



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office
510 Desmond Dr. SE, Suite 102
Lacey, Washington 98503



In Reply Please Refer To:
01EWF00-2012-CPA-0056

FEB - 3 2012

Kelly Susewind
Water Quality Program Manager
Washington State Department of Ecology
ATTN: Carrie Graul and Harriet Beale
PO Box 47696
Olympia, Washington 98504-7696

Dear Mr. Susewind:

On October 19, 2011, the Washington State Department of Ecology (Ecology) announced its intent to reissue modified general permits to Phase I and Phase II operators of municipal separate storm sewer systems (MS4s). Ecology released two draft National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permits for Municipal Stormwater, and requested public review and comment by February 3, 2012.

The Phase I general permit addresses discharges from large and medium MS4s, including public systems owned and operated within the incorporated areas of the Cities of Seattle and Tacoma, unincorporated areas of Clark, King, Pierce, and Snohomish Counties, and the Ports of Seattle and Tacoma (Phase I Permittees and Secondary Permittees). The Phase II general permit addresses discharges from regulated small MS4s within, or partially within, a census-defined Urbanized Area or county unincorporated Urban Growth Area, including public systems owned and operated within 80 medium and small cities, the urban portions of additional counties in western Washington (Cowlitz, Kitsap, Lewis, Skagit, Thurston, and Whatcom Counties), and the Ports of Anacortes, Bellingham, Olympia, Vancouver, and Skagit County (Phase II Permittees and Secondary Permittees). Additional Phase I and Phase II Secondary Permittees include owners and operators within special districts (e.g., diking, flood control, drainage, park, and school districts), colleges and universities, and the Washington State Department of Corrections, Military Department, and General Administration. These permits do not regulate discharges from MS4s owned and operated by the Federal government on military bases or other Federal lands, federally recognized Indian Tribes located within Indian Country Lands, or the Washington State Department of Transportation (WSDOT).

Ecology has modified the draft Phase I and Phase II general permits to include new low impact development (LID) requirements, requirements related to Total Maximum Daily Loads (TMDLs), and new monitoring requirements, including the option of participation in a cooperatively-funded Regional Stormwater Monitoring Program (RSMP). The draft permits require that permittees apply all known, available, and reasonable methods of prevention, control and treatment (AKART), a requirement satisfied by applying the site planning process and stormwater best management practice (BMP) selection and design criteria outlined in the revised *2012 Stormwater Management Manual for Western Washington* (Stormwater Management Manual), or an Ecology-approved equivalent. The draft permits emphasize source control, maintenance and maintenance accountability, and stormwater program planning and implementation coordinated among permittees and secondary permittees to achieve TMDL and sub-basin planning objectives. The draft Phase I general permit proposes changes to the Structural Stormwater Controls Program requirements and incentives, broadens coverage to include additional secondary permittees under the 5-year permit term beginning August 1, 2013, and establishes a timeline and deadlines for implementing components of the required stormwater management programs (including system mapping and inventory; program and sub-basin planning; review and revision of local codes, ordinances, rules, and standards; inspection, maintenance, and enforcement; reporting; and, public involvement, education, and participation). The draft Phase II general permit proposes adjusted thresholds for applying the Minimum Requirements (project-level), broadens coverage to include additional permittees and secondary permittees under the 5-year permit term beginning August 1, 2013, and establishes a timeline and deadlines for implementing the same components of required stormwater management programs.

Staff from our office reviewed all or portions of the following documents:

- Public Review Draft of the Phase I Permit with Changes (October 19, 2011)
- Fact Sheet for the Phase I Permit (November 4, 2011)
- Public Review Draft of the Western Washington Phase II Permit (October 19, 2011)
- Fact Sheet for the Western Washington Phase II Permit (November 4, 2011)
- Draft Stormwater Management Manual (November 2011)

During November of last year, Ecology announced their intent to reissue a modified MS4 permit to the WSDOT. The U.S. Fish & Wildlife Service (Service) provided comments for the modified permit, and revised and updated *WSDOT 2011 Highway Runoff Manual*, with a letter sent to Ecology on December 23, 2011.

