

1 **POLLUTION CONTROL HEARINGS BOARD**  
2 **STATE OF WASHINGTON**

3 PIERCE COUNTY; SNOHOMISH  
4 COUNTY, a political subdivision of the State  
5 of Washington; CLARK COUNTY,  
6 WASHINGTON; KING COUNTY, a  
7 political subdivision of the State of  
8 Washington; and BUILDING INDUSTRY  
9 ASSOCIATION OF CLARK COUNTY,

10 Appellants,

11 and

12 CITY OF SEATTLE, a municipal  
13 corporation; and CITY OF TACOMA, a  
14 municipal corporation, and STATE OF  
15 WASHINGTON, DEPARTMENT OF  
16 TRANSPORTATION,

17 Intervenor,

18 v.

19 STATE OF WASHINGTON,  
20 DEPARTMENT OF ECOLOGY,

21 Respondent,

and

PUGET SOUNDKEEPER ALLIANCE,  
WASHINGTON ENVIRONMENTAL  
COUNCIL, and ROSEMERE  
NEIGHBORHOOD ASSOCIATION,

Respondent Intervenors.

and

PCHB No. 12-093c

PCHB No. 12-097c

ORDER ON SUMMARY JUDGMENT

Phase I Issues No. 11, 14, 15, 16, 22 and 23

ORDER ON SUMMARY JUDGMENT  
Phase I Issues No. 11, 14, 15, 16, 22 and 23  
PCHB No. 12-093c  
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1 COALITION OF GOVERNMENT  
2 ENTITIES: CITY OF AUBURN, CITY OF  
3 BAINBRIDGE ISLAND, CITY OF  
4 BELLEVUE, CITY OF BURLINGTON,  
5 CITY OF DES MOINES, CITY OF  
6 EVERETT, CITY OF KENT, CITY OF  
7 ISSAQUAH, CITY OF MOUNT VERNON,  
8 CITY OF RENTON, CITY OF SEATAC,  
9 CITY OF SNOQUALMIE, CITY OF  
10 SUMNER, all municipal corporations of the  
11 State of Washington; COWLITZ COUNTY;  
12 and KING COUNTY, political subdivisions  
13 of the State of Washington,

Appellants,

and

9 CITIES OF KIRKLAND, KELSO,  
10 SAMMAMISH, CAMAS, LONGVIEW,  
11 LYNNWOOD, POULSBO, BREMERTON,  
12 BOTHELL and FERNDALE; and STATE  
OF WASHINGTON, DEPARTMENT OF  
TRANSPORTATION

Appellant Intervenors,

v.

15 STATE OF WASHINGTON,  
16 DEPARTMENT OF ECOLOGY,

Respondent.

and

18 PUGET SOUNDKEEPER ALLIANCE,  
19 ROSEMERE NEIGHBORHOOD  
ASSOCIATION,

Respondent Intervenors.

1 **I. INTRODUCTION**

2 This case involves appeals brought by various local governments that are permittees  
3 (“Permittees”) to either the 2013-2018 Phase I or Western Washington Phase II Municipal  
4 Stormwater National Pollution Discharge Elimination System (NPDES) and State Waste  
5 Discharge General Permits (“2013 Phase I and Phase II Permits” or “2013 Permits”) issued by  
6 the Washington State Department of Ecology (“Ecology”) in 2012.

7 The parties have filed several motions for summary judgment on many of the issues in  
8 these consolidated appeals. In this Order, the Pollution Control Hearings Board addresses  
9 Ecology’s Motion for Summary Judgment on Phase I issues 11, 14, 15, 16, and 22, and  
10 Appellant Snohomish County’s Motion for Partial Summary Judgment as to Phase I Issue 23.

11 Respondent-Intervenors Puget Soundkeeper Alliance, Washington Environmental  
12 Council and Rosemere Neighborhood Association (collectively “PSA”) filed a joinder to  
13 Ecology’s Motion. Clark County filed a Response to Ecology’s Motion on Issue No. 14. Pierce  
14 County filed a response to Ecology’s Motion on Issue No. 16. Snohomish County filed a  
15 response to Ecology’s Motion on Issue No. 22. No parties filed responses to Ecology’s Motion  
16 on Issues No. 11 and No. 15. Ecology filed a response to Snohomish County’s Motion on Issue  
17 No. 23. No other Party filed a Response.

18 Board Chair Tom McDonald, and Board Members Kathleen D. Mix and Joan Marchioro  
19 reviewed and considered the written record before the Board on this motion. No oral argument  
20 was held. In considering these motions, the Board considered the following record:

- 1 1. Respondent State of Washington, Department of Ecology's Motion for Summary  
2 Judgment on Phase I Issues 11, 14, 15, 16, and 22.
- 3 2. Declaration of Karen Dinicola in Support of Department of Ecology's Motion for  
4 Summary Judgment on Phase I Issues 11, 14, 15, 16, and 22.
- 5 3. Declaration of Phyllis J. Barney in Support of Department of Ecology's Motion for  
6 Summary Judgment on Phase I Issues 11, 14, 15, 16, and 22 with attached Exhibits A  
7 to G.
- 8 4. Notice of Puget Soundkeeper Alliance, et al.'s Joinder in Department of Ecology's  
9 Motion For Summary Judgment on Phase I Issue Nos. 11, 14, 15, and 22 (Phase I).
- 10 5. Snohomish County's Response to Ecology's and Puget Soundkeeper Alliance's Joint  
11 Motion for Summary Judgment on Phase I Issues 11, 14, 15, 16, and 22.
- 12 6. Declaration Of Alethea Hart in Support of Snohomish County's Response to  
13 Ecology's and Puget Soundkeeper Alliance's Joint Motion for Summary Judgment on  
14 Phase I Issues 11, 14, 15, 16, and 22 with attached Exhibits A to G.
- 15 7. Declaration of William T. Leif in Support of Snohomish County's Response to  
16 Ecology's and Puget Soundkeeper Alliance's Joint Motion for Summary Judgment on  
17 Phase I Issues 11, 14, 15, 16, and 22 with attached Exhibits A to Z-1 (provided on a  
18 CD).
- 19 8. Declaration of Tom Rowe in Support of Snohomish County's Response to Ecology's  
20 and Puget Soundkeeper Alliance's Joint Motion for Summary Judgment on Phase I  
21 Issues 11, 14, 15, 16, and 22 with attached Exhibits A to N-3 (provided on a CD).
9. Declaration of Max T. Phan in Support of Snohomish County's Response to  
Ecology's and Puget Soundkeeper Alliance's Joint Motion for Summary Judgment on  
Phase I Issues 11, 14, 15, 16, and 22 with attached Exhibits A to I (provided on a  
CD).
10. Pierce County's Memorandum in Opposition to Ecology's Motion for Partial  
Summary Judgment on Issue 16, with Appendix A.
11. Declaration of Dan D. Wrye in Opposition to Ecology's Motion for Partial Summary  
Judgment on Issue 16 with attached Exhibit A.
12. Declaration of Lori Terry Gregory in Opposition to Ecology's Motion for Partial  
Summary Judgment on Issue 16 with attached Exhibits A and B.
13. Appellant Clark County's Response in Opposition to Ecology's Motion for Summary  
Judgment on Issues 11, 14, 15, 16, and 22.
14. Declaration of Eric Strecker, P.E., in Support of Clark County's Response in  
Opposition to Ecology's Motion for Summary Judgment on Phase I Issues 11, 14, 15,  
16, and 22 with attached Exhibit 1.
15. Declaration of Rod Swanson in Support of Clark County's Response in Opposition to  
Ecology's Motion for Summary Judgment on Phase I Issues 11, 14, 15, 16, and 22  
with attached Exhibit A.
16. Respondent State of Washington, Department of Ecology's Reply in Support of  
Ecology's Motion for Summary Judgment on Phase I Issues 11, 14, 15, 16, and 22.

