

Clark County Comments on the Draft 2013 Phase I Municipal Stormwater Permit

NPDES Municipal Permit Requirement	Page	Line	Description or language	Comments
S2. Authorized Discharges	7		Discharges to groundwater	The permit should more clearly define what is an NPDES regulated discharge and discharges authorized under state law. Are bioretention facilities and retention basins regulated under state law? Are they defined as "outfalls" under this permit?
S2. Authorized Discharges	7		Definition of an outfall	The permit should clearly define what is an NPDES regulated outfall discharge and discharges authorized separately under state law.
S4.F.1.	9	34-35	"known or likely" violation of water quality standards	Remove any reference to "likely" water quality violation. Only water quality testing can verify a water quality violation.
S5.C.5.A. Scope of SWMPR vs. Permit requirements	11		SWMPR scope may be less than the performance measures of the permit, leading to backsliding issues if a SWMPR activity beyond the performance measures is discontinued.	The permit should clearly state that if a permittee includes an action in the SWMPR that exceeds the performance measures, they are being performed as activities that go beyond accepted of the MEP and AKART of the permit and are not required actions under the permit.
				Not including a provision allowing "backsliding" from the SWMPR reported level will create a disincentive for permittees to do more than is required by the permit.
S5.B,	12	26-28	"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."	To purport to require of permittees what is not required by the permit defies logic and is based on no legal authority.
S5.B,	12	26-28		First, this part of S5.B is neither AKART nor MEP, because it would require local standards that are not required by the permit, which, presumably, is itself AKART and MEP. It is difficult to envision how the general permit terms could be controlling pollutants to the AKART standard, if the permit requires application of standards that control pollutants beyond the required standard. One must conclude that Ecology deems the existing beyond-permit-requirement standards to be the actual MEP and AKART for the locality. Alternatively, this permit requirement is neither reasonable nor practicable, and should be deleted.
S5.B,	12	26-28		Second, this provision fails to recognize that what is reasonable, and even possible, can and has changed within the last permit term. The term "reasonable," which is part of AKART, encompasses the ability of a municipality or a private land developer to fund what is required under the permit. Ecology manager Bill Moore, for example, testified before the Pollution Control Hearings Board in October 2010 that virtually all localities had changed their level of effort toward compliance with the structural retrofit program under S5.C.6. "In some cases," he stated, "pretty significant reductions in that level of effort in the last two to three years since the permit was issued." Direct Testimony of Bill Moore, at 838, 871-72, Rosemere Neighborhood Ass'n v. Department of Ecology, PCHB No. 10-013.
S5.B,	12	26-28		In a time of shrinking resources, Ecology cannot reasonably demand that permittees continue expensive, but not required, programs at the same time that resources must be devoted to new, and required, program components. This language should be deleted from the draft.
S5.B. MEP and AKART restrictions	12	21	This section includes language banning permittees from reducing an activity or standard already in place during the previous permit.	If the reference to "components" is the same as the one in the Definitions e.g. S5.C.5., this language is not needed because permittees are required to perform these components. If it is intended to mean an activity, remove language that binds a permittee to continue an activity above the minimum threshold. This reduces the ability of a permittee to place resources where they are most needed and limits adaptive management within the confines of the prescriptive permit.
			SWMP as AKART and MEP	The permit should state that the overall SWMP is AKART and MEP. This would allow that there is some uncertainty whether each level of performance and requirement is an absolute AKART threshold.
			Permit as AKART	The Permit should state that completing the SWMP and S4.F. and S7 requirements constitutes AKART and MEP. The fact sheet states that SWMP be designed to meet AKART and federal MEP. Presumably the minimum performance measures represent AKART and performing a SWMP that meets the minimum measures is AKART. It is not up to the permittee to decide what AKART is, that is in the permit.
	12	26		page 12 Line 26 includes the requirement to not repeal existing requirements. Technically, all previous code is repealed and replaced by new code. Remove this language.
S5.C.2.a.i. Outfall mapping	13	37	Outfalls now include discharges to GW not regulated by UIC rules.	This is a new mapping requirement precipitated by the addition of groundwater to the definition of an outfall. This makes for a very confusing mapping requirement where MS4 systems discharge to groundwater. For example, would roadside ditches be outfalls? Would an unlined detention facility be an outfall? Would a bioretention facility be an outfall? Permittees have already mapped stormwater facilities that discharge to groundwater, and that should be sufficient to meet this permit requirement.

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S5.C.2.a.iii. Facility mapping	14	1	Requires mapping of treatment and flow control BMPs.	Make it clear that BMPs put in place for projects not subject to MR 6 and 7 are not facilities and are not subject to the mapping requirements.
S5.C.2.a.iv. Mapping geographic area of MS4 not draining to surface water.	14	8	This is a broadly worded requirement to map parts of the MS4 that do not drain to surface water bodies.	This requirement serves little to no useful purpose for Clark County. This requirement would include mapping small areas within hundreds of outfall catchments that drain to localized UIC regulated facilities, retention basins or closed depressions that are not wetlands. In rural areas, it could require extensive review of topographical maps and the county drainage system to map the catchment areas draining to roadside ditches, then find areas within those catchments that do not drain to roadside ditches.
S5.C.2.a.vi. MS4 connection mapping	14	18		The term public entity is vague. Perhaps it should be limited to municipal storm sewers regulated by the Clean Water Act.
S5.C.2.a.viii. 8 inch connections	14	22	Requires mapping of 8 inch nominal connections.	The permit is unclear about whether non-pipe connections such as driveway and private road ditches are included in the connection mapping requirements. Clearly specify that it means pipes 8 inch nominal diameter or larger.
S5.C.2.b.ii. Connection mapping	15	11-16		The "ongoing" and "new" mapping requirements for connections is confusing. The upshot of it all is that permittees are required to map all 8 inch or larger connections within the specified geographic area.
S5.C.2.b.ii. Prioritization	15		ability to prioritize	Permittees, especially counties, should have the latitude to prioritize mapping to areas where it may be most needed. For example, basins where TMDLs exist and areas where watershed planning is proposed or underway.
S5.C.3.a. Coordination within Clark Co.	16	12-16	Org chart submittal	The permit should specify that the org chart include <u>key positions</u> not key personnel.
S5.C.3.a. Coordination within Clark Co.	16	13-14	permittee departments	The permit language should be " <u>identify all permittee departments</u> " that...
S5.C.4.a.	16	38	public participation in SWMP development	Include examples of participation such as, public processes for development code updates, advisory boards and budget approval.
S5.C.4.b. SWMP document availability	17	11-12	states that documents should be available on request.	The wording "All other submittals should be available to the public upon request" is unneeded; it does not take into account state public disclosure law.
S5.C.4.b. SWMP document availability	17	4-12	web posting	Only require the most recent SWMP and Annual Report to be posted.
S5.C.5.a.i. Tailor Minimum Requirements to local circumstances	17	27	Code revisions through basin assessments.	The language in the current permit as interpreted by the PCHB makes it difficult to alter a minimum requirement without completing a full-blown basin plan. The permit should include alternative language that allows for results of technical assessments that provide programs equivalent protection. Something like: certain requirements may be tailored to local circumstances through the use of basin plans or technical assessments that provide programs equivalent to the minimum requirements".
S5.C.5.a.iii	18	17-24 and footnotes 3 and 4	Vesting issues	This section, especially at page 18, lines 20-24, states that "the local program adopted to meet the requirements of S5.C.5.b.i through ii, above, shall apply to all applications submitted after January 1, 2015, and shall apply to projects approved before that date that have not started construction by January 1, 2018." There are numerous problems with this language.
				First, Clark County representatives have been told that the final date, January 1, 2018, is a typographical error, and should be January 1, 2020.
				Second, the requirements of S5.C.5.b.i through ii are not "above" that language. They are below, on pages 20 and 21, and concern code implementation of LID requirements. S5.C.5.a.i through ii are above the noted language, and concern site and subdivision scale implementation of the Minimum Requirements, thresholds and definitions in Appendix 1. Which is correct, paragraph a, above, or paragraph b, below?
				The major legal problem with designating an effective date for local codes is that this permit language would violate the vesting rules set forth in Washington statute and copious appellate precedent. RCW 58.17.033 requires that a proposal for a land division be considered under the zoning or land use controls in effect at the time that a fully completed application for preliminary plat approval is filed with the local government. RCW 19.27.095(a) states the same rule for building permit applications. Westside Business Park v. Pierce County, 100 Wn.App 599, 5 P.3d 713 (2000) (local stormwater drainage ordinance is subject to vesting); Noble Manor Co. v. Pierce County, 133 Wn.2d 269, 943 P.2d 1378 (1997).

