

Joint Base Lewis-McChord comments on EPA's National Pollutant Discharge Elimination System Permit WAS-026638 (MS4 permit)

GENERAL COMMENTS:

1. As a long time member of the Puget Sound Federal Caucus, The ARMY and JBLM support ongoing regional efforts to improve water quality in Puget Sound. JBLM also supports the goals of the Puget Sound Partnership described in the fact sheet. There are no simple solutions to meet these goals. Combinations of existing and emerging technologies will be required. DOD policy to implement the terms of the Energy and Independence Act section 438 is a significant part of moving JBLM toward those regional water quality goals.
2. The JBLM draft permit contains stormwater management requirements that are based on section 438 of the Energy Independence and Security Act (EISA). Although, the permit does not reference EISA § 438 by name, we note that the Fact Sheet and statements in public meetings have made it clear that EPA based the requirements in II.B.5 on EISA 438. EISA and the Clean Water Act (CWA) are two separate statutes having related, but distinct, underlying purposes and enforcement mechanisms. The CWA is designed to eliminate the discharge of pollutants into navigable waters of the United States; EISA § 438 is designed to maintain or restore to the maximum extent technically feasible the pre-development hydrology of the property with regard to the temperature, rate, volume, and duration of flow. That is, EISA is designed to retain stormwater on-site, consistent with pre-development hydrology, to allow infiltration into groundwater rather than entry into navigable waters of the United States. We also note Congress did not amend the CWA when it passed EISA § 438. Rather, EISA § 438 was written to be self-executing by federal agencies, in the management of stormwater from federal development and redevelopment projects. The Department of Defense has already instructed its installations to implement EISA § 438, consistent with the EPA's Technical Guidance, through its policy memorandum issued January 19, 2010.
3. We do not believe the CWA authorizes the inclusion of EISA §438 standards in JBLM's MS4 Permit. The CWA contains broad enforcement authorities to ensure compliance by the entire regulated community, including federal facilities, in applicable circumstances, but Congress did not extend that authority to the substantive EISA § 438 requirements. Prior to the inclusion of requirements based on EISA § 438 in an MS4 Permit, we believe the EPA is required to complete federal rulemaking under the Administrative Procedures Act to amend its stormwater regulations, providing all stakeholders notice and the opportunity to comment on the standards, their effectiveness, and the economic impact of the imposition of such standards.
4. In addition, the draft permit proposes to hold JBLM to more stringent performance standards than non-federal facilities. The federal government is only subject to requirements under the CWA to the extent it is treated in a non-discriminatory manner. Under CWA § 313(a), federal agencies are subject to "all Federal, State, interstate, and local requirements ... respecting the control and abatement of water pollution in the same manner, and to the same extent as any non-governmental entity." Some states, including Washington, have an approved state NPDES permit program but are not approved to issue permits for federal facilities. While in these states the U.S. EPA may *only* issue permits to federal facilities, the prohibition against discrimination still

stands. In this case, the EPA has proposed post-construction standards for entities on JBLM that non-governmental entities discharging to other MS4s would not be subject; as such, the EPA's inclusion of these standards in a permit for JBLM may violate CWA provisions prohibiting discriminatory treatment of federal facilities.

5. Some of the stormwater management requirements in this draft permit appear to be taken from the State of Washington's pending update of its Municipal Stormwater General Permits. These new requirements, set forth in the 2012-13 and 2013-2018 proposed revisions to the Western Washington Phase II Municipal Stormwater Permit by Washington Department of Ecology, are not current requirements and should not be incorporated into this permit. The current 2007 permit was modified on June 17, 2009 (2009 WWPhIIMS4) and will remain effective until the new 2012-13 permit takes effect on August 1, 2012. Furthermore, consistent with the comment above, requirements more restrictive than current, promulgated Washington State requirements are discriminatory and should be removed from this draft permit.

6. The inclusion of an arbitrary retrofit program is inappropriate and should be removed. We are unaware of any statutory or regulatory basis to mandate that a federal agency, as part of a Clean Water Act permit, retrofit structures on the federal property.

7. The term "stormwater" should be replaced with "MS4-managed stormwater" or "MS4 stormwater." On JBLM there are stormwater outfalls and treatment infrastructure governed by the Multi-Sector General Permit. These facilities are managed in accordance with that permit.

8. Construction runoff is managed under the U.S. EPA Construction General Permit (CGP). Significant Construction Requirements including enforcement of the CGP conditions have been incorporated in this MS4 permit relating to Washington State specific stormwater management requirements. If these restrictions are to be placed on Federal Facilities in Washington, a more appropriate avenue to include state requirements would be to place conditions in the CGP for Federal Facilities in Washington.

9. The terms "maximum extent practicable" should be used throughout the permit to refer to pollutant reductions, as it is the standard under the CWA (33 USC 1342(p)(3)(B)).