- 1 17. Second Declaration of Phyllis J. Barney in Support of Ecology’s Motion for  
2 Summary Judgment on Phase I Issues 11, 14, 15, 16, and 22 with attached Exhibits A  
3 to F.
- 4 18. Second Declaration of Bill Moore in Support of Ecology’s Motion for Summary  
5 Judgment on Phase I Issues 11, 14, 15, 16, and 22 with attached Exhibit A.
- 6 19. Second Declaration of Karen Dinicola in Support of Department of Ecology’s Motion  
7 for Summary Judgment on Phase I Issues 11, 14, 15, 16, and 22.
- 8 20. Snohomish County’s Motion for Partial Summary Judgment Regarding Phase I Issue  
9 No. 23 with attached cases (18) and federal statute and codes (4).
- 10 21. Declaration of Bree Urban in Support of Snohomish County’s Motion for Partial  
11 Summary Judgment Regarding Phase I Issue No. 23 with attached Exhibits A-F  
12 (provided on a CD).
- 13 22. Errata to Declaration of Bree Urban in Support of Snohomish County’s Motion for  
14 Partial Summary Judgment Regarding Phase I Issue No. 23 with attached Exhibit A.
- 15 23. Respondent Department of Ecology’s Response in Opposition to Snohomish  
16 County’s Motion for Partial Summary Judgment Regarding Phase I Issue No. 23.
- 17 24. Declaration of Ed O’Brien in Support of Department of Ecology’s Response to  
18 Snohomish County’s Motion for Partial Summary Judgment Regarding Phase I Issue  
19 No. 23 with attached Exhibit A.
- 20 25. Snohomish County’s Reply to Ecology’s Response in Opposition to Snohomish  
21 County’s Motion for Partial Summary Judgment Regarding Phase I Issue No. 23.

## 12 **II. STANDARD OF REVIEW**

13 Summary judgment is a procedure available to avoid unnecessary trials where formal  
14 issues cannot be factually supported and cannot lead to, or result in, a favorable outcome to the  
15 opposing party. *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977). The summary  
16 judgment procedure is designed to eliminate trial if only questions of law remain for resolution.  
17 Summary judgment is appropriate when the only controversy involves the meaning of statutes,  
18 and neither party contests the facts relevant to a legal determination. *Rainier Nat’l Bank v.*  
19 *Security State Bank*, 59 Wn. App. 161, 164, 796 P.2d 443 (1990), *review denied*, 117 Wn.2d  
20 1004 (1991).

1           The party moving for summary judgment must show there are no genuine issues of  
2 material fact and the moving party is entitled to judgment as a matter of law. *Magula v. Benton*  
3 *Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997). A material fact in a  
4 summary judgment proceeding is one affecting the outcome under the governing law. *Eriks v.*  
5 *Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). If the moving party satisfies its burden,  
6 then the non-moving party must present evidence demonstrating that material facts are in  
7 dispute. *Atherton Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990),  
8 reconsideration denied (1991). In a summary judgment proceeding, all facts and reasonable  
9 inferences must be construed in favor of the non-moving party. *Jones v. Allstate Ins. Co.*, 146  
10 Wn.2d 291, 300, 45 P.3d 1068 (2002). However, the non-moving party cannot rely on  
11 argumentative assertions, speculative statements or conclusory allegations to defeat summary  
12 judgment. *Traeger v. City of Spokane*, SHB No. 07-010 (Order Granting Summary Judgment,  
13 September 25, 2007). The board will enter summary judgment for a non-moving party under  
14 appropriate circumstances. *Impecoven v. Department of Revenue*, 120 Wn.2d 357, 365, 842 P.2d  
15 470 (1992).

16                           **III. ECOLOGY'S MOTION FOR SUMMARY JUDGMENT ON**  
17   **ISSUES 11, 14, 15, 16, 22**

18           Ecology's Motion for Summary Judgment addresses several issues related to the  
19 monitoring requirements of the Phase I Permit. No party responded to Ecology's Motion on  
20 Issues No. 11 and No. 15. Accordingly, the Board finds that there are no disputed issues of  
21

1 material fact, and concludes that as a matter of law, Issues No. 11 and No. 15 should be  
2 dismissed. The remaining issues in Ecology’s Motion are Issues No. 14, 16, and 22.

3 **A. Issue No. 14**

4 **BACKGROUND**

5 Issue No. 14 states as follows:

6 Whether Special Condition S8.B of the Permit is unlawful, unjust, unreasonable,  
7 impracticable, inequitable and/or unduly burdensome because it requires Clark  
8 County to continue a program that is far more expensive than options allowed  
9 for other Phase I Permittees to satisfy the same requirement.

9 Condition S8.B.2 applies specifically to Clark County and requires the County to:

10 a. Continue stormwater discharge monitoring at two of the three locations  
11 selected pursuant to S8.D in the *Phase I Municipal Stormwater Permit* February  
12 16, 2007 – February 15, 2012 for the duration of this permit term. This  
13 monitoring and reporting of findings shall be conducted in accordance with the  
14 previously-approved QAPP until September 30, 2014.