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				The PCHB erroneously ruled in Rosemere Neighborhood Ass'n v. Ecology, PCHB No. 10-013, that stormwater requirements do not follow the general Washington rule on vesting, reasoning that NPDES permit standards are environmental regulations, not land use controls. The characterization of some parts of the NPDES permit as strictly environmental mandates may be appropriate, as for water quality standards, maintenance requirements, and so forth. Even if the flow control standard is an environmental regulation, however, it is a hybrid that is also subject to Washington law on vesting. Published materials disseminated pursuant to the education and outreach requirements of a stormwater permit are still subject to state law on libel and slander, and to laws protecting intellectual property. The environmental aspect of the permit does not make other legal considerations ineffective.
				Flow control requirements pursuant to special condition S5.C.5 are land use controls. The flow control requirements are set forth in Clark County's land use ordinance because they dictate the use of developing property; land devoted to detention ponds or bioretention swales cannot be used for built space. Flow control requirements are triggered by land use applications, and are imposed as part of land use approvals and permits. Absent compliance with flow control standards, a development cannot be built at all. Functionally, stormwater standards are land use controls, subject to the rules of vesting in the state of Washington.
				The PCHB decision, which is under pending review at the Washington Court of Appeals, erroneously held otherwise. To the extent that the permit would require application of stormwater standards by dates certain, rather than in conformance with vesting rules, the permit would require subject municipalities to violate Washington law. This section should be rewritten to comply with Washington law on vesting.
S5.C.5.a.iii. Adopt and Apply Standards	18	17-18	Adopt standards equivalent to the SWMMWW by Dec. 31, 2014	Major updates of standards every 5 years provides an unstable regulatory environment and consumes huge amounts of permittee and community resources.
	18			It will be difficult for permittees to adopt code on this timeline. Add at least a year to the schedule. Permittees, working diligently and in good faith required 2 to 3 years to make the last code and manual updates. The proposed changes to mandated LID will likely take longer because of the complexity of code revisions beyond stormwater. For example, Clark County began work on road cross section standards in early 2011 that will include accommodating LID features in the right of way. These standards are simple cross sections for placement of traffic lanes, sidewalks, medians, and LID features. They will take over a year to complete.
	18	20-21	Apply the standards to "applications" submitted after January 1, 2015.	This requirement needs to be reworded to conform with state vesting law that applies to "completed development applications". A "fully complete application" See RCW 58.17.033 and 19.27.095.
S5.C.5.a.iii.	18	22-24	Apply standards to projects approved before January 1, 2015 which have not started construction by January 1, 2018.	This requirement conflicts with vesting and standard practice in Washington state. No provision is made for how the permittee can comply with this requirement.
S5.C.5.a.v.	19		6-month facility inspections during subdivision home construction.	Move the 6-month facility inspections from O and M to this requirement. It is a development inspection activity.
S5.C.5.a.v.	19	21	"using qualified personnel"	Remove the term qualified personnel from the permit.
S5.C.5.a.vi. NOI forms	20	18-24	Process to make industrial and construction NOIs available "as applicable"	The NOI forms are available at the Ecology Web site. Does this need to be in the permit?
S5.C.5.a.vii. Training of staff	20		Continue training program for staff to implement Development regs.	The training requirement seems minor but creates a tracking process for training that would normally take place as part of doing business.
S5.C5.b.i. LID Standards Adopted	20		Adopt LID standards in the permit and revise code and process to allow LID.	This is a huge effort to carry out at the same time the traditional manuals are revised to conform to the SWMMWW 2012. Add at least a year to the schedule. The goal should be to make the change during the permit term and let the system work through the next permit term.
	20	36-41	"intent to of the revisions...commonly used approach..."	revise language to "intent to of the revisions...commonly used approach <u>where feasible</u> ..."
			LID principles are land use standards not stormwater standards.	LID Principles are Land use requirements. While they are good ideas for managing stormwater, they are not strictly stormwater BMPs and may fall outside the area of stormwater management.
			Methods to minimize native vegetation loss	Permittees already have Growth Management Act critical areas rules in place since the 1990s. These regulations limit native vegetation removal in and near wetlands, steep slopes and riparian areas. Additional stormwater rules mandating vegetation retention are not likely to be supported by the public for smaller individual lot development in rural areas.
S5.C5.b.ii.	21	12	list of participants	"Participants" is a broad term that could include a variety of stakeholders and individuals. The language should include agencies, organizations, departments instead of participants.

