

Phase I & WWA Phase II Modification Comments

Permit	Section	Page	Comment
Phase I	S5.C.5.a.iii	17/77	<p>Make the date to apply the code requirements consistent with the effective date of the code, which is June 30, 2015.</p> <p>"The local program adopted to meet the requirements of S5.C.5.a.i through ii shall apply to applications submitted <<on or>> after June 30, 2015 and shall apply to applications submitted <<prior to no later than>> June 30, 2015, which have not started construction <<prior to>> by June 30, 2020."</p>
Phase I	S5.C.5.b	19/77	<p>This section already provides that the deadline is changed when an alternative date is established by S5.C.5.a.iii. To add clarity, insert "automatically or otherwise" as follows:</p> <p>"No later than July 1 <u>June 30, 2015</u>, or by an alternative date if established <<automatically or otherwise>> in accordance with S5.C.5.a.iii.</p>
Both	Def'n: "Discharge Point"	Ph.I: 71-77; App.1, 3/55	<p>Stormwater facilities/BMPs, and conveyances, that inadvertently infiltrate such as ditches and swales should not be considered "discharge points" and should be excluded in each definition and explanation in the Permit, Statement of Basis and Definitions Guidance. Inclusion is not mandated by federal or state law, and as Ecology points out, Ecology did not intend permittees to map features or areas that provide inadvertent infiltration as discharge points. Specifically excluding these features would resolve the problem Ecology identified. An example of the necessary edits for each "discharge point" definition:</p> <p>"... 'Discharge point' also includes the location where a discharge leaves the permittee's MS4 and discharges to ground, except <<for stormwater facilities/BMPs, or conveyances, that inadvertently infiltrate such as ditches and swales or>> where such a discharge occurs via an outfall."</p>
Both	Statement of Basis	10	<p>Edits to support previous comment regarding "discharge point." "For discharge points to ground:</p> <ul style="list-style-type: none"> - <<Includes-Excludes>> facilities/BMPs <<, and conveyances,>> that inadvertently infiltrate such as ditches and swales* - Includes stormwater conveyances that have no outlet, such as dispersion BMPs." <p>"*Please Note: The settlement language that resulted from the appeal process (provided above) <<includes/excludes>> "inadvertent infiltration through ditches or swales" as a type of discharge point. <<This language assumes that any unlined ditch or swale used for conveyance may have incidental infiltration, and creates an inherent conflict as swales are commonly designed to infiltrate and may need to be mapped as an outfall.>> "</p> <p>"<<Within the context of the Permit, the settlement language would require all ditches and swales to be mapped as discharge points.>> Many, if not all, permittees have established mapping programs. It is not Ecology's intent to require permittees to map inadvertent infiltration, such as ditches, as a discharge point or to review previously mapped features and require these to be re-labeled as discharge points according to the new definition (although this may be helpful for permittees and their programs to do so)."</p>

Permit	Section	Page	Comment
Both	Definition Guidance	6	<p>more edits to support previous comment regarding discharge points for discharge points to ground.</p> <p>- <<Includes Excludes>> facilities/BMPs <<and conveyances>> that inadvertently infiltrate, such as ditches and swales.</p> <p>- Includes stormwater conveyances that have no outlet, such as dispersion BMPs.</p> <p>Issues to keep in mind:</p> <p>MS4 MAPPING- According to the language developed through the settlement of the western Washington Phase II Permit appeal, all known discharge points must be mapped according to the requirements of the Permits. The definition for outfall contained in the permits issued August 1, 2012 and effective August 1, 2013 captured all points where discharges occur from one MS4 to surface water, ground waters, other MS4s, and private or unregulated stormwater infrastructure. As such, the requirement to map outfalls is modified to reference outfalls and discharge points under the proposed new definitions. <<Strict application of the agreed upon settlement language results in a requirement to map locations of inadvertent infiltration (such as ditches) as discharge points.>></p> <p>It is not Ecology's intent to require permittees to map features or areas that provide inadvertent infiltration as discharge points. Nor is it Ecology's intent that Permittees must re-label previously mapped outfalls as discharge points according to the new definition, although this may be helpful for permittees' programs.</p>
Both	Definition Guidance		Delete all language characterizing stormwater as a "water of the state" for NPDES permit purposes. These statements are unnecessary to the permit modification and are inaccurate and misleading. They misconstrue state water pollution control law, including but not limited to RCW 90.48.020, are inconsistent with federal law, and exceed the scope and substance of the Phase II settlement agreement. Seattle is available to discuss this comment with Ecology and its legal counsel.
		1; Background, paragraph 3	"There are two important aspects of the definition of waters of the state that affect the terms and conditions in the Washington State Municipal Stormwater Permits:"
		1; Background, #2	"2.——Waters of the state include stormwater, such as that found within municipal stormwater systems."
		2; Background, 1st paragraph	","not in a water of the state ,which would include the stormwater itself"
		2; Background, 3rd bullet	"<<The definition of outfall used in the permits cannot be based entirely on the federal definition of outfall, which relies heavily on use of waters of the US. If an outfall were defined solely by its discharge to waters of the state , any point in a municipal stormwater conveyance could be considered an outfall because stormwater in one pipe is being discharged to stormwater in another pipe (and stormwater is considered a water of the state)->>"
		2; Background, 4th bullet	"The definition of receiving water, or receiving water body, must appropriately include waters of the US and some<<-,but not all,>> waters of the state . <<Because stormwater itself is a water of the state ,>> he permits' definition of receiving water is intended to exclude stormwater within system conveyances, facilities and BMPs."
Both	Definition Guidance	5 or elsewhere	Add text consistent with the former definition of receiving water to clarify that while groundwater may be a receiving water for a facility/BMP that is designed to infiltrate, questions of fact will remain regarding whether or not there is a receiving water and what receiving water is involved. To add at p. 5 or elsewhere in the Definitions Guidance: "• Groundwater <<is may be>> a receiving water body where a facility/BMP is designed to infiltrate. <<In each case, there are questions of fact as to whether or not flow from an infiltrating facility/BMP to ground reaches any receiving water and which receiving water is involved.>>"