15 b. No later than February 2, 2014, submit a revised QAPP to Ecology. The  
16 revised QAPP shall follow the specifications and deadlines in Appendix 9. If  
17 Ecology does not request changes within 90 days, the QAPP is considered  
18 approved. The final QAPP shall be submitted to Ecology as soon as possible  
19 following finalization, and before September 30, 2014.

20 c. If the County changes a discharge monitoring location, the County shall  
21 document in the revised QAPP why the pre-existing stormwater monitoring  
location is not a good location for additional monitoring and why the newly  
selected location is of interest for long term stormwater discharge monitoring.

Condition 8.B requires Clark County to continue the monitoring program it implemented  
under the terms of the 2007 Phase I municipal stormwater general permit (2007 Permit), at what  
Ecology describes as a “decreased level of effort.” Dinicola Decl. Ecology contends that it is

1 lawful, just, reasonable, and not unduly burdensome to require the Clark County to conduct a  
2 monitoring program that should cost less than the program the County implemented during the  
3 last permit cycle, and that Clark County’s monitoring costs will not be unreasonably more  
4 expensive than other permittees’ monitoring costs. *Id.*

5 Clark County advances several arguments in support of its challenge to the monitoring  
6 requirements. Generally, the County claims that Condition S8.B.2 is unreasonable because,  
7 despite proof of better alternative monitoring plans and in contrast to other Puget Sound  
8 permittees, the County is given no alternatives to choose among, and Clark County’s per capita  
9 cost will be greater than what will be paid by Puget Sound permittees. The County claims that  
10 unlike the Puget Sound permittees, it has been given no alternatives to choose from for the  
11 “Status and Trends Monitoring” in Condition S8.B, and its costs may be more than double the  
12 costs for Puget Sound permittees. The County challenges Ecology’s rejection of a “receiving  
13 waters monitoring alternative” plan that the County had previously proposed. In that plan, the  
14 County proposed to implement wadeable stream (receiving waters) monitoring to meet the status  
15 and trends monitoring requirement of Condition S8.B. Swanson Decl. at 5. The County argues  
16 the wadeable monitoring program will facilitate adaptive management by identifying streams  
17 where stormwater management and restoration activities would be most needed to reduce  
18 pollution. The County argues that the current requirements in Condition S8.B.2 will do little or  
19 nothing for adaptive stormwater management and will produce data of much less value. *Id.* at 5-  
20 6. The County states that the last 3 1/2 years of data collection under the current monitoring  
21 program is sufficient for Ecology to predict changes in stormwater quality with changes in land

1 use, which was the purpose of this monitoring. Strecker Decl. at 6-9. The County believes that  
2 Ecology should have used the past monitoring data collected under the 2007 Permit to modify  
3 the current status and trends monitoring for the County. In sum, the County asserts that  
4 additional monitoring under the current plan is not necessary and not cost effective, and the data  
5 collected will not inform Ecology about in-stream water quality and stream health. *Id.*

6 Ecology disagrees with the County's analysis and objections, arguing that it is premature  
7 to determine whether the data from the current monitoring will be helpful or not, as the data from  
8 the 2007 and 2012 Permits will not be available until April 2014, at which time the data will be  
9 analyzed. Second Dinicola Decl. Ecology has also used the data it has already received to  
10 confirm the results of the effectiveness and land use studies. *Id.* To the extent the County is not  
11 in agreement with the current monitoring program, Ecology confirms that the County may  
12 change its monitoring by updating the Quality Assurance Project Plan (QAPP). Second Dinicola  
13 Decl. Further, Ecology points out that Clark County does have monitoring alternatives, as  
14 Appendix 9 of the Permit authorizes the County to change the frequency of sampling, and  
15 Condition S8.C.2.a.ii. allows the County to conduct wadeable or receiving water monitoring by  
16 coupling it with two additional discharge points. *Id.*

17 According to Ecology, the alternative monitoring options available to the Puget Sound  
18 permittees are primarily the result of the development of a Regional Stormwater Monitoring  
19 Program (RSMP). The RSMP was developed by a stormwater working group with the purpose  
20 of having a regional cooperative and assessment program for the management of stormwater  
21 impacts to the Puget Sound. Dinicola Decl. In June 2010, the stormwater group released the

1 *2010 Stormwater Monitoring and Assessment Strategy for the Puget Sound Region*. This  
2 strategy described four specific components of the RSMP: 1) small stream and near shore status  
3 and trend monitoring to develop baseline data; 2) effectiveness studies to consider whether  
4 specific techniques are effective for preventing and controlling sources of stormwater impacts;  
5 3) source identification and diagnostic monitoring to assess and understand the sources of the  
6 physical, chemical and biological inputs to stormwater; and 4) investigations into the effect of  
7 stormwater on the ecosystem. *Id.*

8 In October 2010, the stormwater group issued *Recommendations for Municipal*  
9 *Stormwater Permit Monitoring*, which included recommendations for implementing the RSMP  
10 for Puget Sound. *Id.* The stormwater group recommended that a single entity be responsible for  
11 administering the funds, with the costs being distributed among all permittees, and requiring all  
12 permittees in the Puget Sound to participate. Ecology incorporated the stormwater working  
13 groups recommended monitoring into the 2013 Phase I Permit, but allowed the permittees to opt  
14 out. Therefore the Permit gives these permittees alternatives to participating in the “pay-in”  
15 RSMP option. *Id.*

16 The “pay-in” option is not currently available to Clark County because an RSMP has not  
17 yet been developed for the southwest region of the state. However, in its Response to the Motion  
18 for Summary Judgment the County now offers an alternative monitoring plan, which it describes  
19 as a “better approach,” and which is similar to the initial monitoring plan the County proposed to  
20 Ecology. *Id.*; Swanson Decl.; County Response at 8. The County describes the alternative plan  
21 as being similar to the RSMP option for regional monitoring of receiving waters. The plan

1 would be part of a “regional effort by gathering data that would be useful for implementing the  
2 recommendations in the Lower Columbia River Habitat Status and Trends Monitoring Plan”  
3 (Tetra Tech Report). The stated goal of the Tetra Tech Report is to develop the regional status  
4 and trends monitoring that would evaluate instream water quality, quantity, and habitat. Strecker  
5 Decl. at 7.