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S5.C.5.c	21		watershed scale planning authority	Land use planning activities are not an appropriate subject matter for this Permit. The basin planning requirements of this draft Permit are ultra vires and should be deleted.
S5.C.5.c				Neither the CWA nor chapter 90.48 RCW regulates local land use planning. Instead, Washington's regulatory structure for land use and development is contained primarily in chapter 36.70A RCW, the Growth Management Act, and chapter 37.70B RCW, the Local Project Review Act. By attempting in this draft Permit to mandate that Permittees conduct a particular type of land use planning, Ecology is effectively attempting to amend chapters 36.70A and 36.70B RCW. Ecology lacks authority to supersede established state legislation.
S5.C.5.c.	21	20-23		A most troubling aspect of the watershed planning requirement is that the legislature has not authorized any merging of watershed planning under the Phase I permit and planning under the Growth Management Act (GMA). The standards in one program do not match the standards in the other, the policy considerations upon which those standards are based are not identical, and the outcomes for one program can be entirely different from those of the other.
S5.C.5.c				Additionally, the Growth Management Act establishes 13 public policy "Goals" that counties and cities are required to consider and balance when establishing local land use policy. Only one of those 13 Goals involves environmental protection. See RCW 36.70A.020(10). Ecology's proposed basin planning would require Permittees to elevate that single goal - Goal 10 - over the other 12 policy goals described in the statute. Requiring Permittees to put special emphasis on Goal 10 is contrary to Washington caselaw, which holds that all of the policy goals described in the Growth Management Act are of equal importance.
S5.C5.c.	21	20-23		How would a county resolve a conflict between a GMA-based planning decision and an NPDES-based decision? The draft permit contains no guidance to enable either local jurisdictions or appellate bodies to harmonize the diverse requirements of these separate schemes. Indeed, Ecology has no authority to create such rules, because to do so would override the legislature's function and authority. Until the legislature acts to require combined GMA and stormwater planning, and explains how the two sets of standards would work together, Ecology's attempt to require growth management planning via a stormwater permit is ultra vires.
S5.C.5.c.				Further, pursuant to the Growth Management Act, it is counties and cities, not State agencies, that have paramount responsibility and authority for land use planning. RCW 36.70A.3201 reads, in part, as follows: "Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community."
				Thus, pursuant to state statute, it is the County, and not Ecology, that has both the discretion and the obligation to make policy decisions regarding land use planning within unincorporated Snohomish County. Ecology's basin planning requirement usurps the role of the legislature and infringes on the discretion and authority granted to Permittees by the Growth Management Act and its interpreting case law. The basin planning requirement should be abandoned. See, generally, chapter 36.70A RCW; chapter 36.70B RCW; Feil v. Eastern Washington Growth Management Hearings Bd., 172 Wn.2d 367, 259 P.3d 227 (2011); Kittitas County v. Eastern Washington Growth Management Hearings Bd., 172 Wn.2d 144, 256 P.3d 1193 (2011); City of Arlington v. Central Puget Sound Growth Mgmt. Hearings Bd., 164 Wn.2d 768, 193 P.3d 1077 (2008); Thurston County v. Western Washington Growth Mgmt. Hearings Bd., 164 Wn.2d 329, 190 P.3d 38 (2008); Woods v. Kittitas County, 162 Wn.2d 597, 174 P.3d 25 (2007); Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Bd., 161 Wn.2d 415, 166 P.3d 1198 (2007).
			Requirement outside area of MS4	As written, the basin planning requirement is overbroad and ultra vires. Section S5.C.5.c does not limit the basin planning activities to geographic areas that drain to MS4s owned or operated by the Permittee that are covered by the Permit. If Ecology elects to retain the basin planning requirement, it must be revised to accurately reflect the limits of Ecology's regulatory authority. The NPDES municipal stormwater permit program only regulates discharges to or from MS4s owned or operated by the Permittee that discharge to surface waters of the United States. In Snohomish County, significant geographic areas are not served by and do not drain to the County's MS4. For instance, significant portions of both the Quilcida watershed and the Little Bear watershed do not drain to the County's MS4. Those geographic areas are not a proper subject for regulation by this Permit. There is no causal nexus between activities performed on such property and discharges from the County's MS4. Any attempt by Ecology to require the County to undertake activities, including basin planning activities, in geographic areas not subject to the NPDES municipal stormwater permit program is ultra vires.

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				If Ecology wants to create computer models of watersheds, it should either perform such analysis itself or find a legitimate legal basis for requiring local jurisdictions to perform same. Neither the NPDES municipal stormwater permit program nor chapter 90.48 RCW provides Ecology with authority to require local jurisdictions to perform the expansive basin analysis and planning Ecology purports to require in the draft Permit. Ecology should either delete Section S5.C.5.c entirely, or revise it to clearly apply only to geographic areas that drain to portions of the Permittee's MS4 that are covered by the Permit.
S5.C.5.c.ii. Watershed planning Process	21		overall planning process	The permit language suggests that the whole process for a permittee to complete a plan has not be thoroughly considered. Perhaps the goal for this permit should be to establish a system and approach for watershed plan development and implementation. This is as much Ecology's issue as permittees.
S5.C.5.c.i. Watershed selection	21	20 on	Specifies that Counties may select from a specified watershed to conduct mandatory watershed planning.	While these may be perfectly acceptable areas to conduct watershed planning, some counties may wish for greater flexibility in basin selection. That language needs to be in the permit.
			Scope of process includes land use actions beyond the MS4 area regulated under NPDES permits	There should be clear legal authority for land use and watershed scale planning established in the fact sheet. The permit-authorized discharges do not include areas outside of the MS4, which include large areas in rural county watersheds. This argues for a more limited set of mandated activities associated with managing runoff from the MS4.
				Does the requirement for the permittee to protect beneficial uses while accommodating growth become tantamount to imposing GMA requirements under a municipal stormwater permit?
				Watershed-Scale Stormwater Planning is mentioned several ways. It should be consistent. Note that this watershed planning is separate from basin planning embodied in the minimum requirements of Appendix 1 but can include them.
				Consider the appropriate scale for watershed scale planning. It should be at the subwatershed scale (5-15 square miles at most) where permittee actions can make a difference in stream hydrology and water quality.
			Watershed-scale planning included in development regs.	Consider moving watershed-scale planning to S5.C.6. and separating it from the current basin planning that allows alterations to the minimum requirements of Appendix 1.
S5.C.5.c.ii.3	22	7	Language revisions to address scope.	(3) An analysis of flows and water quality for <u>discharges from the MS4</u> conducted at the appropriate scale.
S5.C.5.c.ii.3	22	10	Language revisions to address scope.	(4) Identification of impacts to beneficial uses <u>due to discharges from the MS4</u> for existing development, and predicated (sic) impacts from future development at full build-out under existing or proposed comprehensive land use management plans.
S5.C.5.c.ii.3	22	14	Language revisions to address scope.	(5) Identification of changes to codes, rules, standards, and plans to address harmful impacts to beneficial uses <u>due to discharges from the MS4</u> and comply with antidegradation provisions of state and federal statues and rules.
	22		Lists the components of a Watershed Plan	While there is a list of activities mandated for a watershed plan, there is no reference to guidance documents or an example of a successful plan. This sets in motion an expensive project that may not be acceptable to Ecology.
	22			It would be acceptable for the permit to require stormwater capital planning as a part of planning expansion of the MS4.
	21		Lists Clark, King, Pierce, Snohomish counties. No watersheds in Phase 1 cities.	How will non-county permittees be required to share the financial burden and scoping process for these plans? Deciding that aspect alone could take months or years before the work can even begin. If another permittee fails to cooperate at a sufficient level to meet their reasonable obligations, a county can not be held liable for <u>not completing a watershed plan on time</u> .
S5.C.5.c.iv timelines	22-23		timelines are too short	If watershed-scale stormwater planning is part of the permit, the goal should be to complete the plan during the permit term. A plan or portions of it may then be adopted under the next permit term.
S5.C.5.c.iv plan submittal	23		Requirement to submit a plan	The requirement to submit a watershed-scale stormwater plan should be in each NPDES municipal permit so that permittees besides phase I counties are bound to turn in a plan if they happen to be in a county selected watershed.
			Watershed planning and Stormwater Capital Planning	Specify somewhere that capital improvement projects specified by a watershed plan also meet requirements of S5.C.6.
S5.C.6.a.i. SW CIP Program	23	23	Lists stormwater facility projects considered by the permit.	This list of project types should match the language in Appendix 11.
S5.C.6.a.i.(6) stormwater projects list	23	31	Language describing repair CIPs	The Language should read: Facility maintenance or repair projects greater than \$25,000. (this language will avoid confusion about what is or is not a capital project under various program and accounting standards.)
S5.C.6.a.ii.	23	26	Projects completed under basin or watershed plans	The permit should include language that allows permittees implementing a basin plan or watershed plan to include capital projects in those plans as <u>projects reported under S5.C.6.</u>
S5.C.6.a.iii.	24	9	Prohibits in stream projects	In-channel projects could fall under S5.C.6.b.ii. if they address problems caused or contributed to by stormwater runoff. In addition, projects such as removing fish barriers and stabilizing down cutting (to preserve riparian wetlands) provide greater direct benefit than stormwater facility projects.