BACKGROUND

Ecology has stated that “stormwater runoff is the leading pollution threat to lakes, rivers, streams and marine water bodies in urbanized areas of Washington State”, and has observed that “the impacts of urban land development have severely degraded ... fish resources and other beneficial uses of Washington’s waters.” (Phase I Fact Sheet, pp. 10, 11) “As part of Phase 3 of its toxics loading study [for Puget Sound], Ecology collected water quality samples ... [and] found ...

surface water runoff, particularly from [existing] commercial and industrial areas, did not meet water quality or human health criteria for ... parameters [including] dissolved copper, lead, and zinc, total mercury, total polychlorinated biphenyls, [and] several carcinogenic polycyclic-aromatic hydrocarbons.” (Phase I Fact Sheet, p. 14)

The purpose of the State's anti-degradation policy and program is to “... restore and maintain the highest possible quality of the surface waters of Washington.” (Phase I Fact Sheet, p. 23) The primary objective of the proposed stormwater planning elements is to identify whether and how watersheds can accommodate planned growth and still maintain beneficial uses, including support for anadromous fish resources. “The proposed watershed planning process directs ... permittees to use their land use management authorities to develop plans that can more comprehensively address the impacts of urbanization,” and “the challenge for permittees is to explain what actions they will take that will break [the] historical pattern of urbanization concurrent with stream degradation and loss of beneficial uses.” (Phase I Fact Sheet, p. 37)

The Service agrees that protecting and restoring the beneficial uses of the State’s waters, especially aquatic life uses, requires a permit framework that addresses both new and existing sources of water quality impairment. Furthermore, we agree that protecting beneficial uses within a context of future growth and development will be a significant land use management challenge. The Service agrees that coordinated stormwater programs and sub-basin planning are essential to meeting this challenge and preventing further degradation of the State’s waters and beneficial uses.

Ecology has reported that the U.S. Environmental Protection Agency is currently engaged in a review of Federal stormwater rules, and is considering “... options for establishing and implementing a municipal program to reduce discharges from existing development.” (Phase I Fact Sheet, p. 19) The Service agrees that source control requirements, requirements for proper inspection and maintenance of existing facilities, and minimum requirements for actions that would redevelop and/or replace existing infrastructure, are essential to achieving the primary goals established for Ecology’s MS4 permit program.

The Puget Sound Partnership has drafted a *2012 Puget Sound Action Agenda* (Action Agenda), and has specifically identified “Problems Caused by Existing Development” as a focus for managing stormwater runoff at the site and landscape scales (Draft Action Agenda, December 9, 2011; pp. 179, 186-188). The draft Action Agenda calls for stormwater retrofits, regular and enhanced maintenance to remove legacy pollutant loads, and new or revised policies addressing redevelopment:

- Retrofits – “an estimated \$3–15.6 billion is needed to upgrade existing stormwater systems within municipal permit areas,” “prioritization is necessary given the huge investment required,” and “new, adequate funding [is needed] to ensure significant progress is made.”
- Maintenance – part of the problem is due to “past underfunded maintenance of stormwater systems,” “acceleration of the maintenance, inspection, and pollutant source investigation elements ... is recommended,” “stormwater systems [must be] regularly

inspected and maintained to [ensure] function to engineering design standards,” and there is a need to “assess ... and carry out removal of legacy loads from portions of systems.”

- Redevelopment – “ensure that redevelopment policies ... are fully implemented and bring about improvements to runoff from existing development,” and “revise policies as needed ... to upgrade stormwater controls on existing development.”

We agree that these draft Action Agenda priorities are critical for protecting and restoring aquatic ecosystems. Since Ecology is now considering changes to each of the Phase I, Phase II, and WSDOT MS4 permits, we believe the timing is right to ensure the best possible alignment between permit requirements and these long term Action Agenda priorities.