6 Ecology does not agree with the alternative plan proposed by the County and disputes the  
7 County’s recommendation to gather data for implementing the Tetra Tech Report. While it  
8 recognizes that the Tetra Tech Report may be used to develop a program for ongoing stream  
9 monitoring with regional goals, the report does not contain necessary details, has not benefited  
10 from significant participation by environmental or business groups, tribes, or state and federal  
11 resource management agencies, and is not ready for public review. Second Dinicola Decl.

## 12 ANALYSIS

13 It is undisputed that the Puget Sound permittees benefit from the development of a  
14 regional status and trends monitoring program for the Puget Sound under the RSMP. However,  
15 the Stormwater Working Group did not have the time and resources to complete a similar  
16 program for southwest Washington. Dinicola Decl. at 5. As a result, Clark County must  
17 continue the monitoring program it has implemented since 2007 until Ecology develops a  
18 regional status and trends monitoring proposal for southwest Washington. *Id.* at 6. Ecology  
19 details the reasons why the Puget Sound permittees have available options under the RSMP and  
20 why, at this time, Clark County does not. Dinicola Decl. The different requirements and options  
21 between the monitoring programs do not alone create a disputed issue of material fact regarding

1 the reasonableness of the 2013 Permit’s monitoring provisions, nor does the possibility of  
2 differences in costs between the monitoring plans. While issues of fact exist as to the cost of  
3 Clark County’s monitoring as compared to its counterparts, they are not material to the issue of  
4 reasonableness and validity of the permit’s monitoring condition. Even if Clark County is  
5 ultimately required to pay more than other permittees, this inequality is reasonable based on the  
6 undisputed fact that Ecology could not develop a regional status and trends monitoring program  
7 for southwest Washington quickly enough to include monitoring requirements in the Phase I  
8 Permit.<sup>1</sup>

9 Clark County provides no legal basis that would require Ecology to maintain identical  
10 monitoring programs and options for all permittees. The undisputed fact that Clark County has a  
11 separate and distinct monitoring program is not in and of itself a reason to find that Condition  
12 S8.B is unreasonable as a matter of law.

13 The question follows as to whether Condition S8.B.2 requires a lawful and reasonable  
14 monitoring plan, despite the alternative and potentially “better” plans proposed by Clark County.  
15 The Board had previously held this monitoring plan, as set out in the 2007 Permit, was lawful  
16 and reasonable. The Board stated:

17 It is clear there is no one right approach, as the type and timing of monitoring  
18 that is best in any given situation depends on the particular purpose, context, and  
19 available resources, among other factors.

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20 <sup>1</sup>Ecology asserts that it is wrong for Clark County to argue that its monitoring costs will be unreasonably more  
21 expensive than other permittees’ monitoring costs, since the only way that the Puget Sound permittees’ costs would be  
lower is if all of them opt-in to the RSMP, which will not be known until all permittees select their option. Ecology  
correctly argues that Clark County is incapable of asserting the costs are unreasonable at this point in time, since they  
are currently unascertainable.

1 Neither the Utilities nor the Counties have cited to any law requiring the Phase I  
2 Permit to require receiving water monitoring. The federal stormwater rules  
3 require only that municipalities propose a monitoring program for the term of  
4 the permit, but list few specific requirements. 40 C.F.R. 122.26(d)(2)(iii)(D).22  
5 The Board concludes that Ecology’s decision not to require receiving water  
6 monitoring during this permit cycle is lawful and reasonable. Ecology’s decision  
7 to require monitoring designed to understand the pollutants discharging from  
8 MS4s, and to evaluate the effectiveness of the BMPs in use, will provide the  
9 most useful data to establish what constitutes maximum extent practicable  
10 reduction in pollutants in discharges from MS4s for future permits.

11 *Puget Soundkeeper Alliance v. Wash. Dep’t of Ecology*, PCHB Nos. 07-021, 07-26 through -30,  
12 and 07-039, Findings of Fact, Conclusions of Law, and Order, (Aug. 8, 2008) at 51-52. The  
13 Board added that “the counties are not prohibited from conducting receiving water monitoring in  
14 addition to the S8 monitoring required under the permit.” *Id.* at 52.

15 Ecology has the discretion under WAC 173-226-090(1) to impose a reasonable  
16 monitoring program in the context of the stormwater permits. *Id.* at 51, (citing *Port of Seattle v.*  
17 *PCHB*, 151 Wn.2d 568, 593-94, 90 P.3d 659 (2004)). Decisions by Ecology on the scope and  
18 detail of monitoring requirements in a general permit are within an area of Ecology’s technical  
19 expertise and, because they involve complex scientific issues, are entitled to deference. *Id.* In  
20 light of the discretion Ecology has in this area, the deference the Board must afford such  
21 technical decisions, and the fact that the burden of proof rests on the party challenging the  
22 permit, Clark County has not presented a sufficient case to convince the Board that it should  
23 reverse Ecology’s decision to prescribe the monitoring program applicable to the County under  
24 Condition S8.B.

25 Summary Judgment is granted to Ecology on Issue 14.



1 Quality Assurance Project Plan (QAPP). *Id.* at 58. The BMP Evaluation Monitoring was met  
2 when the statistical goals were met for each parameter based on a minimum of 12 and a  
3 maximum of 35 samples. *Id.* at 49-50 (Condition S8.C.1.c); Moore Second Decl.

4 In its Motion for Summary Judgment, Ecology argues that the 2013 Permit does not alter  
5 the obligation of the permittees to comply with the 2007 Permit as extended in 2012. Ecology  
6 also asserts that the 2013 Permit is not a shield to the agency's enforcement authority if a  
7 permittee failed to comply with the monitoring requirements in the 2007 Permit. Ecology's  
8 Motion at 11-12. Pierce County argues that unless the existing monitoring terminates on July 31,  
9 2013, without risk of noncompliance, a Permittee could be required to conduct overlapping  
10 monitoring. Pierce County further argues that Condition S8.C is unlawful and unjust if the 2007  
11 Permit is allowed to be enforced beyond the July 31, 2013, termination date. Pierce County  
12 requests that it be granted summary judgment on this issue.