10. It is requested that airfield and approach areas be exempted from Low Impact Development (LID) stormwater requirements, to the extent those requirements apply under CWA § 313(a). Designating separate stormwater management requirements for airfields is consistent with Ecology guidance. There are significant restrictions on land use in and around airfields. Ponding and impounded water in above ground LID structures could attract birds and create a hazard for both the aircraft and wildlife. Washington State Department of Transportation (WSDOT) and Ecology have a specific stormwater manual for airfields. This should be the preferred guidance for areas near the airfields.

11. The Permit references inspection and maintenance requirements for all stormwater treatment facilities. A clarification should be made that this only applies to MS4 stormwater management structures and does not include onsite bioretention and infiltration structures in which associated

surface waters do not have an outlet to MS4 infrastructure. JBLM should follow its own protocols to inspect these facilities since there is no nexus to surface waters of the United States.

12. This draft MS4 permit represents a significant deviation from previous permits; not only in the increased scope of aspects proposed for regulation, but also in the sheer volume of new requirements. Expecting Federal Facilities to be able to successfully react to this proposed level of increase in requirements, in a single permit cycle, is unrealistic. Initial estimates indicate that JBLM would have to at least double our manpower resources, from 2 full time employees to 4, in order to comply with all requirements in this permit.

SECTION SPECIFIC (SS) COMMENTS

PERMIT PAGE 3

1. Applicability

A. Permit Area. This permit covers all areas of the military subinstallation located within Pierce and Thurston Counties, Washington, served by the municipal separate storm sewer system (MS4) owned or operated by the Joint Base Lewis-McChord (JBLM), hereafter also referred to as “permittee.” See Appendix D.

JBLM COMMENT SS1: The above section specifically states that the “permit covers all areas of the subinstallation located... served by the municipal separate storm sewer system (MS4)”. Since there are areas on the installation that are not served by the MS4 system, please revise to exclude those areas outside of the cantonment areas. For example, Appendix D includes a map that encompasses the entire installation; however, since not all JBLM facilities actually drain to the installation’s MS4 system, this map should be revised. .

In addition, the term subinstallation is not appropriate title for the Joint Base Lewis-McChord military installation; please replace subinstallation with military installation throughout the permit and fact sheet.

PERMIT PAGE 3

B. Discharges Authorized Under This Permit. During the effective dates of this permit, the permittee is authorized to discharge stormwater to waters of the United States and groundwater of the State of Washington from all portions of its MS4 located within the boundaries of the JBLM military subinstallation, including but not limited to the cantonment areas (comprised of and referred to as JBLM-Main, JBLM-North, and/or JBLM-McChord Field) and all military training areas, subject to the conditions set forth herein. This permit also authorizes the discharge of flows categorized as allowable non-stormwater discharges in Part I.C.1 of this permit.

JBLM COMMENT SS2: As mentioned in the last comment, most of the areas outside of the cantonment area on the installation do not have urban MS4 infrastructure or urban runoff as discussed on page 6 of the Fact Sheet. Rural stormwater conveyances such as roadside ditches and culverts should not be regulated by this permit unless there is a clear connection or areas that channel stormwater to the MS4 system or waters of the U.S.

The 2009 WWPhIIMS4 permit, at Pg 1, S1(B)(1)(b) describes a regulated small MS4 to include urbanized areas. In the definitions, at Pg 49-50, a small MS4 does not include storm sewer systems in very discrete areas such as individual buildings stating they do not require coverage under this permit. To expand the standard in this JBLM MS4 permit is inappropriate. The permit area should be clarified and exclude the training areas.

PERMIT PAGE 3

C. Limitations on Permit Coverage

1. Non-Stormwater Discharges. The permittee is authorized to discharge nonstormwater from the MS4, only where such discharges satisfy one of the following conditions:

...

d) The non-stormwater discharges consist of one or more flows listed below, and such flows are managed by the permittee in accordance with Parts II.B.3.c and II.B.6 of this permit.

...

JBLM COMMENT SS3: Reference above section and fact sheet Section VII Subsection B, Page 20. JBLM requests that acceptable water should include: reclaimed water (such as Class A as defined by Washington State Departments of Health and Ecology); Water with an appropriate dye to support evaluations including identification of sources of infiltration, inflow, and illicit discharges (and use in spill exercises), and uncontaminated cooling water. The cooling water source would be building heating, ventilation and air conditioning systems including heat pumps.

PERMIT PAGE 5

II. Stormwater Management Program (SWMP) Requirements

A. General Requirements

...

4. SWMP Information. The permittee's SWMP must include an on-going means for gathering, tracking, maintaining, and using information in order to evaluate SWMP development and implementation, permit compliance, and to set priorities.

a) No later than one year from permit effective date, the permittee must track the cost, or estimated cost, to develop and implement each program component of the SWMP. A summary of costs and funding sources, by program component, must be included in each Annual Report.

JBLM COMMENT SS4: The requirement to provide costs and funding sources is not applicable for a Federal Facility. Cost data is proprietary for any proposed contract actions. Funding sources available to city and county MS4 operators such as taxes, development fees, utility fees, etc. are not available on JBLM. See also page 27 II.G.

