Regional Road Maintenance ESA Forum
155 Monroe Avenue NE, Renton Washington 98155-4199

February 2, 2012

Municipal Permit Comments
WA Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7696

To Whom It May Concern:

The Regional Road Maintenance Forum (Forum) would like to thank the Department of Ecology for the opportunity to comment on the 2013-2018 draft Phase 1&2 Municipal Stormwater General Permits. Comments were developed by the Regional Forum Permit Committee (RFPC) which is comprised of biologists, engineers, and maintenance staff who represent the member agencies listed at the end of this letter. The Forum is committed to environmentally sound maintenance practices which preserve and protect both surface and ground waters.

The RFPC has the following general comments for both the Phase I & II permits:

- Ecology has incorporated Low Impact Development (LID) requirements into both municipal permits without mentioning that LID is not always feasible. On the bottom of page 20 of the Phase 1 permit and page 34 of the Phase II permit, it states that "No later than December 31, 2014, Permittees shall review and revise their local development-related codes, rules, standards, or other enforceable documents to incorporate and require Low Impact Development (LID) Principles and LID Best Management Practices (BMPs)". This sentence implies that LID is a mandatory requirement without any discussion of feasibility or cost. It should be clearly stated and understood that LID be required only in areas where it can function as designed and the risk of failure or damage to the public is minimal. Construction and maintenance costs should also be factored into the decision making process. LID should not be the only means available to jurisdictions to manage stormwater runoff. The RFPC recommends that "where feasible" be added to the end of the sentence after LID Best Management Practices (BMPs).

- Ecology has put the draft stormwater manual out for review concurrently with the Phase 1&2 municipal stormwater permits when they should be done independently. It is difficult to infer how an entity will be affected without first knowing what the final changes will be for each document. It would be more effective to complete the reviews independently so that Ecology and the affected municipalities are clear on what the requirements are.

- The revised definition for illicit discharge will create a substantial and costly new workload (page 83 of Phase I Permit and page 75 of Phase II Permit). The new definition includes interflows into the storm drain system as an illicit discharge. This is a financially burdensome requirement that will require inspections of the entire storm drain system to make this determination. It will be difficult and costly to train staff to identify leaks and other discharges that are not easily seen. This requirement would most likely have to be completed via a remote camera where the cost would significantly outweigh the environmental benefits. We recommend that the definition be retained from the previous permit.

Our specific comments on the remainder of the permit are listed below:

Draft Phase 1 Permit 2013 through 2018

Section	Proposed Permit Language	Problem Statement	Recommended Changes
S5B. Page 12	The SWMP shall be designed to reduce the discharge of pollutants from MS4s to the maximum extent practicable (MEP), meet state AKART requirements, and to protect water quality. Permittees that are already implementing some or all of the SWMP components in this section shall continue implementation of those components of their SWMP. Permittees shall not repeal existing local requirements to control stormwater that go beyond the requirements of this permit for prohibiting non-stormwater discharges and for new development and redevelopment sites.	The last sentence removes all local flexibility. If the permittee is meeting the requirements of the Permit then they are in compliance with the Permit. Changes to existing programs outside the Permit is beyond the scope of this Permit.	Recommend using existing language. The existing language has only been in place for a few years and it would be prudent to determine its effectiveness before making further changes.

Section	Proposed Permit Language	Problem Statement	Recommended Changes
S5.C2.a Page 13	Ongoing Mapping: Each Permittee shall continue mapping the features listed below on an ongoing basis. All updates shall be completed within six months of additional features being found, modified, or constructed	The six month time frame is too restrictive to get all features mapped particularly when the language states that mapping is done on an ongoing basis.	Recommend removing the six month time frame.
S5.C2.a.iii Page 14	Stormwater treatment and flow control BMPs/facilities owned, operated, or maintained by the Permittee. Permittee may rely on permanent stormwater control plans for mapping LID BMPs provided they are spatially referenced to the MS4 map and maintained on an ongoing basis.	The language is confusing and we would like more clarification on how this will be applied. What is a permanent stormwater control plan?	Recommend using existing language. The existing language has only been in place for a few years and it would be prudent to determine its effectiveness before making further changes.
S5.C2.b.i-ii Page 15	i. Counties shall map existing, known connections greater than 8 inches in nominal diameter to tributary conveyances mapped in accordance with S5.C.2.a.v. ii. Each Permittee shall map existing, known connections equal to 8 inches in nominal diameter to tributary conveyances mapped in accordance with S.5.C.2.a.v.	The requirement to map connections greater than 8 inches will be a very costly and time consuming process in a tough economic climate.	Recommend using existing language requiring mapping of all connections 24 inches or larger.
S5.C2.c Page 15	To the extent consistent with national security laws and directives, Permittee shall make available to Ecology, upon request, available maps depicting the information required in S5.C.2.a and b. above. The required format for mapping is electronic with fully described mapping standards. An example description is available on Ecology's website.	Permittee should have the option of using paper maps since this is the medium of many historic drainage maps. Not all entities have the capability to scan and georeference these features.	Recommend using existing language. The existing language has only been in place for a few years and it would be prudent to determine its effectiveness before making further changes.