13 Relying on an email exchange with Ecology's Water Quality Program Manager, Pierce  
14 County argues that Ecology admitted that the monitoring requirements of the 2012 Permit  
15 terminated upon its expiration, regardless of whether the required monitoring was completed.  
16 Pierce County Response at 5-6; Wrye Decl., Ex. A. Pierce County also argues that in its email  
17 Ecology confirmed that, if a permittee had not fully complied with the monitoring requirements  
18 of the 2012 Permit, it would not be out of compliance. *Id.* In reply, Ecology explains that the  
19 statements in its email exchange with Pierce County were incorrect. Moore Second Decl.  
20 Ecology clarified its position that a permittee is in violation of the 2012 Permit if it fails to either  
21

1 meet the statistical goals with a minimum 12 samples or take a total 35 samples, and enter the  
2 results in the BMP data base before expiration of the 2012 Permit. *Id.*

3 **ANALYSIS**

4 The parties agree that the monitoring requirements of the 2007 and 2012 Permits  
5 terminated when the 2012 Permit expired. There are therefore no overlapping monitoring  
6 requirements, and there is not an issue regarding the Permittees noncompliance with the 2013  
7 Permit based on a failure to continue the monitoring required under the terms of the 2012 Permit.

8 This is consistent with WAC 173-226-220 which provides in part:

9 (3) When a permittee has made timely and sufficient application for the renewal  
10 of coverage under a general permit, an expiring general permit remains in effect  
and enforceable until:

11 ...  
(b) A replacement permit has been issued by the department. . . .

12 Accordingly, the Board concludes as a matter of law that the monitoring requirements of  
13 the 2012 Permit expired at the time Ecology issued the 2013 Permit, and that it is therefore not  
14 unlawful, unjust, unreasonable and/or impracticable for the 2013 Permit to not state that the  
15 monitoring required in the conditions of the 2012 Permit terminated on July 31, 2013. As a  
16 result, the Permittees under the 2013 Permit are not in violation of the 2013 Permit if they do not  
17 continue monitoring under the requirements of the 2012 Permit.

18 The remaining arguments are on the issue of the Ecology's authority to enforce for  
19 noncompliance with the 2012 Permit. These arguments appear to rise from the following  
20 language in the legal issue – “unless the existing monitoring terminates on July 31, 2013, without  
21 risk of noncompliance, the Permittee could be required to conduct over-lapping inconsistent,

1 expensive, and unnecessary monitoring.” Ecology argues that Pierce County seeks a decision on  
2 whether Ecology has the authority to take enforcement action for a permittee’s failure to comply  
3 with the 2012 Permit.<sup>2</sup> Pierce County disputes this interpretation of the issue and its argument.

4 Pierce County states:

5 Issue 16 does not ask the Board to decide whether Ecology can enforce a  
6 hypothetical violation of the prior Permit, under an unsupportable construction  
7 of the prior Permit language. Instead, Issue 16 merely asks the Board to make  
8 clear that Phase I Permittees do not need to continue monitoring under the terms  
9 of the prior Permit.

10 Pierce County’s Memorandum in Opposition at 7.

11 The Board does not interpret Issue No. 16 and Pierce County’s arguments as asking the  
12 Board “to decide that no permit conditions can ever be enforced after the term of that permit has  
13 expired.” Ecology’s Reply at 21. As the Board has already noted, since the 2013 Permit  
14 supersedes all earlier permits, permittees are not required to continue prior monitoring  
15 requirements if they are not incorporated into the 2013 Permit. If Ecology believed that the 2012  
16 Permit monitoring conditions should continue, the agency could have included those conditions  
17 in the 2013 Permit, and the enforceability of those conditions may have then been an issue in this  
18 appeal. However, in the current appeal of the terms of the 2013 Permit, the Board will not  
19 address possible violations of the monitoring requirements of the 2007 Permit or the 2012  
20 Permit, as those permits are not before the Board.

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21 <sup>2</sup> Ecology may take enforcement action for past violations of the conditions of an NPDES permit and failure to  
comply the state water quality laws implemented under ch. 90.48 RCW. *See U.S. Oil & Refining Co. v. Dep’t of  
Ecology*, 96 Wn.2d 85, 633 P.2d 1329, 1333 (1981).

1 The Board finds that there are no disputed issues of material fact and as a matter of law,  
2 summary judgment is appropriate. Ecology's and Pierce County's respective requests for  
3 summary judgment on Issue No. 16 are granted to the extent they both ask for a decision that the  
4 2013 Permit supersedes all earlier permits, and the permittees do not need to continue  
5 monitoring requirements in the 2007 and 2012 Permits.<sup>3</sup> In granting summary judgment the  
6 Board is not determining either Ecology's authority to enforce any noncompliance with 2007 and  
7 2012 Permits or Pierce County's defenses of such enforcement action. The Board does not  
8 interpret Issue No. 16 as requesting such relief, and to the extent it is raised in the issue, any  
9 Board decision would merely be advisory and based on speculation regarding hypothetical facts.  
10 Based on the above analysis, the Board finds that Condition S8 does not require any revisions.  
11 Issue No. 16 is dismissed.

12 **C. Issue No. 22**

13 **BACKGROUND**

14 Issue No. 22 states:

15 Whether one or more of the following provisions of the Permit that require Permittees to  
16 deliver or report certain data or information to Ecology are unlawful, unjust,  
unreasonable, impracticable, vague, ambiguous and/or beyond the scope of Ecology to  
impose:

- 17 a. Special Condition S5.C.3.a of the Permit and Item No. 10 of Appendix 12;  
18 b. Special Condition S5.C.5.b.ii of the Permit and Item No. 30 of Appendix 12;  
c. Special Condition S8.A of the Permit and Item No. 72 of Appendix 12.

19 Snohomish County argues that the reporting requirements in Condition S5.C.3,  
20 S5.C5.b.ii, and S8.A are unreasonable because they do nothing to reduce the discharge of

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21 <sup>3</sup> The Board takes no position on a Permittees' obligation to comply with any other requirements of the 2007 and 2012 Permits.

1 pollution under the county's municipal separate storm sewer system (MS4), and do not assure  
2 compliance with the permit. Snohomish's Response at 8, 12, 21. These permit conditions  
3 require reporting of the internal coordination mechanisms within County government, a list of  
4 individuals participating in review and incorporation of LID requirements into local codes, and  
5 certain stormwater-related monitoring and studies. Snohomish County argues that these  
6 requirements are neither helpful nor relevant to the CWA's objective to reduce the discharge of  
7 pollutants from a regulated MS4. Ecology argues that the reporting requirements of the permit  
8 are reasonable and necessary to eliminate internal barriers and assure permit compliance.  
9 Ecology relies on a guidance document, *Integrating LID into Local Codes: A Guidebook for*  
10 *Local Governments*. Barney Decl., Ex. D.