COMMENTS FOR THE DRAFT **STORMWATER MANAGEMENT MANUAL**

- Volume I – Minimum Requirements and Planning. Relationship to Regulatory Requirements (p. 1-8). “Agencies with jurisdiction can require more stringent measures ... deemed necessary to meet locally established goals, ... standards, or ... objectives.” “Retrofitting stormwater BMPs into existing developed areas may be necessary to meet ... Clean Water Act and ... Water Pollution Control Act requirements.” COMMENT – We agree that this flexibility is important, and will be essential to meaningfully improve controls for discharges from some MS4s.
- Volume I – Minimum Requirements and Planning. Relationship to Regulatory Requirements (p. 1-11). “Following the stormwater management practices in this manual means adhering to the guidance provided for proper selection, design, construction, implementation, operation, and maintenance of BMPs.” COMMENT – We agree that a technology-based stormwater requirement (AKART) will only be effective where facilities and BMPs are properly sited and designed, and then maintained over time to preserve their intended design function and performance.
- Volume I – Minimum Requirements and Planning. Relationship to Regulatory Requirements, Puget Sound Action Agenda (pp. 1-11 thru 1-13). COMMENT – We agree with these Action Agenda priorities, including: the need for comprehensive guidance and standards regarding LID practices, and the incorporation of LID requirements in local stormwater codes for development and redevelopment; the importance of prioritizing implementation of stormwater retrofits; the need for sub-basin planning to better identify actions and improve collaboration of effort to address “shared” receiving waters; the importance of establishing a coordinated approach to stormwater monitoring (i.e., the RSMP); and, the need for technical and programmatic solutions to address the problem of combined sewer overflows.
- Volume I – Minimum Requirements for New Development and Redevelopment, Relationship to Municipal Stormwater Permits (p. 2-2). “Municipalities covered under the Phase I or II NPDES Municipal Stormwater Permits should use Appendix 1 of those permits rather than the bold font statements of this chapter for determining their

compliance requirements.” COMMENT – The additional comments offered below, for the Stormwater Management Manual, also pertain to the same, relevant portions of the Appendices 1 to both the draft Phase I and draft Phase II general permits.

- Volume I – Minimum Requirements for New Development and Redevelopment, Applicability of the Minimum Requirements (pp. 2-10 thru 2-15). Project thresholds currently in use for applying the Minimum Requirements state that for road-related projects, runoff from the replaced hard surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the Minimum Requirements if the new hard surfaces total 5,000 square feet or more and total 50 percent or more of the existing hard surfaces within the project limits. Ecology has explained, “Redevelopment projects have the same requirements as new development projects in order to minimize the impacts from new surfaces. To not discourage redevelopment projects, replaced surfaces aren’t required to be brought up to new stormwater standards unless the noted cost or space thresholds are exceeded ... This is consistent with other utility standards.” (p. 2-15) COMMENTS – Given the context previously described (see BACKGROUND), we question the project thresholds currently in use for applying Minimum Requirements #6 (Runoff Treatment) and #7 (Flow Control) to replaced hard surfaces. We believe that where capital improvement projects create more than 5,000 square feet of new pollution-generating hard surface, owners and operators of MS4s should be held responsible for applying and meeting Minimum Requirements #6 and #7 for an area equivalent to all of the new, and all of the replaced hard surfaces. We understand this would have the effect of increasing the size of retrofit obligations for some capital improvement projects, but we doubt in most cases that this change would unreasonably increase associated costs. We request a fuller explanation for how Ecology decided on the “50 percent threshold” where existing, new, and replaced hard surfaces are concerned. Achieving the primary goals established for Ecology’s MS4 permit program will require a concerted effort to retrofit and upgrade existing stormwater systems within municipal permit areas. We believe that uncontrolled discharges originating from existing infrastructure are a primary cause for water quality impairment within many municipal permit areas. Road-related projects are generally planned and designed in response to known system safety or mobility deficiencies, and we doubt that the costs associated with retrofitting replaced hard surfaces act as a significant disincentive for redevelopment or system improvements. We do agree that retrofit dollars should be spent at high-priority locations where they would provide the greatest net benefit.
- Volume I – Minimum Requirements, Minimum Requirement #5 On-Site Stormwater Management (pp. 2-34 thru 2-38). COMMENT – We agree that the LID Performance Standard and “Mandatory Lists”, including BMPs T5.30 Full Dispersion and T5.13 Post-Construction Soil Quality and Depth, are appropriate for sites and projects needing only to satisfy Minimum Requirements #1 through #5. We expect that the consistent application and enforcement of these standards would preserve or minimally-disturb important hydrologic characteristics of developed and redeveloped sites, and thereby meaningfully improve controls for stormwater discharges.