PERMIT PAGE 6

7. Equivalent Documents or Programs. The permittee may submit to EPA any existing documents or programs that it deems to fulfill a SWMP minimum control measure or component required by this permit. Such documents or programs must be individually submitted to EPA pursuant to Part IV.D for review and approval no later than six months prior to the compliance date of the SWMP component. Where EPA determines, in writing, that a document or program description submitted by the permittee is equivalent, a separate SWMP specific document or program is not required. A copy of EPA’s written approval of each equivalent document or program must be maintained within the SWMP document required in Part II.A.3. The permittee must submit the following documentation with each individual request for review submitted in compliance with this Part:

- a) a complete copy of the relevant document or program; and
- b) a detailed written overview identifying the required SWMP program component addressed by the document or program, and the reasons, citations and references which demonstrate that the submittal meets or exceeds the required SWMP program component of this permit.

JBLM COMMENT SS5: As a Permittee, JBLM should only be required to provide applicable sections of the plans and documents describing equivalent programs. The language should be similar to multi-Sector General Permit (MSGP) language at section “5.1: *Where your SWPPP refers to procedures in other facility documents, such as a Spill Prevention, Control and Countermeasure (SPCC) Plan or an Environmental Management System (EMS) developed for a National Environmental Performance Track facility, copies of the relevant portions of those documents must be kept with your SWPPP.* In addition at 5.1.5.1 of the MSGP Spill Prevention and Response Procedures (See Part 2.1.2.4) – *Procedures for preventing and responding to spills and leaks. You may reference the existence of other plans for Spill Prevention Control and Countermeasure (SPCC) developed for the facility under Section 311 of the CWA or BMP programs otherwise required by an NPDES permit for the facility, provided that you keep a copy of that other plan onsite and make it available for review consistent with Part 5.3.*”

PERMIT PAGE 6-7

B. Minimum Control Measures. The following minimum control measures must be accomplished through the permittee’s Stormwater Management Program:

1. Public Education and Outreach on Stormwater Impacts

- ...
- c) The permittee must include the following topics in its public education and outreach program:

- ...
- Proper design and use of Low Impact Development (LID) techniques at new development and redevelopment sites; and

JBLM COMMENT SS6: Recommend removing "Proper design and use of Low Impact Development (LID) techniques at new development and redevelopment sites" as a public

education and outreach requirement. The discussion of LIDs is more appropriate for a more limited audience (i.e. construction project officers) than the general public.

PERMIT PAGE 7

d) Beginning two years from the effective date of this permit, the permittee must measure and document the understanding and adoption of the targeted behaviors among targeted audiences. The resulting measurements must be used to direct education and outreach resources most effectively and to evaluate changes in adoption of the targeted behaviors.

JBLM COMMENT SS7: JBLM does not object to performing outreach; however, measurement and verification of the effects of outreach on human behavior is problematic of design and inherently imprecise. Trying to quantify actual effects on behavior from any given outreach effort, especially when there are multiple efforts going on simultaneously, is unlikely to yield results with a suitable level of confidence to base management decisions on. JBLM is unaware of any objective measurement methodology that might comply with this requirement, and notes that the outreach requirements in this permit are themselves detailed and robust enough to ensure a positive result. JBLM requests that this requirement be removed from the permit.

PERMIT PAGE 8

2. Public Involvement/Participation

...

c) No later than one year from the permit effective date, and annually thereafter, the permittee must make all Annual Reports available to the public on the permittee's website.

JBLM COMMENT SS8: Annual Report should be changed to MS4 Annual Report. The annual report includes a significant amount of data and technical submittals. It is not appropriate to require this information be posted on a public website. The posting may conflict with permittee and other outreach efforts of adjacent MS4 operators such as Pierce County. JBLM is a Military Installation with specific security requirements and restrictions. The current Freedom of Information Act process ensures that the public has access to public documents and the installation security concerns are addressed. The permittee should determine what information will be posted to a public website. The website posting should be limited to key accomplishments, concerns and issues of the permittee in accordance with the required public outreach program. The Pierce County Annual report on that website provides a suitable template for a public posting. See comment (Page 36, C. Reporting Requirements).

PERMIT PAGE 8

3. Illicit Discharge Detection and Elimination

An illicit discharge is any discharge to a MS4 that is not composed entirely of stormwater as defined in 40 CFR § 122.26(b)(2). The permittee's SWMP must include an on-going

program to detect and remove illicit connections and discharges into the MS4. The permittee must include a written description of the program in the SWMP document. No later than 180 days prior to the expiration date of this permit, the permittee must implement an on-going illicit discharge detection and elimination program which fully addresses each of the following components:

JBLM COMMENT SS9: Suggest changing the word “anon-going” to “an on-going.”

PERMIT PAGE 9

a) Map of Cantonment Areas. Within two years from the effective date of this permit, the permittee must update and maintain a map of the MS4 located within the JBLM cantonment area. At a minimum, the cantonment area map must be periodically updated and include the following information:

...