## 11 ANALYSIS

### 12 **Condition S5.C.3.a**

13 Snohomish County challenges the second sentence in Condition S5.C.3.a regarding the  
14 requirement of permittees to describe their respective internal coordination mechanisms. The  
15 Condition states:

16 The SWMP shall also include coordination mechanisms among entities covered  
17 under a municipal stormwater NPDES permit to encourage coordinated  
stormwater-related policies, programs and projects within a watershed.

18 Minimum performance measures:

- 19 a. Implement intra-governmental (internal) coordination agreement(s) or  
Executive Directive(s) to facilitate compliance with the terms of this  
20 permit. **Permittees shall include a written description of internal  
coordination mechanisms in the Annual Report**, due no later than March  
31, 2015. (emphasis added)

1 The Board concludes that the requirements of Condition S5.C.3.a. are not are unlawful,  
2 unjust, unreasonable, impracticable, vague, ambiguous and/or beyond the scope of Ecology to  
3 impose.

4 Ecology is required by statute to assemble and evaluate all existing and readily available  
5 water quality related data and information from sources other than itself when developing and  
6 implementing water quality protection measures. RCW 90.48.570(1)(b). Such a system ensures  
7 that the financial resources of the state and local governments and regulated entities are  
8 prioritized to address our state's most important water quality issues. RCW 90.48.570(1)(c).  
9 The parties agree that Ecology has implied powers to implement and enforce their legislative  
10 mandates, and monitoring requirements are within those powers.

11 Ecology explains that the requirement for the permittees to have an internal coordination  
12 mechanism is critical to facilitating compliance with the terms of the Permit that will directly  
13 control the discharges of stormwater. Permit requirements for internal coordination and  
14 communication among county departments that respond to critical water quality incidents, such  
15 as spills to surface waters, are aimed at addressing the extent and duration of discharges from the  
16 County's MS4 to waters of the state. Like the monitoring requirements, which do not  
17 themselves control discharges, these conditions set out reasonable procedural requirements that  
18 assist the permittee and Ecology in implementing pollution control requirements. Providing a  
19 description of the internal coordination allows Ecology to ensure needed coordination  
20 mechanisms are in place and to assist permittees with incident responses. This eliminates  
21 barriers to permit compliance and will, in turn, assist Ecology in reducing the discharge of

1 pollution under the county's MS4. The information required by Permit Condition S5.C.3  
2 therefore is reasonable, lawful, and not unduly vague. The Board grants summary judgment to  
3 Ecology as to Issue No. 22(a).

4 **Condition S5.C.5.b.ii**

5 Snohomish County challenges the specific requirement in Condition S5.C.5.b.ii to list  
6 each person including the person's job title, brief job description, and the department the  
7 participant represented who participated in the review and revision process required in Condition  
8 S5.C.5.b.i. Condition S5.C.5.b.i provides that the permittee shall:

9 . . . review, revise, and make effective their local development-related codes,  
10 rules, standards, or other enforceable documents to incorporate and require Low  
11 Impact Development (LID) Principles and LID Best Management Practices  
12 (BMPs). . . Permittees shall conduct a similar review and revision process, and  
13 consider the range of issues, outlined in the following document: *Integrating  
14 LID into Local Codes: A Guidebook for Local Governments* (Puget Sound  
15 Partnership, 2011).

16 Condition S5.C.5.b.ii is meant to be a reporting requirement for the permittees to  
17 summarize their results of their process to incorporate LID provisions into local codes, rules and  
18 standards. The purpose of such requirement is to insure appropriate regulatory oversight of the  
19 development process, which Ecology is obliged to provide. Snohomish County is concerned that  
20 this could be an unwieldy and labor intensive task, with no benefit and no nexus to the protection  
21 of water quality from stormwater discharges.

22 Ecology, explaining what it expects to be reported by the Permittees, responds that the  
23 requirements of Condition S5.C.5.b.ii are not as onerous as Snohomish County describes. Ecology  
24 refers to the *Integrating LID into Local Codes: A Guidebook for Local Governments*. Barney

1 Decl., Ex. D. Ecology interprets this to define the participants as “key” internal staff and select  
2 external participants. *Id.*; Ecology Reply at 14. It does not include every person who was  
3 involved in revising the County Code, and does not require those who provided merely supportive  
4 services. *Id.* The participants listed are those who actually were on the “review and revision  
5 team,” actually performing the rule review and revisions. *Id.* This information provides Ecology  
6 with the background necessary to assure the review and revision are completed by those with  
7 knowledge of the subject matter and the authority to provide the necessary recommendations and  
8 review.

9 The Board finds that the requirements of Condition S5.C.5.b.ii. are reasonable, and the  
10 work load should be minimal based on Ecology’s expectation of the level of participants listed.  
11 It is otherwise not within this Board’s purview to define the participants to be listed with the  
12 specificity as Snohomish County may desire. This should be left to the judgment of the  
13 permittees and their communication with Ecology. The Board grants summary judgment to  
14 Ecology as to Issue No. 22(b).

15 **Condition S8.A**

16 Snohomish County challenges Condition S8.A. and in particular, the lack of definition of  
17 the terms “stormwater monitoring,” “stormwater-related studies” and “stormwater related  
18 investigations.” Condition S8.A states:

19 All Permittees including Secondary Permittees shall provide, in each annual  
20 report, a description of any **stormwater monitoring** or **stormwater-related**  
21 **studies** conducted by the Permittee during the reporting period. If other  
stormwater monitoring or stormwater-related studies were conducted on behalf  
of the Permittee during the reporting period, or if **stormwater-related**

1 **investigations** conducted by other entities were reported to the Permittee during  
2 the reporting period, a brief description of the type of information gathered or  
3 received shall be included in the annual report. Permittees are not required to  
4 provide descriptions of any monitoring, studies, or analyses conducted as part of  
5 the Regional Stormwater Monitoring Program (RSMP) in annual reports. If a  
6 Permittee conducts independent monitoring in accordance with requirements in  
7 S8.B or S8.C below, annual reporting of such monitoring must follow the  
8 requirements specified in those sections. (emphasis added)

9 A permit need not set out with absolute certainty every act required for compliance if the  
10 general provisions of the permit convey an understandable meaning. *State v. Peterson*, 174 Wn.  
11 App. 828, 846, 301 P.3d 1060 (2013). The Board finds that whether the terms “stormwater  
12 studies,” “stormwater monitoring,” and “stormwater investigations” are defined as terms-of-art  
13 or are, in fact, undefined is not dispositive. The parties’ prior performances and actions will  
14 guide what “stormwater monitoring,” “stormwater related studies,” and “stormwater related  
15 investigations” encompass.