- Volume I – Minimum Requirements, Minimum Requirements #6 (Runoff Treatment) and #7 (Flow Control) (pp. 2-39, 2-45). Treatment and flow control facilities shall be selected, designed, and maintained according to Volumes III and V, or an Ecology-approved equivalent design and maintenance manual. COMMENT – We agree that a technology-based stormwater requirement (AKART) will only be effective where facilities and BMPs are properly sited and designed, and then maintained over time to preserve their intended design function and performance.
- Volume I – Minimum Requirements, Minimum Requirement #7 (Flow Control) (p. 2-44). “The pre-developed condition to be matched shall be a forested land cover unless ... 2) the drainage area of the immediate stream and all subsequent downstream basins have had at least 40 percent total impervious area since 1985. In this case, the pre-developed condition to be matched shall be the existing land cover condition ... Where basin-specific studies determine a stream channel to be unstable, even though the above criterion is met, the pre-developed condition assumption shall be the historic land cover condition, or a land cover condition commensurate with achieving a target flow regime identified by an approved basin study.” COMMENT – We request a fuller explanation for how Ecology decided on this exemption to the default, presumed, pre-developed conditions (i.e., forest, prairie, or pasture). Where sub-basins are substantially built-out, and especially at locations where this build-out occurred prior to 1985 and presumably with little or no attention to controlling peak flows, stormwater runoff from existing development likely already contributes to heightened peak flows and resulting channel bed and bank scour or erosion. This exemption fails to acknowledge the existing degraded conditions resulting from inadequate flow control, and its continued application may represent a barrier to meaningfully improving controls for stormwater discharges. We support the second, qualifying statement regarding known unstable conditions, but we question the basis for the broader exemption and whether it is appropriate for any sites or projects.
- Volume I – Minimum Requirements, Minimum Requirement #9 (Operation and Maintenance) (pp. 2-49, 2-50). COMMENT – We agree that inadequate maintenance is a common, even ubiquitous, cause of failure for stormwater control facilities. We support requirements that direct owners and operators of MS4s to develop and maintain individual operation and maintenance manuals for constructed stormwater facilities and BMPs. We support maintenance accountability in the form of record-keeping, a log indicating what inspection and maintenance actions were taken, by whom, when, and with what frequency.

COMMENTS FOR THE PUBLIC REVIEW DRAFT **PHASE I PERMIT**

- S5. Stormwater Management Program (pp. 11-43). Owners and operators of MS4s are required to implement a program that includes: system mapping and inventory; program and sub-basin planning; review and revision of local codes, ordinances, rules, and standards; source control; inspection, maintenance, and enforcement; reporting; and, public involvement, education, and participation. COMMENT – We commend Ecology,

their permittees, and stakeholders for developing a comprehensive framework for controlling stormwater discharges, preserving and restoring the beneficial uses of the State's waters, and engaging the public in these important efforts. We expect that the proposed permit modifications will meaningfully improve controls for discharges from regulated MS4s.