- **Locations of all permittee owned or operated industrial facilities, maintenance/storage facilities and snow disposal sites that discharge directly to the permittee's MS4, and/or waters of the State.**

JBLM COMMENT SS10: Recommend the last bullet be changed to: “Locations of significant permittee owned or operated industrial facilities, maintenance/storage facilities and snow disposal sites that discharge to the permittee's MS4. Significant industrial facilities or maintenance/storage facilities are defined for the purpose of this permit as uncovered yards of 0.5 acres or more. Significant liquid product storage facilities should be defined as reportable EPCRA Tier II facilities.”

PERMIT PAGE 10

c) Ordinance. The permittee must effectively prohibit, through ordinance or other regulatory mechanism, all illicit discharges into the MS4 to the maximum extent allowable under the legal authorities of JBLM. The ordinance or regulatory mechanism must be adopted, or existing mechanism amended, to comply with this permit no later than one year from the effective date of this permit. The regulatory mechanism does not need to prohibit the following categories of non-stormwater discharges, consistent with Part I.C.1.d:

...

The regulatory mechanism must prohibit the following categories of non-stormwater discharges, unless the stated conditions are met:

- ***Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water:* Planned discharges must be dechlorinated to a concentration of 0.1 parts per million (ppm) or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4.**

- ***Discharges from lawn watering and other irrigation runoff:*** These discharges must be minimized through, at a minimum, public education activities (see Part II.B.2.a) and water conservation efforts.
- ***Dechlorinated swimming pool discharges:*** The discharges must be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4. Swimming pool cleaning wastewater and filter backwash must not be discharged to the MS4.

JBLM COMMENT SS11: Significant dechlorination will occur with-in MS4 lines through oxidation of natural materials. Dechlorination should not be required for discharges of potable or reclaimed water from hydrant and line flushing. Stormwater retention ponds, infiltration systems, other flow control facilities, and long collection lines effectively remove chlorine residuals from potable water. Dechlorination of potable or reclaimed water should not be required when these waters are added to the MS4 upstream of these facilities or the JBLM stormwater canal. Dechlorination requirements should be limited to hyperchlorinated water and pool waters. The Washington State Department of Health reports that the lower limit for residual chlorine for EPA approved field test kits is 0.1 mg/l. It is not appropriate to set a discharge limit at or below the method detection limit of the approved test methods.

The 2009 WWPiIMS4 permit, at pg 14 allows up to 30 months from the effective date of their permits. This permit's one-year (12 month) time for compliance stated in the first paragraph of this permit section should be extended to 30 months.

PERMIT PAGE 11

d) Detection and Elimination. No later than two years from the effective date of this permit, the permittee must develop and implement an ongoing program to detect and address non-stormwater discharges, spills, and illicit connections into their MS4. This program must be described within the SWMP document and must include:

...

- **No later than two years from the effective date of this permit, the permittee must begin dry weather field screening for nonstormwater flows from stormwater outfalls. No later than five years from the effective date of this permit, the permittee must complete field screening of at least 75% of the MS4 located within the cantonment area. The dry weather screening may include field tests of parameters selected as indicators of discharge sources. The permittee may utilize less expensive "field test kits," using test methods not approved by EPA under 40 CFR Part 136, provided the manufacturer's published detection ranges are adequate for the illicit discharge detection purposes.**

JBLM COMMENT SS12: Recommend this language be added to this section: "Screening tests other engineering test methods do not need to comply with EPA requirements under 40 CFR Part 136 provided detection ranges are adequate for the illicit discharge investigation." The

permittee should not be required to report data from screening and engineering tests. This is the standard for other compliance programs.

**VAROUS SECTIONS RELATED TO TRAINING
PERMIT PAGE 13**

g) Training. Within two years of the effective date of this permit, the permittee must ensure that all staff responsible for the identification, investigation, termination, clean up and reporting of illicit discharges, including spills and illicit connections, are trained to conduct these activities. The permittee must maintain records of the training provided and the staff trained, and include a training summary in the Annual Report.

...

PERMIT PAGE 15

h) Training. Throughout the permit term, the permittee must ensure that all staff whose primary job duties are related to preconstruction site plan review, construction site inspections, or are otherwise implementing the construction site runoff control program, are adequately trained to conduct such activities. A summary of trainings attended, or conducted, by the permittee's staff must be included with each Annual Report.

...

PERMIT PAGE 22

h) Training. The permittee must develop and implement an on-going training program for JBLM facility maintenance staff, contracted companies, environmental project officers, or other staff whose construction, operations or maintenance job functions may impact stormwater quality. The training program must address the importance of protecting water quality; the requirements of this permit; operation and maintenance standards, inspection procedures; selection of appropriate BMPs as required in this Part; ways to perform their job activities to prevent or minimize impacts to water quality; and procedures for reporting water quality concerns, including potential illicit discharges. Follow-up training must be provided as needed to address changes in procedures, techniques, or requirements. The permittee must document and maintain records of all training provided in the SWMP.