16 In its annual reports submitted under prior Phase I Permits, Snohomish County reported  
17 “none” when asked for descriptions of any stormwater monitoring studies for the last three years.  
18 Second Barney Decl., Ex. E; Snohomish County’s Response, at 15-18. This past practice is the  
19 best indicator of how the parties intended the terms to be “practical[ly] interpret[ed]” and applied  
20 in executing the permit requirements. *Peterson*, 174 Wn. App. 846. Past practice has not  
21 included the reporting of the many project- and site-specific reports and plans referenced by the  
County in its brief. The Board concludes that the provisions of Condition S8.A are not unlawful,  
unjust, unreasonable, impracticable, vague, ambiguous and/or beyond the scope of Ecology to  
impose. Summary judgment is granted to Ecology on Issue No. 22(c).

1 **IV. SNOHOMISH COUNTY’S MOTION FOR SUMMARY**  
2 **JUDGMENT ON PHASE I ISSUE NO. 23**

3 **BACKGROUND**

4 Phase I Issue No. 23 challenges conditions of the 2013 Permit requiring compliance with  
5 other documents that do not yet exist, are subject to revision, and/or have not been through any  
6 public review process.<sup>4</sup> Snohomish County seeks partial summary judgment on this issue as it  
7 pertains to the 2012 Stormwater Management Manual for Western Washington (SWMMWW),  
8 the Rain Garden Handbook for Western Washington Homeowners (the “Rain Garden  
9 Handbook”), and the Low Impact Development Technical Guidance Manual for Puget Sound

10 <sup>4</sup> Phase I Issue No. 23 states:

11 Whether provisions contained in (i) Special Condition S5.C.5.a of the Permit, (ii) Special Condition S5.C.7  
12 of the Permit, (iii) Special Condition S5.C.9 of the Permit, (iv) Special Condition S7 of the Permit, (v)  
13 Special Condition S8.B.1.b of the Permit, (vi) Section 2 of Appendix 1 to the Permit, (vii) Section 4 of  
14 Appendix 1 to the Permit, (viii) the Executive Summary of the Manual, (ix) Volume I, Chapter 2 of the  
15 Manual, (x) Volume I, Glossary of the Manual, (xi) Volume II, Chapter 3 of the Manual, (xii) Volume III,  
16 Chapter 2 of the Manual, (xiii) Volume III, Chapter 3 of the Manual, (xiv) Volume III, Appendix III-B of  
17 the Manual, (xv) Volume III, Appendix III-C of the Manual, (xvi) Volume IV, Chapter 2 of the Manual,  
18 (xvii) Volume IV, Appendix IV-D of the Manual, (xviii) Volume V, Chapter 3 of the Manual, (xix) Volume  
19 V, Chapter 4 of the Manual, (xx) Volume V, Chapter 5 of the Manual, and/or (xxi) Volume V, Chapter 7 of  
20 the Manual, are unlawful, unjust, unreasonable, impracticable, vague, ambiguous and/or beyond the  
21 authority of Ecology to impose for one or more of the following reasons:

- a. Said provisions incorporate by reference and/or instruct the reader to consult or comply with outdated and/or inapplicable life/safety codes in contravention of the State Building Code Act, chapter 19.27 RCW, and/or its implementing regulations;
- b. Said provisions incorporate by reference and/or instruct the reader to consult or comply with documents that were not made available for adequate public review and comment;
- c. Said provisions incorporate by reference and/or instruct the reader to consult or comply with documents that do not exist, or that did not exist as of the date on which the permit was issued;
- d. Said provisions incorporate by reference and/or instruct the reader to consult or comply with documents that exist in multiple versions without consistently specifying which version of said document must be used;
- e. Said provisions purport to incorporate by reference and/or instruct the reader to consult or comply with future, revised versions of documents that may potentially become available at some point in the future; and/or
- f. Said provisions state or imply that Ecology will or intends to make future changes, revisions and/or technical updates to portions of the Manual or to documents incorporated into or referenced by the Manual without following public notice and comment or other required procedures.

1 (the “LID Manual”). Snohomish County asserts that (i) the conditions of the 2013 Permit are  
2 ambiguous regarding which version of the cited documents Ecology has incorporated by  
3 reference and made part of the Permit; (ii) under the doctrine of incorporation by reference, later  
4 versions that did not exist when the 2013 Permit was issued cannot be properly incorporated into  
5 the Permit; and (iii) any later versions that are sought to be incorporated into the 2013 Permit  
6 must undergo APA rulemaking procedures.

7         Snohomish County argues that incorporation of those documents by reference into the  
8 2013 Permit creates confusion as to which version of the manual or guidance document applies.  
9 Snohomish County’s Motion for Partial Summary Judgment at 5-9. For instance, the  
10 SWMMWW incorporates other guidance documents that will likely be revised in the future and  
11 with which the permittees are required to comply. In the Executive Summary of the  
12 SWMMWW it is stated that Ecology will be making clarifications and corrections, and it will  
13 publish “corrections, updates and new technical information” on the Ecology website.  
14 SWMMWW, Vol. I, p. ES-i. Specifically, the SWMMWW also states that the LID flow  
15 modeling guidance may be revised as modeling techniques improve and that a table in the BMP  
16 maintenance standards for bioretention facilities is expected to be revised. Motion at 6; citing  
17 the SWMMWW at Vol. III, p. C-1, and Vol. V, p. 4-52. Snohomish County asserts that the  
18 terms of the 2013 Permit will change as a result of the revisions to these incorporated documents  
19 without following proper notice and comment periods.

20         With respect to the LID Manual, Snohomish County argues that the SWMMWW  
21 incorporates the LID Manual but it is not clear which version of the Manual is being

1 incorporated. According to Snohomish County, if Ecology intends that the 2012 LID Manual be  
2 incorporated in SWMMWW, the Manual was not available for requisite comment period.  
3 Motion at 8-9; citing SWMMWW, Vol. V.