- S5. Stormwater Management Program, Coordination (p. 16). The program "...shall include coordination mechanisms among entities covered under a ... permit to encourage coordinated stormwater-related policies, programs, and projects within a watershed," including "... stormwater management activities for shared waterbodies ... as necessary to avoid conflicting plans, policies, and regulations [among permittees and secondary permittees]." COMMENT – Protecting beneficial uses within a context of future growth and development will be a significant land use management challenge. We agree that coordinated stormwater programs and sub-basin planning are essential to meeting this challenge and preventing degradation of the State's waters and beneficial uses.
- S5. Stormwater Management Program, Controlling Runoff from New Development, Redevelopment, and Construction Sites. Re: LID Codes and Requirements (pp. 20-21). "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 LID principles and BMPs. The intent of the revisions shall be to make LID the preferred and commonly-used approach to site development ... to minimize impervious surfaces, native vegetation loss, and stormwater runoff in all types of development situations." COMMENT – We commend Ecology, their permittees, and stakeholders for their cooperative efforts to develop guidance, standards, and suitability criteria for LID practices. We expect that wider implementation of LID practices during the pending 5-year permit term will provide important information regarding suitability, performance, operational and maintenance requirements, and the opportunities and barriers to implementation. We support continuing close cooperation among all parties so that this information, and lessons-learned, can inform the site-scale stormwater designs for individual projects and future permits.
- S5. Stormwater Management Program, Controlling Runoff from New Development, Redevelopment, and Construction Sites. Re: Watershed Scale Stormwater Planning Requirements (pp. 21-23). "Each County permittee ... shall select one watershed ... in which to conduct detailed stormwater basin planning ... shall convene and lead a process involving other permittees subject to a municipal stormwater permit ... in the watershed. The process shall develop a watershed scale stormwater basin plan ... [with] the goal of accommodating growth and maintaining beneficial uses. The process shall include: identification of watershed conditions requiring special attention; identification of impacts to beneficial uses from existing development, and future development at full build-out under ... comprehensive land use management plans; identification of structural retrofit actions ... [and] land acquisition or restoration [actions]; and, an implementation plan that identifies a schedule of actions, responsible parties, estimated costs, and funding strategies." COMMENT – We commend Ecology, their permittees, and stakeholders for the far-reaching, comprehensive scope of the proposed planning process and objectives.

We hope and expect that these stormwater planning efforts will promote a better understanding of watershed functions and functional requirements, promote wise growth management decision-making, and enable local governments to better anticipate and efficiently achieve needed stormwater system improvements.

- S5. Stormwater Management Program, Structural Stormwater Controls (pp. 23-25). “Each permittee shall implement a structural stormwater controls program to prevent or reduce impacts ... caused by discharges from the MS4 ... [including] areas of existing development ... The program shall address impacts that are not adequately controlled by the other required actions ... [and shall consider] new flow control facilities, new water quality treatment facilities, retrofitting of existing stormwater facilities, property acquisition, and ... restoration of forest cover and/ or riparian buffers ... Each permittee’s annual report must provide an annually updated or revised list of planned, individual projects scheduled for implementation during the permit term.” COMMENT – We support the Structural Stormwater Controls Program requirements and incentives included in the draft Phase I general permit. We agree that protecting and restoring the beneficial uses of the State’s waters, especially aquatic life uses, requires a permit framework that proactively addresses existing sources of water quality impairment. Furthermore, we share the concerns identified by the Action Agenda that significant upgrades to existing stormwater systems are needed within municipal permit areas, that prioritization is necessary given the huge investment required, and additional funding is needed to ensure significant progress (Draft Action Agenda, December 9, 2011; pp. 179, 186-188).
- S5. Stormwater Management Program, Source Control Program for Existing Development (pp. 25-28). “Permittees shall enforce ordinance(s) ... requiring the application of source control BMPs for pollutant generating sources associated with existing land uses and activities ... shall implement [training and] inspection program[s] ... [and] a progressive enforcement policy to require sites to come into compliance ... within a reasonable time period.” COMMENT – We support source control requirements, their important function to protect the quality of discharges from MS4s, and their role in preserving and maintaining over time the intended design function and performance of constructed stormwater facilities and BMPs.
- S5. Stormwater Management Program, Operation and Maintenance Program (pp. 35-41). COMMENT – We fully support the included regular inspection, maintenance, and related reporting requirements for constructed stormwater facilities and BMPs. However, we have related concerns. We believe that inadequate maintenance is a common, even ubiquitous, cause of failure for stormwater control facilities. We share the concerns identified by the Action Agenda, that maintenance of stormwater systems has been underfunded in the past, that acceleration of inspection and maintenance programs is needed, and that legacy loads should be identified and removed from portions of systems (Draft Action Agenda, December 9, 2011; pp. 179, 186-188). We believe that Ecology, the permittees, and secondary permittees have a shared responsibility to communicate

funding needs in support of stormwater systems management and control. We believe that a joint effort to communicate the importance of adequate funding is more likely to succeed.