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S5.C.6.c.	14		Threshold for including a project in reporting.	What is a reasonable threshold for including a capital project in Appendix 11? Maintenance projects over \$25,000 are included in the permit program. Perhaps that is a reasonable threshold.
S5.C.6.c. Reporting includes various metrics in Appendix 11.	25	15		Comments are in the section on Appendix 11.
S5.C.7.a.iv.	26	4	"Reduction of" pollutants associated with...	Change "Reduction of" to "Efforts to reduce"
S5.C.7.b.iii.(2) Inspection requirements	27	20 - 21	inspect 20% of these listed sites annually	Change the first sentence to reflect the possibility that there will be sites inspected more than once. Something like "The permittee shall complete a number of inspections equal to 20 percent of the source control inventory"
S5.C.7. b.			PARIS database notification	Ecology should have a program to notify municipal permittees when an industrial stormwater permittee receives a notification of violation from the PARIS database.
S5.C.7.b.iii.(2) Inspection requirements	27	20 -30	limit on counting follow-up visits.	Strike the limitation on follow-visits counted for reporting because it may be difficult to count and doesn't really add value to the reporting information.
S5.C.7.b.iii. Training of staff.	28	20 -30	Replaces previous permit language with specific annual requirements to have training and evaluation.	While it appears to add specificity, this requirement is vague and does not have clear outcomes other than documentation that it was completed. Remove training reporting requirements. Source control inspection and outreach include extensive contact with the regulated public. Stormwater programs are not going to send untrained staff to meet the public.
S5.C.8.	29	1	IDDE intent	The first sentence should note that the program is "designed" or "intended" to identify....
S5.C.8.	29	1	IDDE intent	The program should include detection, identification, characterization, removal and prevention ...
S5.C.8.c.i.(2) County screening	31	39	Prioritize outfalls and conveyances for screening	Clarify the intention of prioritizing conveyances for screening. Is this intended to be a new requirement to screen not only outfalls but conveyance systems? Is it intended to refer to areas that are not NPDES permit regulated due to discharge to groundwater?
S5.C.8.c.i.(2) County screening	31	39	screening	Clarify the difference between outfall screening and some other broader conveyance system screening.
S5.C.8.c.i.(2) County screening	31	39	Urban/higher density rural sub-basins	The term urban/higher density rural areas has been a problematic term. Perhaps the permit language should drop the term and just refer to the more well understood Urban Growth Area Boundary and unincorporated rural areas zoned for urban land uses, such as rural centers.
	31	39	Complete at least the remaining unscreened half of the urban conveyance systems and one rural subwatershed.	Clark County completed screening most of the urban area and several rural subwatersheds under the 2007 permit. The permit should state that permittees should complete outfall screening in urban areas not screened under the 2007 permit. If permittees have not screened more than one rural subwatershed under the 2007 permit, they must screen one rural subwatershed no later than...
	32	5-9	Ongoing screening to annually inspect 20 percent of the urban MS4 and one rural subwatershed.	The MS4 is defined in the permit as including municipal conveyance systems that discharge to waters of the state. As this is written, it would include inspecting conveyance systems that discharge to Class V injection wells regulated under UIC rules. The permit does not authorize discharges to UIC regulated structures, so it should not require inspection of conveyances leading to them.
	32	5-9		This language would require counties to screen their entire urban system every five years and five rural subwatersheds every five years. This is excessive considering the relative ineffectiveness of dry-weather screening in relatively modern development in residential and commercial areas that predominate in unincorporated UGAs. The permit should have language similar to that for stormwater facility inspections that allows permittees to not inspect or follow an alternative inspection program for low-risk areas.
S5.C.8.c.iii. Training	32	26	IDDE awareness training for all field staff	This should be limited to employees who's primary job involves working on or near the MS4. Training beyond this group will provide little or no results because of the remote likelihood of encountering an illicit discharge.
S5.C.8.d.ii.(2) Ongoing program to address illicit discharges	34	7 -10	Investigation time line	The current permit has a 21-day window to initiate an inspection of a suspected illicit discharge. That should be retained. If the 7-day investigation language is retained, it should read "initiate an investigation" because it could easily take more than 7 days to investigate a problem.
S5.C.9.	35	21	extra words	Delete "the program shall include:"
S5.C.9.a.Update maintenance standards to the 2012 manual			Maintenance standards	Maintenance standards are not yet included in the draft 2012 SWMMWW. They cannot be commented on.
S5.C.9.a.ii, Maintenance deadlines	36	9	Deadlines for maintenance	This sentence needs to include language that notes only maintenance needed to retain or restore facility functions is required under the permit schedule. Such as "...an exceedence of a maintenance standard for a water quality or flow control function, maintenance shall be performed:"
S5.C.9.a.ii, Maintenance deadlines	36	16 - 21	Maintenance deadlines	The permit should include performance measures that recognize it is not possible to comply with the maintenance standards for 100 percent of the facilities where "circumstances beyond the permittee's control" do not exist. Examples could be 80 percent of regulated facilities and 95 percent of permittee operated facilities.