4 Snohomish County also seeks clarification on the version of the Rain Garden Handbook  
5 that the permittees are required to refer to under the 2013 Permit. The Permit incorporates by  
6 reference the “Rain Garden Handbook for Western Washington Homeowners (WSU 2007 or as  
7 revised).” Permit at Appendix 1. § 2 at 5. In addition to the 2007 Handbook, there is now the  
8 2013 Handbook that is a revised version of the 2007 Handbook.

9 Ecology concedes that there is need for clarification regarding the documents  
10 incorporated into the 2013 Permit and requests that the Board allow Ecology to modify the  
11 Permit language to clarify those requirements. Ecology Response at 3, 20-21. Specifically,  
12 Ecology agrees that because the 2012 LID Manual and the draft 2012 Rain Garden Handbook  
13 were not available for public comment during the comment period for the 2013 Phase I and  
14 Phase II Permits, the permittees are not required to use these documents. Ecology Response at 4.  
15 Ecology suggests that the permittees may want to voluntarily use the updated documents because  
16 they will be easier to use and will result in better long term performance, but Ecology recognizes  
17 that mandating their use will require Ecology to follow the formal procedure for a permit  
18 modification. *Id.* at 4-5.

19 Ecology also notes that although use of the 2012 LID Manual is not required, Volume V  
20 of the SWMMWW has specific maintenance requirements for bioretention facilities and this  
21 language is taken from the preliminary draft of the 2012 LID Manual. *Id.* at 6. Therefore,

1 regardless of the applicability of the 2012 LID Manual, the permittees must comply with the  
2 language in the SWMMWW for the maintenance requirements for bioretention facilities. *Id.*  
3 Ecology notes that the language in the SWMMWW regarding the maintenance requirements for  
4 permeable pavement, also taken from the draft LID Manual, was added to the SWMMWW at a  
5 time that did not allow for the full 30 day comment. *Id.* Ecology asks the Board to “cure” this  
6 lack of the 30 day comment period through this appeal process. *Id.* at 6-7.

### 7 ANALYSIS

8 The Board agrees that references to the SWMMWW, the Rain Garden Handbook, and the  
9 LID Manual do not clearly indicate which version or revisions are to be used and are ambiguous  
10 in indicating whether use of an updated version or edition is mandatory or voluntary. Under the  
11 doctrine of incorporation, an ambiguous reference is ineffective because “the provisions to which  
12 reference is made do not have a reasonably clear and ascertainable meaning.” *Western*  
13 *Washington Corp. of Seventh-Day Adventists v. Ferrellgas, Inc.*, 102 Wn. App. 488, 494, 7 P.3d  
14 861 (2000), review denied, 143 Wn.2d 1003, 21 P.3d 292 (2001). Additionally, the incorporation  
15 doctrine requires that referenced documents be in existence at the time the referencing document  
16 is created, so that “the parties to the agreement [have] knowledge of and assented to the  
17 incorporated terms.” *Id.* at 495. This Board has held that a party objecting to the use of the  
18 externally developed material can challenge its use as a permit requirement through the permit’s  
19 public comment and appeal procedures. *PSA v. Ecology*, PCHB No. 07-022, 07-023 (Phase II  
20 Municipal Stormwater Permit, Order on Summary Judgment, September 2008) at 20.

1 As described above, Ecology agrees that the permittees are not required to use the 2012  
2 LID Manual or the draft 2012 Rain Garden Handbook (published in 2013). The 2005 LID  
3 Manual and the 2007 Rain Garden Handbook are the applicable documents to the extent they do  
4 not conflict with specific terms in the Permits or in the SWMMWW, which will prevail.

5 Because the permeable pavement language added to the SWMMWW did not have a  
6 requisite 30 day public comment period required by state and federal law, the permittees are also  
7 not required to comply with this term. The Board will not accept Ecology's invitation to cure  
8 this fault based on the Board's current de novo review of the 2013 Phase I and Phase II Permits.  
9 Any modifications to the 2013 Phase I and Phase II Permits must comply with the formal process  
10 for permit modifications.

11 Since Ecology agrees that the relief Snohomish County seeks is appropriate under the  
12 regulations governing Washington's NPDES permitting program, it is unnecessary for the Board  
13 to reach Snohomish County's alternative argument regarding APA rulemaking requirements.  
14 The Board grants summary judgment to Snohomish County and remands the 2013 Phase I  
15 Permit to Ecology for modification of its terms consistent with the Board's Order.

16 As a final matter, Snohomish County reserved its right to argue the applicability of the  
17 Western Washington Hydrology Model (WWHM). Motion at 3. Ecology, however, stated that  
18 the permittees are not required to follow the WWHM because it was not available at the time of  
19 permit issuance. Ecology Response at 3, n. 1, citing O'Brien Decl. Based on Ecology's  
20 response, the Board finds that there are no remaining issues regarding Issue No. 23.

1 **ORDER**

2 The Board **GRANTS** summary judgment to Ecology on Phase I Legal Issues No. 14, 16,  
3 22(a),(b), and (c).

4 The Board **GRANTS** summary judgment to Snohomish County on Phase I Legal Issue  
5 No. 23 and remands the 2013 Phase I Permit to Ecology to modify the 2013 Permit:

6 1. To clearly specify the version or edition of the Rain Garden Handbook, and the LID  
7 Manual that are incorporated by reference into and made a part of the Phase I Permit, consistent  
8 with his opinion. Any such permit modification may allow the permittees the option to use  
9 future or updated versions or editions of these documents, even though they are not incorporated  
10 by reference into the Permit;

11 2. To provide the requisite 30-day public notice and comment period on those portions of  
12 the SWMMWW that did not receive adequate notice and comment, and to accurately reference  
13 and incorporate appropriate maintenance requirements for bioretention facilities and permeable  
14 pavement, as included in the 2012 SWMMWW;

15 3. Nothing in this Order restricts Ecology’s authority to allow the permittees to use the  
16 2012 LID Manual and 2013 Rain Garden Handbook.

1 SO ORDERED this 8<sup>th</sup> day of October, 2013.

2 **POLLUTION CONTROL HEARINGS BOARD**

3  
4 TOM MCDONALD, Presiding

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6 KATHLEEN D. MIX, Member

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8 JOAN M. MARCHIORO, Member

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