- S5. Stormwater Management Program, Operation and Maintenance Program (pp. 35-41). COMMENT – Long term maintenance requirements must be a basic consideration in stormwater systems design. We encourage Ecology, the permittees, and secondary permittees to further examine and refine life-cycle costs and long term performance of constructed stormwater facilities and BMPs. Better, more complete cost-effectiveness data are needed to improve decision-making by owners and operators of MS4s.
- S6. Stormwater Management Program for Secondary Permittees (pp. 43-62). Re: A Structural Stormwater Controls Program. The draft Phase I general permit does not establish Structural Stormwater Controls Program requirements and incentives for secondary permittees, including the Ports of Seattle and Tacoma. COMMENT – We recommend that Structural Stormwater Controls Program requirements and incentives should be included in the stormwater management programs for secondary permittees. Protecting and restoring the beneficial uses of the State’s waters, especially aquatic life uses, requires a permit framework that proactively addresses existing sources of water quality impairment. We believe that secondary permittees, including the Ports of Seattle and Tacoma, manage significant infrastructure which is not controlled, or only incompletely controlled, by the other required actions. We believe that secondary permittees, like the Phase I (primary) permittees, should consider and prioritize new flow control facilities, new water quality treatment facilities, retrofitting of existing stormwater facilities, and/or other stand-alone projects. Please clarify if the Phase I (primary) permittees’ annual report should and may include planned, individual projects scheduled for implementation by the secondary permittees. We believe that significant upgrades to existing stormwater systems are needed within all, or most, municipal permit areas.
- S8. Monitoring (pp. 63-69). COMMENTS – We support the option of participation in a cooperatively-funded RSMP. We agree that the RSMP should provide significant advantages, flexibility, and efficiencies for permittees and secondary permittees. We believe that Ecology, their permittees, and stakeholders have outlined an appropriately focused and scaled strategy for obtaining reliable program effectiveness data, and a reasonably equitable and fair approach to allocating costs among the permittees and secondary permittees (e.g., Ports of Seattle and Tacoma). We share Ecology’s concern that if too many permittees elect not to participate in one or more RSMP components, it may become inefficient and/or burdensome to implement, and could compromise the regional stormwater monitoring effort (Phase I Fact Sheet, p. 69). We encourage the widest possible support for, and participation in, the RSMP among Phase I permittees and secondary permittees.
- Appendix 1 – Minimum Technical Requirements for New Development and Redevelopment. COMMENT – Please see the comments offered above for the Stormwater Management Manual, including those that pertain to: project thresholds currently in use for applying the Minimum Requirements (road-related projects);

Minimum Requirement #5 (On-Site Stormwater Management); Minimum Requirements #6 (Runoff Treatment) and #7 (Flow Control); Minimum Requirement #7 (exemption to the default pre-developed condition); and, Minimum Requirement #9 (Operation and Maintenance).