Section	Proposed Permit Language	Problem Statement	Recommended Changes
S5.C3.a Page 16	Implement intra-governmental (internal) coordination agreement(s) or Executive Directive(s) to facilitate compliance with the terms of this permit. Permittees shall include information in the first year annual report to identify all departments within the Permittee's jurisdiction that conduct stormwater-related activities and their roles and responsibilities under this permit, and a current organizational chart specifying these department's key personnel.	The inclusion of the last sentence will be costly and time consuming to prepare and update since staff changes can be frequent and policies can change. Reports submitted to Ecology are legal certification letters with signed contacts. Any inquiries should be directed to the contacts on the letter.	Recommend removing last sentence.
S5.C.9.a.ii(2) Page 36	Unless there are circumstances beyond the Permittee's control, when an inspection identifies an exceedence of the maintenance standard, maintenance shall be performed: (1) Within 1 year for typical maintenance of facilities, except catch 11 basins. (2) Within 6 months for catch basins.	Six month time frame for catch basins is too restrictive.	Recommend using one year for catch basins to be consistent with other maintenance requirements.
S5.C.9.b.iv Page 37	Permittee shall manage maintenance activities to inspect all permanent stormwater treatment and flow control BMPs/facilities, and catch basins, in new residential developments every 6 months, until 90% of the lots are constructed, to identify maintenance needs and enforce compliance with maintenance standards as needed.	Proposed language changes conditions under which permittees must conduct inspections in new residential developments. How will this requirement be applied if a development was not completed? As written, the permittee must inspect "until 90% of the lots are constructed". This could lead to unnecessary inspections during extended lags in construction activity, such as those that have occurred during the current economic downturn.	Recommend revising proposed language to address significant lapses in construction activity when inspections are not necessary (e.g., if a developer stops work for years pending improved sales outlooks and site is stabilized during lull, it may not be appropriate to inspect every six months). Recommend that the six month requirement be changed to One year and that 90% threshold be changed to the 80% requirement in section v below. These sections should be consistent with one another.

Section	Proposed Permit Language	Problem Statement	Recommended Changes
S5.C.9.c.ii Page 38	Each Permittee shall implement a program to conduct spot checks of potentially damaged permanent stormwater treatment and flow control BMPs/facilities after major storm events. If spot checks indicate widespread damage/maintenance needs, inspect all stormwater treatment and flow control facilities that may be affected. Conduct repairs or take appropriate maintenance action in accordance with maintenance standards established under S5.C.9.a., above, based on the results of the inspections.	Major storm event is a vague term. Some local stormwater manuals (Pierce County 2008) define a major storm event as 1 inch in 24 hours which can occur multiple times within a year. It would be a financially burdensome requirement to inspect all stormwater facilities several times within a year.	Recommend that the 10 year recurrence interval be left in.
S5.C.9.c.iii Page38	Compliance with the inspection requirements of S5.C.9.c.i and ii above, shall be determined by the presence of an established inspection program designed to inspect all sites and achieving at least 95% of required inspections.	Remove reference to subsection ii in this requirement. Since spot checks are conducted on an "as-needed" basis that may change from storm to storm, they should not be included in determining compliance with requirement to "inspect all sites". Compliance standard of 95% of inspections is overly stringent.	Recommend changing to 80% to be consistent with inspection requirement for facilities regulated by the permittee. Remove reference to subsection ii in this requirement.
S5.C.9.d.i Page38-39	Each Permittee shall continue to annually inspect catch basins and inlets owned or operated by the Permittee, except as provided below…. The following alternatives to the standard approach of inspecting catch basins every two years are allowed: …..	As written, draft Catch Basin (CB) inspection and maintenance requirements are extremely confusing. Item i states that the default frequency for inspecting CBs is annually however, item i also states " the standard approach of inspecting catch basins every two years " which conflicts with previous statement about annual requirement. The alternative listed in i(2) adds further confusion. As written, this item requires cleaning "the entire MS4 within a circuit".	For clarity, we recommend changing i(2) to "The Permittee may clean all catch basins and associated pipes once during the permit term."