JBLM COMMENT SS13: The permit language includes very specific training requirements for permittee personnel and contractors. Specific training requirements should be determined by the permittee and included in the SWMP. For example, the more general training language in the MS4 permit for Fort Carson, Colorado (COR042001) allows the permittee to develop and effective training program: "Provide annual training for public education and outreach for facility maintenance contracted companies, EPOs, and other people identified as having fleet maintenance activities in line with the SWMP." On JBLM, for a number of requirements, qualified contractors will need to be hired. These contractors should already be trained or have appropriate credentials. States have registration programs for Professional Engineers. If the permittee hires a registered professional such as an engineer or other subject matter expert, that professional should not need training. In many cases the required training is incorporated in other environmental training programs. Where the training requirement is incorporated in other

training programs the SWMP should only be required to include a description of the training programs and audience.

PERMIT PAGE 13

4. Construction Site Stormwater Runoff Control. Throughout the permit area, the permittee must implement and enforce a program to reduce pollutants in stormwater runoff from construction activities resulting in land disturbance of greater than or equal to 5,000 square feet or more. The permittee must include a written description of the construction site runoff control program in the SWMP document. At a minimum the program must include the following components:

JBLM COMMENT SS14: JBLM requests that EPA change the 5,000 sq ft threshold to be consistent with 40 CFR 122.34(b)(4) *Construction site storm water runoff control*. (i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.. The inclusion of additional requirements in the MS4 permit related to construction activity must be based on applicable, non-discriminatory, promulgated requirements or supported by a demonstration of the nexus between the requirement and a potential exceedance of a water quality standard. The footnote on page 13 of the draft MS4 permit recognizes the discrepancy between the proposed threshold and Ecology's analogous site size action triggers and EPA asks how they should rectify this discrepancy. Ecology's January 17, 2012 letter to EPA also points out the discrepancy between Ecology and EPA thresholds and asks EPA to consider options to address the situation. However, the proper resolution is to use the existing promulgated standard in the above referenced CFR..

PERMIT PAGE 13

a) Oversight. The permittee must provide adequate direction and oversight to ensure that entities responsible for regulated construction activities within the permit area obtain authorization to discharge as necessary under the NPDES General Permit for Stormwater Discharges for Construction Activity for Federal Facilities in Washington, Permit #WAR10000F (Construction General Permit or CGP).

JBLM COMMENT SS15: This requirement needs to be narrowed to requiring oversight for regulated construction activities that discharge to JBLM's MS4 system. Inclusion of an oversight requirement in an MS4 permit for CGP dischargers that do not discharge to the MS4 would result in double permitting.

PERMIT PAGE 14

c) Enforcement. The permittee must maintain a list of policies and procedures which can be used to enforce construction site compliance within JBLM independent of EPA staff directly enforcing the CGP. No later than two years from the effective date of this permit, the permittee must include this list of policies and

procedures in the SWMP document, and must update the list as necessary at least annually. The permittee must summarize in each Annual Report any enforcement actions taken at construction sites during the previous reporting period.

JBLM COMMENT SS16: This requirement needs to be narrowed to requiring oversight for regulated construction activities that discharge to JBLM's MS4 system. Inclusion of an oversight requirement in an MS4 permit for CGP dischargers when there are other instruments that already address this issue (i.e. SWMP, SOPs, contractual provisions) is a duplicative effort. .

PERMIT PAGE 15 -FOOTNOTE

² EPA requests comment on two specific issues/questions related to this section: **How should EPA reference potential 2012 changes to the Manual(s) mentioned in this Part? and, How should EPA rectify the discrepancy between this proposal and Ecology's analogous site size action triggers? (i.e., EPA proposes 5,000 sq ft land disturbance threshold; Ecology's threshold is 2,000 sq ft impervious/hard surface or 7,000 sq ft land disturbance).**

JBLM COMMENT SS17: Referencing footnote above located at page 15 in the MS4 permit and Fact sheet, Section VI Subsection B page 16, 3rd paragraph, and other locations in the permit:

The Stormwater Management Manual for Western Washington (Manual) is a Washington State guidance document and includes many developing stormwater management methodologies. There are significant changes in the proposed 2012 version of the Manual. The Puget Sound Low Impact Design Manual also includes developing technologies. Washington has been a leader in developing stormwater management technologies. JBLM objects to the inclusion of principles from a guidance document in an enforceable NPDES permit. The permittee is responsible for any water quality violation. The permittee must also be responsible for selection of the appropriate technologies to be implemented within the permit area. The permittee should also be authorized to adopt or test developing technologies to support regional efforts to improve stormwater management technologies.

PERMIT PAGES 15-20

5. Stormwater Management for Areas of New Development and Redevelopment. (Entire section, including subsections (a) through (k).)

...

JBLM COMMENT SS18: JBLM is unaware of any promulgated requirement to implement, in a Clean Water Act permit, a program to preserve or restore predevelopment hydrology. To the extent this requirement is based on EISA §438, it should be removed for the reasons stated in the General Comments.