- Appendix 1 – Minimum Technical Requirements for New Development and Redevelopment (pp. 12, 35). Re: Basin/Watershed Planning and Modification of the Minimum Requirements. “The Permittee may exempt or institute a stop-loss provision for redevelopment projects from compliance with Minimum Requirements ... [for] replaced hard surfaces if the Permittee has adopted a plan and a schedule that fulfills those requirements in regional facilities.” “Basin planning may ... demonstrate an equivalent level of treatment, flow control, and/or wetland protection through the construction and use of regional stormwater facilities.” “Basin/Watershed planning may be used ... to tailor Minimum Requirements [#5 thru #8] ... through the construction and use of regional stormwater facilities.” COMMENT – We support this concept in principle. We agree that this practice should be feasible, and adequately protective of beneficial uses, where its application can be expected to reliably provide equivalent or better treatment and flow control for discharges from MS4s. Regional stormwater facilities may, in some contexts, provide significant short and long term cost advantages, and/or effectively address the site constraints associated with some sites and projects. However, we understand that this practice is relatively new in its application, and we therefore suggest that Ecology and their permittees take a measured, careful approach to developing such proposals. On-site stormwater management practices should remain the preferred means for controlling stormwater from the majority of sites and projects, unless seriously constrained by the availability of space or other unfavorable site characteristics. We agree that regional stormwater facilities may, to some degree or in some instances, provide opportunities to retrofit and provide treatment and flow control where discharges from existing infrastructure are currently uncontrolled.
- Appendix 6 – Street Waste Disposal. Re: Street Waste Solids. “Contaminated soils are considered solid waste and are regulated by local health departments/districts and regulations governing the disposal of solid waste and hazardous waste.” COMMENT – We appreciate the emphasis, and unambiguous language, included in the permit on this issue. Permittees need to plan and implement safe solids and waste disposal. Permittees need to plan and account for associated costs.
- Appendix 9 – Stormwater Discharge Monitoring. COMMENTS – We believe that Ecology, their permittees, and stakeholders have outlined an appropriately focused and scaled strategy for obtaining reliable program effectiveness data. We appreciate the attention to toxics, including total and dissolved metals, polycyclic-aromatic hydrocarbons, phthalates, and petroleum hydrocarbon fractions. We note, however, that no measure of whole effluent toxicity is included in the revised list of parameters and procedures. We believe that measures of whole effluent toxicity are important to ascertaining the potential additive and synergistic effects of stormwater discharges. We recommend including whole effluent toxicity tests as part of the planned BMP

effectiveness monitoring. We believe that the RSMP should make some effort to obtain additional data and improve our understanding of potential additive and synergistic toxicity effects resulting from stormwater exposures.

- Appendix 11 – Structural Stormwater Controls Project List. COMMENT – Each permittee’s annual report must provide an updated or revised list of planned, individual projects scheduled for implementation under the Structural Stormwater Controls Program. “Permittees want a meaningful way to count projects, to give recognition for what they are doing, and to use the information generated by the reporting in their own management programs.” (Phase I Fact Sheet, p. 42) We fully support and endorse the Structural Stormwater Controls Program. We agree it is important to document the planning and prioritization process, and associated costs and environmental benefits. We understand that Ecology and their permittees will want and need these records as evidence of their program accomplishments, and that this information may be essential to the process of advocating for and obtaining additional stormwater program funding.

COMMENTS FOR THE PUBLIC REVIEW DRAFT **PHASE II PERMIT**

Please note, we believe that the vast majority of the comments offered above for the Stormwater Management Manual and draft Phase I general permit also pertain to the same, relevant portions of the draft Phase II general permit. We have not repeated each of those comments again below. The comments included below are specific to the draft Phase II general permit, have been repeated for emphasis, or address particulars where the Phase II general permit is concerned.

- Stormwater Management Program for City and County Permittees, Controlling Runoff from New Development, Redevelopment, and Construction (Phase II Fact Sheet, pp. 41, 42). Re: Elimination of the One-Acre Threshold. “Ecology proposes to apply the S5.C.4 requirements to new development, redevelopment, and construction at project sites smaller than one-acre. The current ... Phase II permit does not require application of the ... [Minimum] Requirements to project sites smaller than one acre, except where the sites are part of a common plan of development or sale. The thresholds in the draft [Phase II] permit ... are consistent with those in the Phase I permit.” “Ecology’s proposal to eliminate the one-acre threshold is intended to prevent harm to aquatic habitat and water quality ... due to the cumulative impacts of unregulated stormwater from these [smaller] sites.” “Most Phase II jurisdictions recognize the importance of managing stormwater ... at sites smaller than one acre.” “The requirements that apply to S5.C.4 could increase the workload for cities and counties ... The number of site plans to review, [and] site ... and maintenance inspections will increase.” COMMENT – We fully support this proposed revision to the Phase II general permit requirements. We believe that eliminating the one-acre threshold for application of the Minimum Requirements will meaningfully improve controls for discharges from MS4s, and will not unduly burden Phase II permittees and secondary permittees. We agree that eliminating the one-acre threshold is important to addressing the cumulative impacts of unregulated discharges from smaller sites and projects.