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NPDES Municipal Permit Requirement	Page	Line	Description or language	Comments
S5.C.9.a.ii, Maintenance deadlines	36	16 - 21	Maintenance deadlines	Bad or unusual short or long-term weather characteristics have an impact on maintenance schedules. For example, an unusually damp spring can lead to an extended mowing season and a corresponding increase in work. Add weather conditions to the list of beyond permittee control circumstances.
S5.C.9.b.i. update code for maintenance requirements	36	27	Requirements for regulated facility maintenance.	This should be clearly limited to catch basins within regulated facilities as part of the regulated stormwater facility inspection program. While it makes sense to inspect inlets away from facilities during facility inspections, it should not be a specific part of a facility inspection. If Ecology believes regulated inlets should be inspected, there should be a separate requirement similar to the permittee operated catch basin inspection that clearly defines expectations.
S5.C.9.b.v. regulated facility std	36	27	No maintenance standard.	In the absence of a standard such as the 80 percent inspection standard, the permit appears to require 100 percent compliance with maintenance standards in S5.C.9.a. This is not practicable or reasonable. Considering that the inspection standard is 80 percent, a standard of compliance at 80% of the sites is probably realistic.
S5.C.9.b.iv. Six month inspections during residential build out	37	25-28	90 percent threshold	This requirement should be limited to having a program to inspect and enforce maintenance requirements in new subdivisions. It should be in S5.C.5. as it is a development enforcement requirement.
S5.C.9.b.vi. Regulated catch basins	37	29-37	6-month regulated catch basin standard	Make the regulated catch basin maintenance enforcement schedule one year to match typical facility maintenance. That would allow one trip per year for inspection.
S5.C.9.c.iii. Maintenance compliance criteria	38	22-27	No maintenance standard.	In the absence of a standard such as the 90 percent inspection standard, the permit appears to require 100 percent compliance with maintenance standards in S5.C.9.a. This is not practicable or reasonable.
S5.C.9.c.iii. Maintenance compliance criteria			Includes compliance with spot checks in S5.C.9.c.ii.	Spot checks are a part of routine operation and should not be a permit compliance measure that is reported.
S5.C.9.d. catch basins	39	11-25	inspection and cleaning options	The new language is unclear.
S5.C.9.d.iii. catch basins	39	28 -31	Catch basin maintenance standard	The permit needs a maintenance standard for catch basins. Perhaps 90%of inspected catchbasins maintained is reasonable.
S5.C.9.e.vi.	40	13	snow and ice practices	Clarify whether this refers to snow disposal or disposal of sand applied to roads.
S5.C.9.f. Training	41	5-15	Adds language on the scope of employee training	Permit language should focus training on employees who's primary duties include construction or maintenance that could impact stormwater quality.
S5.C.9.f. Training	41	5-15	Adds language on the scope of employee training	The permit should only require training in the areas related to job function because employees often do not accept or retain training unrelated to their job functions.
S5.C.9.h. Record keeping	41	31-32	"maintain records of inspections and maintenance or repair activities by the permittees".	This section should be worded to apply only to facility and catch basin inspection and maintenance to meet requirements of S5.C.9.a-d.
S5.C.10.	43	16-17	New target audience and new target subject area	Make it clear as to what "new" means. Is it a current targeted audience not previously surveyed?
S5.C.10.	43	2-3	Training for engineering and contracting personnel	Permittees should not be responsible for training engineers who are licensed professionals. The same goes for contractors who have trade associations who can provide training. Also, Ecology should provide the public training on standards in its permit-adopted manuals
S8. monitoring	63	16	Monitoring	The fact sheet makes a clear statement that the goal of permit required monitoring is to collect information that is useful for local governments, Ecology and others. Clark County agrees with this goal. Unfortunately the monitoring requirements of the permit do not clearly reflect this goal, especially in the case of mandating continued stormwater monitoring.
S.8	63	1	Monitoring	General Comment - This radical shift in effectiveness monitoring requirements now shifts monitoring from permittees to DOE, which was part of our original argument in previous appeal - this sort of academic exercise is rightly the responsibility of the regulator, rather than imposing the requirements on permittees. That being said, this draft permit does not shift the financial burden. Rather it forces the permittees to contribute \$ to DOE to complete a DOE mandated requirement. This is especially troubling, since Clark County was not part of the SWG (invited to party late). And, we have made significant investment to meet previous permit standard.
S8.B. Other monitoring reporting	63	16	Calls for reporting on projects "conducted" during the reporting period.	It would be more useful and efficient to only report on stormwater studies "completed" during the reporting period. Sticking with reporting on completed projects allows the results and any management recommendations to be reported and eliminates the need to summarize incomplete projects.
	63	15-22	Reword paragraph	All Permittees including Secondary Permittees shall provide, in each annual report a description of any stormwater monitoring or stormwater-related studies <u>completed</u> by the Permittee <u>or on behalf of the permittee</u> during the reporting period.
S8.C.Status and Trends Monitoring	64	1	title of section	This section should more appropriately be called 'receiving water and stormwater monitoring' to more accurately reflect the required actions. The actions are one time receiving water monitoring or stormwater characterization monitoring. Neither of which will measure trends.