The requirements for small MS4 permits are set forth in 33 USC 1342(p)(3)(B), requiring the reduction of pollutants to the maximum extent practicable, and 40 CFR 122.34, requiring implementation of six specified minimum control measures. According to 40 CRR 122.34, narrative effluent limitations and application of BMPs are considered the most appropriate

requirements for small MS4 permits. Application of these measures, according to the regulation, satisfies the CWA statutory requirement to reduce pollutants "to the maximum extent practicable." 40 CFR 122.34(a). Inclusion of the prescriptive standards in the draft permit is inconsistent with the existing regulatory requirements in EPA's regulations.

Additionally, many of the requirements in the subsections are based on unpromulgated guidance documents. All references to guidance in an enforceable CWA permit should be deleted. For example, the "Stormwater Management Manual for Western Washington (2005), the Low Impact Development Technical Guidance Manual for the Puget Sound (2005)" and the "Illicit Discharge Detection and Elimination" A Guidance Manual for Program Development and Technical Assessments, Center of Watershed Protection, October 2004, page 12. were intended as guidance.

JBLM does not object to implementing stormwater management requirements based on existing, applicable, promulgated and non-discriminatory regulations. The small MS4 permit regulations already address post-construction stormwater management. 40 CFR 122.34(b)(5). JBLM requests that the entirety of Section II.B.5. be replaced with the requirements in 40 CFR 122.34(b)(5).

Specifically, paragraph (e) Hydrologic Performance Requirement for On-site Stormwater Management places a restrictive soil requirement on all new development lawn areas in not appropriate. The permittee will use native soils in landscaping and features whenever possible. The subject requirement could result in removal of native soils if they do not comply with this specification. Specific soil requirements should be limited to stormwater management structures. This is a best management practice not a regulatory requirement. The requirement would result in requiring that 8-12 inches of special soils be transported to some constructions sites.

PERMIT PAGE 20

6. Pollution Prevention and Good Housekeeping for Municipal Operations & Maintenance. Within two years from the effective date of this permit, the permittee must develop and implement an operations and maintenance (O&M) program intended to prevent or reduces pollutant runoff from the permittee's MS4 and operations. The written description of the program must be included in the SWMP document. At a minimum, the program must address each of the following program components:

a) Maintenance Standards for Structural Stormwater Facilities.

The permittee must establish maintenance standards for its structural stormwater treatment and flow control facilities that are protective of facility function. The purpose of a maintenance standard is to determine if maintenance of a structural stormwater treatment facility or flow control facility is required. The maintenance standard is not a measure of the facility's required condition at all times between inspections. Exceeding the maintenance standard between inspections is not a permit violation.

b) Inspection of Structural Stormwater Facilities. No later than two years from the effective date of this permit, the program must include annual inspection of all

permittee owned or operated permanent stormwater treatment and flow control facilities, other than catch basins. The permittee must take appropriate maintenance actions in accordance with its adopted maintenance standards.

- **As part of the 1st Year Annual Report, the permittee must document the total number of permittee-owned or operated structural stormwater facilities to be inspected in compliance with this Part.**

JBLM COMMENT SS19: Given that JBLM owns all the infrastructure on the installation, extension of the annual inspection requirement to the building level would impose a large burden with little environmental benefit. The inspection requirement should be limited to trunk lines and other infrastructure which conveys stormwater away from a building site. Annual inspections are not warranted for other onsite stormwater management infrastructure. During the public meeting on 19 March 2012, EPA stated that the permit includes operations and maintenance requirements in addition to the minimum control measures required under 40 CFR Section 122.34. The requirement to inspect all structural stormwater treatment and flow control facilities is too restrictive. The permittee should be allowed to develop inspections schedule for specific facilities as part of the O & M procedures.

PERMIT PAGE 21

d) Inspections of Catch Basins. The permittee must inspect all catch basins and inlets owned or operated by the permittee at least once before the end of the permit term. The permittee must clean catch basins if inspection indicates cleaning is needed. Decant water and solids must be disposed of in accordance with Appendix A of this permit.

JBLM COMMENT SS20: The requirement that “Decant Water and solids must be disposed of in accordance with appendix A of this permit” is not appropriate. The permittee or waste generator is responsible for waste characterization and disposal in accordance with applicable Federal, State, and local regulations. These materials could be taken to a properly permitted landfill. The Appendix A is a guidance document that provides a method of disposal; however, this is not the only method of proper disposal. The permittee is responsible for proper management of these materials and will determine the appropriate disposal or reuse method. JBLM has an on-site compost processing facility.

PERMIT PAGE 21

e) Compliance. Compliance with the inspection requirements in Parts II.B.6.b, c, and d. above will be determined by evaluating permittee records of an established stormwater facility inspection program. No later than 180 days prior to the expiration date of this permit, the permittee must achieve an annual inspection rate of at least 95% of the total universe of identified structural stormwater facilities and catch basins.

JBLM COMMENT SS21: Referencing the above section and Fact sheet Section VII Subsection D6, page 42: The 95% completion does not support a systematic inspection program

to include 20% of the facilities each year with most work occurring during the dry season. At the time of permit renewal, the inspection could be only 80% complete with the remaining 20% of the facilities scheduled for inspection during the remaining 180 days of the permit. The requirement is too restrictive and should be adjusted for completion of inspections during the full permit cycle.