- Stormwater Management Program for City and County Permittees, Controlling Runoff from New Development, Redevelopment, and Construction (Phase II Fact Sheet, 47-49). Re: Watershed-Scale Stormwater Planning. “Ecology has ... [established] a planning requirement, suggested by a number of commenters, for basin planning in areas where impending growth threatens high-value habitat or water resources.” “The proposed ... Phase II permit language would require some Phase II permittees to participate with Phase I permittees in the watershed planning process ... Phase II entities must ... [provide] information for conducting the necessary analyses, and must participate in the development of strategies to meet [common] planning objectives.” COMMENT – We commend Ecology, their permittees, and stakeholders for outlining a well-coordinated and comprehensive planning process and objectives. We hope and expect that these stormwater planning efforts will promote a better understanding of watershed functions and functional requirements, promote wise growth management decision-making, and enable local governments to better anticipate and efficiently achieve needed stormwater system improvements.
- S5. Stormwater Management Program, Controlling Runoff from New Development, Redevelopment, and Construction Sites. Re: Watershed-Scale Stormwater Planning (Phase II Permit, p. 35). “Each permittee that has all or part of its coverage area under this permit in a watershed selected by a Phase I county for watershed-scale stormwater planning ... must participate and cooperate with the ... process led by the Phase I county.” COMMENT – We commend Ecology, their permittees, and stakeholders for outlining a well-coordinated and comprehensive planning process.
- S8. Monitoring (Phase II Permit, pp. 50-63). COMMENTS – We support the option of participation in a cooperatively-funded RSMP. We agree that the RSMP should provide significant advantages, flexibility, and efficiencies for permittees and secondary permittees. We believe that Ecology, their permittees, and stakeholders have outlined an appropriately focused and scaled strategy for obtaining reliable program effectiveness data, and a reasonably equitable and fair approach to allocating costs among the permittees and secondary permittees. We share Ecology’s concern that if too many permittees elect not to participate in one or more RSMP components, it may become inefficient and/or burdensome to implement, and could compromise the regional stormwater monitoring effort (Phase I Fact Sheet, p. 69). We encourage the widest possible support for, and participation in, the RSMP among Phase II permittees and secondary permittees.

We appreciate the opportunity to review and offer comments for the revised *2012 Stormwater Management Manual for Western Washington*, and the draft Phase I and Phase II general permits. Ecology, their permittees, and stakeholders have made good progress refining and implementing the MS4 permits and programs. We support the new and revised permit requirements addressing LID practices, TMDLs, stormwater program planning and implementation to achieve sub-basin planning objectives, and the option of participation in the cooperatively-funded RSMP. We are encouraged by the renewed focus and attention on monitoring, source control, and maintenance and maintenance accountability, since we expect all

of these elements are essential. We expect that these permit modifications will meaningfully improve controls for discharges from MS4s, and thereby more completely protect and restore the beneficial uses of the State's waters.

If you have any questions, if our comments require further explanation, or you would like to discuss the MS4 permits and programs, please contact Ryan McReynolds at (360) 753-6047, or John Grettenberger at (360) 753-6044, of this office.

Sincerely,

for 
Ken S. Berg, Manager
Washington Fish and Wildlife Office

cc:

WDOE, Olympia, WA (C. Graul)
WDOE, Olympia, WA (H. Beale)
USFWS, Lacey, WA (M. Jensen)
USFWS, Spokane, WA (M. Eames)