Section	Proposed Permit Language	Problem Statement	Recommended Changes
Continued from S5.C.9.d.i Page38-39	Continued from S5.C.9.d.i Page38-39	First, it is not clear what constitutes cleaning the entire MS4, since some elements of the MS4 do not have associated maintenance standards (e.g., roads). Second, the reference to a circuit implies that circuit-based inspections (such as those described in i(2)) are involved in this option, but it is not clear what Ecologies vision of this looks like and how it will impact the regulated community. The vague and confusing language makes it very difficult for a permittee to determine if their program is in compliance with this requirement.	Continued from S5.C.9.d.i Page38-39
S5.C.9.d.iii Page 39	Compliance with the inspection requirements of S5.C.9.d.i. above, shall be determined by the presence of an established inspection program designed to inspect all catch basins and achieving at least 95% of required inspections.	Compliance standard of 95% of inspections is overly stringent.	Recommend changing to 80% to be consistent with inspection requirement for facilities regulated by permittee.
S5.C.9.e Page 39	Each Permittee shall implement practices, policies, and procedures to reduce stormwater impacts associated with runoff from all lands owned or maintained by the Permittee, and road maintenance activities under the functional control of the Permittee. Lands owned or maintained by the Permittee include, but are not limited to: parking lots, streets, roads, and highways, buildings, parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control BMPs/facilities.	Functional control is too vague and will lead to interpretation issues. Please define functional control or remove.	Recommend using existing language.

Section	Proposed Permit Language	Problem Statement	Recommended Changes
S5.C.9.e.vi Page 40	Snow and ice control and disposal.	How will disposal be interpreted and applied to snow and ice control. Snow is typically left to melt on the roadside, please provide an example of disposal for snow and ice work.	Remove from permit.
S5.C.9.e.xiv Page 40	Trash and pet waste management.	Pet waste management should be applied to park facilities only, impossible to manage on roadways.	Remove from permit.
S5.C.9.f Page 41	Implement an ongoing training program for employees of the Permittee who have construction, operations or maintenance job functions that could impact stormwater quality. The training program shall address the importance of protecting water quality, operation and maintenance standards, inspection procedures, selecting appropriate BMPs, ways to perform their job activities to prevent or minimize impacts to water quality, and procedures for reporting water quality concerns. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staffing. Permittees shall document and maintain records of the training provided and the staff trained.	As written, the draft training requirement suggests that all "employees of the Permittee who have construction, operations or maintenance job functions that could impact stormwater quality" must be trained on <u>all</u> of the training topics listed. We concur that a comprehensive training program include all of the elements listed, however, we believe that it is not necessarily advantageous to train <u>all</u> qualifying personnel on <u>all</u> of those elements. Rather, permittees should have the flexibility to identify which personnel are in need of which training and train accordingly. For example, if an employee's job functions don't include conducting inspections, it is not productive to train that employee on how to conduct an inspection. It is more important for that employee to know how to recognize a problem and know how to respond accordingly.	Recommend adding the following statement to f "Training shall address those elements that are applicable to an employee's job functions."

<u>Draft Phase II Permit for 2013</u>

Deadlines for compliance within the one year permit need to be addressed so it is clear that the permit is a continuation or extension of the previous permit and none of the deadlines, except the annual report requirements, are in effect.

Draft Phase II Permit for 2013 through 2018.

Section	Proposed Permit Language	Problem Statement	Recommended Changes
S5C.4.c.ii Page 32	Inspections of all new stormwater treatment and flow control BMPs/facilities and catch basins for permanent residential developments every 6 months until 90% of the lots are constructed to identify maintenance needs and enforce compliance with maintenance standards as needed.	Same as S5.C.9.b.iv of the Phase I comments. Proposed language changes conditions under which permittees must conduct inspections in new residential developments. How will this requirement be applied if a development was not completed? As written, the permittee must inspect "until 90% of the lots are constructed". This could lead to unnecessary inspections during extended lags in construction activity, such as those that have occurred during the current economic downturn.	Same as S5.C.9.b.iv of the Phase I comments. Recommend revising proposed language to address significant lapses in construction activity when inspections are not necessary (e.g., if a developer stops work for years pending improved sales outlooks and site is stabilized during lull, it may not be appropriate to inspect every six months). Recommend that the 6 month requirement be changed to 1 year and that 90% threshold be changed to the 80% requirement in section v below. These sections should be consistent with one another.
S5C.5.c Page 36	Spot checks of potentially damaged permanent stormwater treatment and flow control BMPs/facilities after major storm events. If spot checks indicate widespread damage/maintenance needs, inspect all stormwater treatment and flow control facilities that may be affected. Conduct repairs or take appropriate maintenance action in accordance with maintenance standards established above, based on the results of the inspections.	The proposed changes to spot check inspections do not provide a clear definition of when spot check inspections are required, thus opening up liability to permittees and debate over what is a major storm.	Recommend removing changes and use existing language.
S5C.5.d Page 37	Inspection of all catch basins and inlets owned or operated by the Permittee at least once every two years. Clean catch basins if the inspection indicates cleaning is needed to comply with maintenance standards established in the 2012 *Stormwater Management Manual for Western Washington.* ……	This frequency is too high for many phase two jurisdictions and is considered unattainable without significant financial and staffing increases.	Remove changes to first and third paragraphs regarding a two year time frame for CB inspections. Remove second paragraph and stick to existing language, as this language is no longer applicable in a five year inspection period.