PERMIT PAGE 23

C. Stormwater Retrofits to Reduce Discharges to Quality-Impaired and Degraded Receiving Waters.

1. The permittee must conduct stormwater discharge, water quality and biological assessment monitoring as required in Part IV.

2. Within three years of the permit effective date, the permittee must develop a stormwater retrofit plan to reduce flows and associated pollutant loadings from existing effective impervious surfaces into Clean Water Act Section 303(d) listed and other degraded water bodies. The retrofit plan must be consistent with the recommendations contained in the March 2007 *Murray/Sequalitchew Watershed Management Plan* and the 2008 *Chambers-Clover Creek Watershed Action Plan*.

...

e) Prior to the expiration date of this permit, the permittee must initiate or complete one or more retrofit project(s) sufficient to disconnect and infiltrate discharges from the effective impervious surfaces equal to five (5) acres of cumulative area. The permittee must include a retrofit implementation status report with the 5th Year Annual Report.

JBLM COMMENT SS22: JBLM objects to the inclusion of a retrofit program, including retrofits to "reduce flows." JBLM is unaware of any statutory or regulatory basis to mandate that a federal agency, as part of a Clean Water Act permit, retrofit structures on its federal property. To the contrary, the CWA statutory requirement for small MS4s such as JBLM is to reduce pollutants to the maximum extent practicable. Additionally, as noted above, the EPA regulations at 40 CFR 122.34 prescribe the requirements for a small MS4 permit, including implementation of the six minimum control measures. None of the minimum control measures or any other regulation requires retrofit or other construction requirements. JBLM also notes that this requirement is inconsistent with Washington State permit requirements in the draft Eastern and Western Washington Phase II Municipal Stormwater Permits. MS4s have the flexibility to determine where and if retrofits are necessary in order to comply with regulatory requirements for discharges and to improve water quality. The inclusion of an arbitrary and costly retrofit requirement, which may provide little or no benefit for the attainment of water quality standards in receiving waters, is inappropriate.

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D. Required Response to Violations of Water Quality Standards.

1. The permittee must notify EPA in writing within 30 days of becoming aware, based on credible site-specific information, that a discharge from the MS4 owned or operated by the permittee is causing or contributing to a known or likely violation of

water quality standards in the receiving water. Written notification provided under this Part must, at a minimum, identify the source of the site-specific information, describe the location, nature and extent of the known or likely water quality standard violation in the receiving water, and explain the reasons why the MS4 discharge is believed to be causing or contributing to the problem. For on-going or continuing violations, a single written notification to EPA will fulfill this requirement.

JBLM COMMENT SS23: Clarify whether this notification requirement applies to reportable spills that have been reported to the National Response Center in accordance with procedures in 40 CFR 112.4 and the JBLM Spill Prevention and Countermeasure Control Plan. This should not be a duplication of effort.

PERMIT PAGE 25

3. EPA may elect not to require an adaptive management response from the permittee if:

...

b) EPA concludes the violation will be eliminated through implementation of other permit requirements.

JBLM COMMENT SS24: Recommend modification of this section to: “EPA concludes the violation will be eliminated through implementation of other permit requirements, other regulatory requirements, or permittee actions.” In the case of spills, mechanisms that are not part of the permit may adequately address the violation. An example this would be secondary containment improvements in response to a hazardous material spill as required in the JBLM Spill Prevention, Control, and Countermeasure Plan (SPCC).

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G. SWMP Resources. The permittee must provide adequate finances, staff, equipment and other support capabilities to implement the SWMP actions and activities outlined in this permit. Consistent with Part II.A.4.a, the permittee must provide a summary of estimated SWMP implementation costs in each Annual Report.

JBLM COMMENT SS25: The requirement to provide costs and funding sources is not applicable for a Federal Facility. Cost data is proprietary for any proposed contract actions. Funding sources available to city and county MS4 operators such as taxes, development fees, utility fees, etc. are not available to JBLM. See previous comment above.

As a federal facility, JBLM is also subject to the Anti-Deficiency Act (ADA), 31 USC 1341. Any requirement for the payment or obligation of funds by JBLM shall be subject to the availability of funds, and no provision of this permit should be written to require the obligation of funds in violation of the ADA. In cases where payment or obligation of funds would constitute a violation of the ADA, the actions requiring payment or obligation of funds shall be subject to revision.

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Table III.A, SWMP - Schedule for Implementation and Compliance

JBLM COMMENT SS26: Changes recommended and requested in these comments are also recommended or requested to be made to this chart.

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IV. Monitoring, Recordkeeping, and Reporting Requirements

A. Monitoring

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2. Monitoring Objectives. The permittee must monitor stormwater discharges, surface water quality and stream biology to assess the effectiveness of the SWMP to minimize the impacts of MS4 discharges stormwater. Within one year from the effective date of this permit, the permittee must develop a monitoring plan that includes the quality assurance requirements defined in Part IV.A.8. The permittee must develop and conduct a monitoring program to estimate phosphorus loading to American Lake resulting from the MS4 discharges; to characterize ambient water quality in Murray and Clover Creek; and to assess baseline biological conditions in Murray Creek and Clover Creek.