Clark County Comments on the Draft 2013 Phase I Municipal Stormwater Permit

NPDES Municipal Permit Requirement	Page	Line	Description or language	Comments
				If receiving water monitoring is part of the NPDES permit, the permit should allow Clark County to meet receiving water monitoring requirements using its ongoing status and trends program.
				The Fact Sheet states on page 64 that the S8.C.1. monitoring is to answer basic questions as to whether conditions in receiving waters are improving, static or deteriorating. That is one of the main goals of the Clark County stream monitoring program.
			Fact Sheet misrepresents Clark County's status and trends proposal. This suggests it was never seriously reviewed or considered.	The Fact Sheet is incorrect (page 67 1st paragraph) misstates the SW Washington proposal as one stream per jurisdiction, then rejects it as inadequate. The actual number proposed was commensurate with each permittee's receiving water bodies.
				If the permit includes receiving water monitoring, the permit should include receiving water status and trends monitoring as proposed in Clark County's suggested draft language. This would include continuing the program at 9 sites. The Clark County proposal represents a greater level of effort per WRIA than the SWG proposal. Also this level of effort would be directly associated with the county's receiving waters and stormwater management program. When Ecology and permittees develop a SW WA receiving water monitoring program during the permit term, the current program can be revised to accommodate it.
S8.C.2. Clark County Status and Trends	65	15-32	Requirement for Clark County to continue stormwater characterization monitoring (S8.D. in the 2007 permit).	Stormwater characterization monitoring was discontinued in the Puget Sound region for several reasons stated in the Fact Sheet and because it would not realistically answer the question of whether improvements in stormwater quality are being made as a result of the permit. The likely Clark County status and trends contribution in the draft permit would be approximately \$300,000 during the permit term. The cost to continue three stormwater characterization sites for five years is \$820,000. This is not a valid alternative option.
				Clark County collects receiving water data for 10 long-term status and trend sites on representative water bodies in subwatersheds of a size in which county and the public's actions may influence stream conditions.
			Estimated cost for Clark under its current program	Costs for the status and trends project in 2010 was about \$80,000, comparable to the amounts required for Puget Sound counties. This amount included 10 status and trend sites, 7 of which have stream flow gauges.
			Rationale for continuing stormwater characterization in Clark County	Ecology does not provide a rationale for requiring Clark County to continue stormwater characterization monitoring. This is especially troubling considering Clark County maintains a robust receiving water status and trends monitoring program that could readily meet Ecology's monitoring goals.
				Clark County began a program to conduct receiving water monitoring in 2001. This was in response to the both county policy makers needs and the Clark County 1999 phase I that required development of receiving water characterization. In anticipation of the requirement to implement receiving water monitoring in the next permit, Clark County developed a monitoring and data management program with the intent that other county entities could participate.
			County committed to regional monitoring approaches.	Clark County is committed to regional monitoring and participates in several regional monitoring programs.
				Clark County has published stream health reports based on data collected from county streams. The most recent is the 2010 report available on the web: http://www.clark.wa.gov/water-resources/stream.html
			Regional monitoring	The fact sheet states that Ecology recommends Clark County become more actively engaged in development of a salmon recovery monitoring program for the lower Columbia River. This statement overlooks the fact that Clark County is actively engaged with regional monitoring efforts not associated with Ecology's current permit requirements.
				Clark County has been promoting regional monitoring coordination for many years. However, it is not appropriate to propose a regional permit-driven receiving water monitoring program in SW Washington due to the limited portion of the area included within the jurisdictional boundaries of the permittees.
				Clark County and Salmon Recovery monitoring - LCFRB RME - Lower Columbia Fish Recovery Board's Research, Monitoring and Evaluation program. This regional program leverages existing Clark County status and trends monitoring in planning future site selection and addressing regional data gaps.
				Clark County and PNAMP/ISTM -Pacific Northwest Aquatic Monitoring Partnership, Integrated Status and Trends Monitoring project. Along with Ecology, Clark County is, and has been, an active participant in this effort to promote consistency, data sharing, and efficiency in regional monitoring. The ISTM effort recognizes the need to incorporate and leverage existing monitoring programs, such as the County's, into regional sampling designs and master samples. The permit should recognize the value of the county's ongoing status and trends program and support our proposal to continue/expand this effort in cooperation with PNAMP, LCFRB, etc.
				Greater Portland Pulse. Clark County is an active partner in this regional report card and contributed data, analysis, and committee representation to the inaugural 2010 effort. GPP expects Clark County to continue providing status and trends data.

Clark County Comments on the Draft 2013 Phase I Municipal Stormwater Permit				
NPDES Municipal Permit Requirement	Page	Line	Description or language	Comments
S8.D.1. Effectiveness Monitoring full pay in option	66	5	Payment dates	Specify the date when the first payment is due, not when annual payments begin being due. Perhaps something like this: "The first annual payment is due on August 15, 2014 and each August 15th until the permit expires." Specify the total amount for the permit term.
S8.D.2. Effectiveness Option 2	66		Option 2 proposes five stormwater characterization sites as an alternative to full pay in option.	Ecology should not propose an extremely costly alternative (stormwater monitoring) that will be abandoned after the current permit without providing a compelling argument. Perhaps there are permittees who are conducting stormwater characterization as part of an ongoing program to reduce pollutants from their system. In such a case additional stormwater monitoring may be warranted. But without a compelling reason, this is an onerous option that is not fiscally responsible for permittees to pursue.
	66		Effectiveness monitoring option 2	Option 2 provides no information to make management decisions on permit component effectiveness without conducting an experiment in the area monitored.
S8.D.2. Effectiveness Option 3	66		Option 3 proposes pay in 50% and complete an effectiveness study.	The fact sheet includes some discussion of the level of effort expected in terms of cost. Perhaps there should be some statement of the level of effort in the permit itself.
S8.D.2. Effectiveness alternative 3	67		Option 3 proposes pay in 50% and complete an effectiveness study.	Permittees opting to conduct their own studies should not be expected to incur costs greater than Option 1. They should not be expected to pay as much as 50% of pay-in option 1. This is a strong disincentive to independent studies and inappropriate considering that the independent study option is allowed. Also, the option 3 project would not be part of the RSMP, so a permittee should not be required to pay into the program.
S8.E. Repository	68		Pay in or submit quarterly reports	On the pay in option - This is information that Ecology should provide for its own toxics and stormwater pollutant reduction programs. It should come out of various permit fees and taxes associated with the creation and distribution of toxic materials and pollutants. Not just municipal stormwater permittees.
S8.E. Repository	68		Pay in or submit quarterly reports	On the quarterly reports option - The information in these reports will provide no new data suitable for the repository. This would be the type of information used as the basis for requiring source control and treatment BMPs already employed by permittees. The quarterly reporting schedule has no basis in an actual need at Ecology (who is going to read them and compile the data each quarter?) and appears to be designed as an onerous requirement intended to spur permittees on to the pay-in option.
S9 Annual report			General -	This is a helpful simplification of the permit language for annual reporting.
S9 Annual report Form			Report form	Anything done to simplify the reporting is appreciated.
S9 Annual report Form			Report form	The requirements to report that a permittee has complied with ongoing permit requirements such as tracking expenses appears unneeded if it is a standard activity performed by all municipalities.
S9 Annual report Form			question 4	This is unclear. Wouldn't the permittee be implementing all of its SWMP?
S9 Annual report Form			Question 26	Building permit-related stormwater inspections for projects triggering only MR 1-5 are a large fraction of permittee inspections but are relatively simple. Subdivision and commercial/industrial/multifamily development projects are the most complex and demanding, triggering MR 1-9. It might be appropriate to only report the number of inspections for projects that trigger MR 1- 9.
S9 Annual report Form			question 40.b.	Phase I permittees reported and made needed code revisions as part of their part I and II applications back in the 1990s.
S9 Annual report Form			question 86	This should be a status report not interim results.
Definitions	83	10-15	Illicit connection	Is there a definition in the CWA that can be used here?
Definitions	83	16-22	Illicit discharge	Look at this very carefully. Infiltrated groundwater would be a water of the state. Imagine a roadside ditch with infiltrated groundwater. Make sure the infiltrated groundwater is not categorically an illicit discharge. Reference the exemptions in S5.C8. Ground water flows will be suspect and tested but they are not illicit discharges.
Definitions	83	32-40+	common plan of development	Drop this if it is not in the permit.
Definitions	84		LID	Define LID as stormwater management practices exclusively and not other land use actions that may address other societal goals.
Definitions	84	20-25	LID BMPs	Make certain that definitions of LID BMPs clearly delineate which are actual infrastructure and which BMPs are non-structural actions.
Definition			Outfall	If Ecology needs to define discharge points to waters of the state that are not NPDES outfalls, perhaps it would be more appropriate to coin a separate term for them. Keep outfalls as NPDES outfalls and add a new term such as "state permitted groundwater discharge points" for the discharges to groundwater that are not UIC regulated. Can the Clean Water Act outfall definition be used?
				The outfall definition should exclude open conveyances that are built as part of the MS4. This could be discharges to groundwater.