Section	Proposed Permit Language	Problem Statement	Recommended Changes
S5C.5.d.i Page 37	Inspections at least once every two years may be conducted on a "circuit basis" whereby a sampling of catch basins and inlets within each circuit is inspected to identify maintenance needs. Include in the sampling an inspection of the catch basin immediately upstream of any system outfall. Clean all catch basins within a given circuit for which the inspection indicates cleaning is needed to comply with maintenance standards established under S5.C.4.a., above.	A two year inspections standard of all CB and inlets is unattainable for most Phase II's, especially given the difficult economic times. CB inspection circuits are often based on land use or traffic areas and do not necessarily include system outfalls.	Change the inspection frequency back to five years. Change the second sentence to read "Include in the sampling an inspection of the catch basin immediately upstream of any system outfall, <u>if applicable</u>. This change will clearly give permittees the flexibility needed to effectively and efficiently manage these assets.
S5C.5.d.ii Page 37	The Permittee may clean the entire MS4 within a circuit, including all conveyances and catch basins, once during the permit term.	Cleaning all catch basins and conveyances in the MS4 is not a feasible option.	Remove all new language. Add "in accordance with approved maintenance plan" at the end of the last sentence.
S5C.5.e Page 37	Compliance with the inspection requirements in b, c and d above shall be determined by the presence of an established inspection program designed to inspect all sites and achieving at least 95% of inspections.	Ninety five percent is too high of a standard.	Recommend that 80% be used.
S5C.5.f Page 37 and 38	Implement of practices, policies, and procedures to reduce stormwater impacts associated with runoff from all lands owned or maintained by the Permittee, and road maintenance activities under the functional control of the Permittee. Lands owned or maintained by the Permittee include, but are not limited to: parking lots, streets, roads, and highways, buildings, parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control BMPs/facilities.	Functional control is too vague and will lead to interpretation issues. Please define functional control or remove.	Recommend using existing language.

Definitions (Both Permits):

"**Circuit**" out of order alphabetically. Narrowly defined...too limiting. Flexibility should be given to define circuits based on land use type and activity. Remove "discharging to a single point" or changing "discharging to a single point AND serving a discrete area…" change AND to OR. (pg 82 of Phase I Permit and pg 74 of Phase II Permit)

"**Common Plan of Development**" – how will this be used in permit requirements? May make sense for a private development but runs counter to some municipality projects. Remove "and 4) linear projects such as roads, pipelines, or utilities". Permittees are already conducting inspections of municipally owned or operated flow control facilities and catch basins, pursuant to S5.C.5.b and S5.C.5.d, respectively. A reworded definition should be moved to appendix 1 since it isn't referenced in permit. (pg 81 of Phase I Permit and pg 74 of Phase II Permit)

"**Illicit Connection**" – clarify that designed doesn't mean engineered (means intended). Definition too complex, change to "anything that conveys an illicit discharge". (pg 83 of Phase I Permit and pg 75 of Phase II Permit)

"**Illicit Discharge**" – remove "or from" in the first line, this puts municipalities on the hook for conveying and discharging substances we can't always control. Remove "and infiltration/exfiltration of non-stormwater that takes place in pipe bedding" for the same reason. The Phase I definition also includes interflow which will create a significant amount of discharges that would now be categorized as illicit. (pg 83 of Phase I Permit and pg 75 of Phase II Permit)

"**Industrial or Construction Activity" and** "**IPM**" – please explain why these definitions were removed. (Phase I only on pg 83)

"**LID**" – remove "and land use" (pg 84 of Phase I Permit and pg 76 of Phase II Permit)

"**LID Principles**" – remove definition. Land use requirements exceed authority of NPDES permit. (pg 84 of Phase I Permit and pg 76 of Phase II Permit)

