergency fire fighting activities

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

Summary of the range of comments

Concerns:

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

Suggested alternatives:

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

Response to the range of comments

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

I-4.2 Clarify discharges authorized under permit

Commenters: Eric Olsson, City of Everett

Summary of the range of comments

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

Response to the range of comments

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

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

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

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

I-4.3 Clarify permit authority for discharges to ground

Commenters: Snohomish County

Summary of the range of comments

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

Response to the range of comments

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

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

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

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

Summary of the range of comments

Clarify permit authority to regulate infiltration facilities

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

Clarify relationship of MS4 permits to UIC program

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

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

Response to the range of comments

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

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

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

I-5 S3 Responsibilities of Permittees

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

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

Summary of the range of comments

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

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

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

I-8 Coordination

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

I-8.1 External coordination requirements

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

Summary of the range of comments

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

Response to the range of comments

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

I-8.2 Requirement to submit organizational chart

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

Summary of the range of comments

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

Response to the range of comments

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

I-8.3 Requirement to coordinate internally

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

Summary of range of comments

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

Response to range of comments

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

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

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

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

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

Summary of the range of comments

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

Response to the range of comments

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

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

I-9 Mapping

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

I-9.1 Clarify mapping requirements for discharges to ground water

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

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

Summary of the range of Comments:

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

Response to the range of comments:

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

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

I-12.2 Comments on allowable discharges

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

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

Summary of the range of comments

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

Response to the range of comments:

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

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

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

I-12.3 Comments on conditionally allowable discharges

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

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

Summary of the range of comments

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