Clark County Comments on the Draft 2013 Phase I Municipal Stormwater Permit

NPDES Municipal Permit Requirement	Page	Line	Description or language	Comments
Appendix 1	30		MR 7	The draft language requires stormwater discharges to matched developed discharge durations to pre-developed durations for a range of stormwater flows. With two exceptions, the pre-developed condition to be matched is a forested land cover. These provisions may require municipalities to violate RCW 82.02.020, which forbids any municipal corporation from imposing any direct or indirect tax, fee or charge on the construction of buildings or the development or subdivision of land. Only dedications of land or easements within proposed plats that are reasonably necessary as a direct result of the proposed development or plat from which the dedication or easement is taken are allowed. The restorative aspect of requiring developers to match discharge to that from a forested condition goes far beyond what is reasonably necessary as a direct result of the proposed development.
				Pursuant to RCW 82.02.020, a municipal government cannot lawfully require private developers to address the impacts of historical land clearing and development on their properties. The permit should not require a local government to open itself up to liability under RCW 82.02.020 or a constitutional takings lawsuit. Instead, the pre-developed condition to be matched should be the existing land cover onsite prior to the development.
Appendix 1	36		Feasibility in Section 8	Land use development proposals frequently generate significant controversy. The County is concerned about the potential for endless dispute and litigation regarding whether or not it is “feasible” to use LID techniques on any particular site. The County asks Ecology to revise Section S5.C.5.b and/or Appendix 1 to clarify which party is entitled / required to make the determination regarding the “feasibility” of LID on any particular site and what standard of deference must be afforded to that decision-maker’s determination by administrative and/or judicial tribunals if and when the proposed project is appealed.
				As Section S5.C.5.b and Appendix 1 are currently written, the entire design of any particular land development project will depend on a threshold determination regarding whether or not (or to what extent) it is “feasible” to use LID techniques to manage stormwater on the site. If it is feasible to use LID BMPs, then the project must use LID BMPs. If it is not feasible to use LID BMPs, then the project can not be allowed to use LID BMPs. Thus, the entire design of any particular development project will hinge on this determination. (Accordingly, if a project proponent is initially told by a planning department that LID BMPs are not feasible for the project site, the project proponent will design the project using conventional BMPs instead. If, months later at the public hearing on the project, the Hearing Examiner determines LID BMPs are feasible for the site, the project proponent will have to re-design the entire project in order to proceed.)
				However, while the LID feasibility determination will be critical to the site design, the County anticipates there will frequently be no clear right or wrong answer to the question of whether or not LID is “feasible” on a particular site. Unlike most traditional land use permitting criteria, which involve straight forward calculations and metrics that are easily quantified and capable of being accurately and consistently measured by trained personnel, determinations regarding the “feasibility” of LID are not as amenable to definite, clear-cut, unambiguous computations. Instead, such determinations will often be made largely based on an engineer’s professional judgment.
				When professional judgment (rather than a measurable metric) is the primary basis for an important decision, that decision is apt to be disputed. As is the case with many types of decisions involving professional judgment (e.g., real estate appraisals, legal opinions, medical treatment), it is entirely possible that two equally well-trained and well-qualified engineers will reach different but equally legitimate and defensible conclusions about the “feasibility” or “infeasibility” of using LID on a particular site. If different engineers/scientists can reasonably disagree about whether or not LID BMPs are feasible on a particular site, then there will typically be multiple experts available to substantiate either view.
				Under these circumstances, litigation will proliferate. Increased litigation is undesirable as it increases transaction costs and frustrates Washington’s public policy favoring clarity and finality in the process of developing land. Ecology should take proactive steps to minimize litigation regarding LID “feasibility.” By way of example, Ecology should clearly assign to a particular party the responsibility for making determinations regarding the feasibility of using LID BMPs on a particular site. Ecology should clearly specify the amount or type of deference that administrative and judicial tribunals reviewing the proposed project must accord that party’s decision (i.e. the applicable standard of review).