JBLM COMMENT SS27: Referencing section above and fact sheet Section VI subsection F, page 46-47 last paragraph: Flows from areas outside the permit area and the permittee's control contribute to American Lake and Clover Creek. JBLM should not be responsible for water quality issues caused by other discharges to the subject water bodies. There are also regional acid rain issues that impact water quality in the region. Water quality issues identified during the subject monitoring may not indicate that there is an issue with stormwater management on JBLM.

PERMIT PAGE 35

8. Quality Assurance Requirements. The permittee must develop a quality assurance plan (QAP) for all monitoring required in this Part. The QAP must be developed concurrent with the monitoring plan within one year of the effective date of this permit. Any existing QAPs may be modified for the requirements under this section. Upon completion of the monitoring plan and QAP, the permittee must submit the combined document to EPA with the 1st year Annual Report required by Part IV.C.2.

b) Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in the following documents:

- *EPA Requirements for Quality Assurance Project Plans EPA-QA/R-5* (EPA/240/B-01/003, March 2001). A copy of this document can be found electronically at: <http://www.epa.gov/quality/qs-docs/r5-final.pdf>
- *Guidance for Quality Assurance Project Plans EPA-QA/G-5*, (EPA/600/R-98/018, February, 1998). A copy of this document can be found electronically at: <http://www.epa.gov/r10earth/offices/oea/epaqag5.pdf>

JBLM COMMENT SS28: This section states “The QAP must be prepared in the format specified in these documents”. This is very restrictive language. The permittee should be able to incorporate stormwater requirements into a installation QAP or adopt a QAP developed for other water quality studies in the area. There is a Puget Sound Regional Water Quality Monitoring Program (State). The permittee should have the option to follow that QAP to ensure JBLM data may be useful to this study.

PERMIT PAGE 36

B. Recordkeeping

...

2. Availability of Records. The permittee must submit the records referred to in Part IV.B.1 to EPA only when such information is requested. The permittee must retain all records comprising the SWMP required by this permit (including a copy of the permit language and all Annual Reports) at a location accessible to the EPA. The permittee must make records, including the permit application and the SWMP, available to the public if requested to do so in writing. The public must be able to view the records during normal business hours. The permittee may charge the public a reasonable fee for copying requests.

JBLM COMMENT SS29: The requirement “The public must be able to view the records during normal business hours. The permittee may charge the public a reasonable fee for copying requests”, should be revised to reflect this is a secure military installation. Request these two sentences be changed to “The public may request to view the records and JBLM will make a reasonable effort to comply with that request during normal business hours. Requests should be made in accordance with the Freedom of Information Act procedures and fees may be charged, if applicable.”

PERMIT PAGE 36

C. Reporting Requirements

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2. Annual Report. No later than (*Month*) 15th of each year beginning in year 2014, the permittee must submit an Annual Report to EPA. The reporting period for the first Annual Report will be from the effective date of this permit through *Month XX, 2013*. The reporting period for all subsequent annual reports will be the 12 month period ending (*Month*) XX of the previous calendar year. Copies of all Annual Reports must be made available to the public, at a minimum, through a permittee-

maintained website. The following information must be contained in each Annual Report:

JBLM COMMENT SS30: The timeline for preparation of the annual report is not provided. The Annual report represents a significant document and includes the requirement to review the program and update the SWMP. The permittee should be allowed 180 days to complete the annual report. Copies of the annual report must be made available to the general public on a website in accordance with Section IV Subsection B #2. The annual report required by this permit includes a significant amount of very technical information. This very technical regulatory reporting document is not appropriate for the general public. The public document (if required) should be developed as part of the public outreach program to inform and educate the public. An example of an appropriate MS4 document is the Pierce County “2011 Stormwater Management Program – March 2011” available on the Pierce County Washington Stormwater Program website. This is representative of the type of stormwater information being distributed in the region and reinforces the messages of the public outreach program. Distribution of a technically complex document like the Annual Report would detract from the public outreach goals of the permittee, and local MS4 operators such as Pierce County. Public website postings by JBLM must be screened for national security purposes. Some of the very technical submittals in the Annual report include the quality assurance plan, results of analytical samples collected, and Puget Sound Lowlands I-IBI scores. JBLM is anticipating development of a comprehensive QAP that would include procedures for analytical sampling of stormwater and other media on JBLM. This document would be very technical.

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c) Results of any information collected and analyzed during the previous 12 month period, including summaries of program costs and funding sources, information used to assess the success of the program at improving water quality to the maximum extent practicable, or other relevant information;

JBLM COMMENT SS31: Recommend removing the requirement to make "summaries of program costs and funding sources" publicly available. This information may not be appropriate to release to the public as it may be procurement-sensitive, and there is no apparent water quality benefit of releasing such information.