"**Low Impact Development Best Management Practices**" inconsistent with LID manual. Consider changing "BMPs" to "features" or another term. BMP's is a common term that is widely used for many different activities which makes it confusing when used with LID. (pg 84 of Phase I Permit and pg 76 of Phase II Permit)

"**Medium MS4**" has been struck from Phase II but not in Phase I permit. Why? (pg 85 of Phase I Permit and pg 76 of Phase II Permit)

"**Outfall**" – definition should not include discharges to ground. Overlap with UIC regulations and opens permittees to liability from non-compliance. Remove or redefine, can be too broadly interpreted. (pg 86 of Phase I Permit and pg 77 of Phase II Permit)

"**Qualified Personnel or Consultant**" – remove consultant…consultants are qualified personnel employed by municipalities to complete work as directed. Redundant to include. (pg 86 of Phase I Permit and pg 78 of Phase II Permit)

"**Sediment/Erosion-Sensitive Feature"** – change "appendix 6" to "appendix 7" (pg 87 of Phase I Permit and pg 79 of Phase II Permit)

"**Stormwater**" – includes "interflow" even though it was removed from "runoff" definition. Please define "Interflow". (pg 87 of Phase I Permit and pg 79 of Phase II Permit)

"**Stormwater Treatment and Flow Control BMPs/Facilities**" – requirement to inspect features that meet MR #6 or 7 means permittees must know which BMPs/facilities were installed to meet which MR's. Significant tracking burden involved. Use of "BMPs" inappropriate. Add " and does not include BMPs/facilities that help meet minimum requirement 5." (pg 87 of Phase I Permit and pg 80 of Phase II Permit)

"**Waters of the State**" this definition now includes Waters of the U.S. These are separate and distinct definitions which should not be used interchangeably. (pg 88 of Phase I Permit)

Appendix I-Minimum Technical Requirements for New Development and Redevelopment

In general this section is very confusing and it is difficult to conclude how it will impact maintenance activities. The inclusion of hard surfaces as a new development or redevelopment activity could make many maintenance activities such as shoulder work much more costly and time consuming. More clarification should be given on how maintenance will be affected.

Specific comments are listed below:

<u>Definitions (Both Permits):</u>

Converted Pervious Surface: How will this definition be applied for maintenance activities? (pg 2 of Phase I and II Permit)

Low Impact Development (LID): Delete "mimic pre-disturbance" add "allow" hydrologic processes of infiltration" If pre-disturbed is to be used, it needs to be clearly defined. (pg 3 of Phase I and II Permit)

LID BMPs: Definition should be consistent with above. What is the purpose of creating LID BMPs? (pg 3 of Phase I Permit and pg 4 of Phase II Permit)

LID Principles: Please delete this definition. This should emphasize stormwater management and not land use. (pg 4 of Phase I and II Permit)

Pervious Surface: Delete "A" add "Any" surface add "material". (pg 4 of Phase I and II Permit)

Rain Garden: Clearly state that this is not a flow control or Retention/Detention facility and that these facilities are not subject to a yearly inspection. (pg 5 of Phase I and II Permit)

Receiving Waters: Please remove the last sentence. If there is separation between ground water and the stormwater LID, there is no discharge to groundwater and the discharge is to soil. If the last sentence is not removed then any LID that directs infiltration towards groundwater would be waters of the state and not part of the MS4. (pg 5 of Phase I and II Permit)

Vehicular Use: Please explain how this will be used and why this is included:
Is this the areas that LID may not be used? Recommend that this definition be deleted without further clarification. (pg 6 of Phase I Permit and pg 7 of Phase II Permit)

We look forward to working with Ecology and our Associations so that reasonable, cost effective stormwater regulations are achieved. This will help us all reach our shared goal of protection of the natural and built environment as currently defined in state regulations.

Thank you for the opportunity to comment on the preliminary draft permit language.

Sincerely

Regional Road Maintenance Permit Committee

CC: Ashley Probart, Washington Association of Cities
Gary Rowe, Washington Association of Counties

Regional Road Maintenance ESA 4(d) Regional Forum Members:

City of Bellevue	King County	City of Poulsbo
City of Bremerton	Kitsap County	City of Renton
City of Burien	City of Lake Forest Park	City of Sammamish
Clallam County	City of Lakewood	City of Sea Tac
Clark County	City of Maple Valley	City of Shoreline
City of Covington	Mason County	Snohomish County
City of Edgewood	City of Mill Creek	City of Tacoma
City of Everett	City of Monroe	Thurston County
City of Kenmore	City of Newcastle	City of University Place
City of Kent	Pierce County	WSDOT