Clark County Comments on the Draft 2013 Phase I Municipal Stormwater Permit

NPDES Municipal Permit Requirement	Page	Line	Description or language	Comments
				A somewhat analogous situation occurs when a threshold determination is made pursuant to the State Environmental Policy Act, chapter 43.21C RCW ("SEPA"). If the SEPA responsible official issues a determination of significance, the time and expense involved in creating an environmental impact statement is so substantial that Washington courts allow property owners to directly and immediately challenge a SEPA threshold determination of significance by constitutional writ to Superior court. However, at the same time, the standard of review the Superior court applies to the SEPA responsible official's threshold determination is a very deferential standard; the threshold determination will only be reversed if it was arbitrary or capricious. The County suggests Ecology consider the SEPA analogy and develop and implement a mechanism to efficiently resolve disputes regarding the "feasibility" of using LID BMPs on any particular project site.
Appendix 1	33		Minimum Requirement 8 compliance via Appendix I-D of the SWMMWW 2012	The permit references a draft guidance document (2012 SWMMWW vol.I Appendix I-D) that has not undergone rigorous review as a scientifically and legally defensible approach to managing stormwater discharges to wetlands or to enhancing degraded wetlands as <u>multipurpose stormwater treatment and habitat areas</u> . Code and manuals are cited in Permit Appendix 10.
			Minimum Requirement 8 compliance via Appendix I-D of the SWMMWW 2012	The Guide Sheet 2 restriction on all stormwater BMPs/facilities from all wetlands with native amphibian species in all situations is unrealistic and not supported by best available science for the region.
Appendix 1 page 33	33		Minimum Requirement 8 compliance via Appendix I-D of the SWMMWW 2012	Guide Sheet 2. Degraded wetlands are often used for complex habitat restoration projects that combine elements of wetland mitigation, stormwater management and habitat restoration (e.g. reforestation). Clark County has found through monitoring by a local science professor that <u>restored wetlands and stormwater facilities support breeding populations of native amphibians</u> .
Appendix 6	2		Solids	The language needs to be augmented. Sediment is not always solid waste. The section titled street waste solids would be more appropriately titled solid waste. Materials removed from features such as roadside ditches, swale surfaces, detention ponds, and the like are considered solid waste. The permit should have language something like: Solids generated by maintenance of the MS4 may be reclaimed, reused, recycled or used in accordance with local codes and permits. Contaminated soils as designated by Chapter 173-350 WAC shall be disposed of at a <u>permitted solid waste disposal facility</u> .
Appendix 9 Monitoring	7		Table 9-1	Three parameters are still included in Table 9-1 under conventional parameters (Particle Size Distribution, Grain Size, and pH) that have been dropped from required parameters in the Appendix 9 text on page 3. The new lower MRL for Bis(2-ethylhexyl)phthalate of 0.250 is not routinely achievable in commercial labs and should remain at 1.0 micrograms/ L.
	9		Table 9-2	For Percent Solids, method SM2540B can not be correctly done on centrifuged samples so should also include method 160.3M to address pipetting issues of a mostly solid sediment sample by mass rather than volume for aliquoting. Two parameters are still included in Table 9-2 under conventional parameters (Total Phosphorus, Total Volatile Solids) that have been dropped from required parameters in the Appendix 9 text on page 4. Also BTEX is included in Table 9-2 but not included in Appendix 9 text on page 4 for Sediment samples.
Appendix 11.	1 and 2		Retrofit Incentive	The term retrofit incentive is confusing. Call it a capital project value or something similar. Ecology stated at the Vancouver workshop that this is an experiment during this permit term to create a numerical value for each capital project. Consider further review of this untested metric <u>during the permit term</u> .
	1		Start and end year	Better define what start and end year are. Is it construction? Projects start when they are assigned expense coding, usually this is some point in early design. Projects end in a variety of ways. Standard construction may end years before project costs to install and raise vegetation costs end and maintenance begins. Projects may contain elements that are complete, for example detention capacity, while other elements - such as <u>wetland vegetation for treatment are not</u> .
Appendix 10 - Equivalent programs	2	29-38	Clark County Program	None of the language referencing Clark County Code should be stricken due to the PCHB ruling that applies to the flow control standard.. The Pollution Control Hearings Board did not strike down Clark County code and manuals, only the program to apply Minimum Requirement 7 of permit Appendix 1, the "Flow Control Mitigation Program". Ecology should retain the language adopting code and manuals and add a footnote or other language noting that the pre-development land cover must be historical forest in order to use MR 7 under the county code.
Appendix 10 - Equivalent programs	2	29-38	Clark County Program	There may be phase II permittees who reference Clark County manuals. They would also be impacted by removal of this language.
Appendix 10 - Equivalent programs	2	footnote	Clark County	The footnote is in error. See the Agreed Order (7273) and the PCHB ruling for the correct information. The PCHB ruling did not invalidate Clark County's regulatory program in its entirety. Only the flow control portion under the agreed order and subsequent permit modification in September 2010 was appealed.
Appendix 11 - S.5.C.6.b.ii			Project Summary	Are benefit calculations the same as previous? Are we obligated to list all projects that may meet permit conditions, or can we list the minimum?
Appendix 12 - Monitoring	2		Funding Agreement	SWG was comprised of whom?

Clark County Comments on the Draft 2013 Phase I Municipal Stormwater Permit				
NPDES Municipal Permit Requirement	Page	Line	Description or language	Comments
Appendix 12 - Monitoring	2	33	Funding Agreement	DOE not responsible for cost overruns greater than 10%. Who is?
Appendix 12 - Monitoring	7	25	Funding Agreement	Are any Regional Effectiveness studies planned for Clark County? - Att. C does not specify. Great research hypotheses, which should not be the responsibility of regulated MS4, rather should be the regulators responsibility, since they are imposing many of the BMPs contemplated. Furthermore, while nice to know, the financial burden associated with answering many of the hypotheses should be given more consideration. For example, #18 Do humans value the unmaintained pond for the "wildness"... Are we being forced to fund fanciful research?

Clark County Comments on the Draft 2012 Phase I Municipal Stormwater Permit

NPDES Municipal Permit Requirement	Description or language	Comments
Multiple	Dates for implementation	Review dates for appropriateness under the 2012 permit. Dates should be within the permit period.
S8.C.1.a. Stormwater Characterization Monitoring	Requires permittees to gather 3 full water years v of data	Drop the stormwater characterization monitoring at the time the 2007 permit expires. Resources can be dedicated to watershed-based stormwater management and higher priority monitoring work such as stream flow gauging and water quality investigations.
		Permittees may have partial water years or are capable of completing the monitoring at rates exceeding the 11 storms per site samples per year. At the very least, the permit should allow the equivalent number of samples to 3 years. That would be 33 samples per site at the seasonal percentage specified by the permit.
		Ecology proposed this monitoring effort as a means to not only characterize stormwater but describe its changes with time at specific locations (S8.C.1.a. of the 2007 permit). Since it is being discontinued, the need for data to measure changes with time and simply use it to characterize stormwater constituents. If this is the case, the samples collected during the permit term and by stormwater programs throughout the country should meet this need without expending further resources that could be used to better manage stormwater or plan and execute needed monitoring programs.
		The fact sheet provides no clear basis for requiring the three water years of storm monitoring.

Clark County Comments on the 2012 issued Phase I Municipal Stormwater Permits Fact Sheet

NPDES Municipal Permit Requirement or Fact sheet topic	Page and Paragraph	Item	Comment
		Basis for permit requirements	Generally, the fact sheet describes permit requirements, with little information explaining the basis in AKART and MEP.
		Untested strategies and approaches	The permit includes many new and untested approaches and requirements. These include updated development standards, complex manuals, and watershed-scale stormwater planning. Placing rigid yet untested requirements in an NPDES permit can lead to high likelihood permittees will waste resources and fail to fully comply with the permit.
one year delay to 2013 permit	5 p.4.	One year delay on phase I requirements	If the permit deadlines are reviewed to estimate the amount of effort and time required to meet permit requirements such as code revisions, it is clear that Ecology expects permittees to begin work on 2013 permit requirements. Ecology staff have informally stated that they expect permittees to begin work on permit requirements before the permit becomes effective.
Omitted topic		Omits consideration of current recession impacts on permittee ability to respond to increased stormwater requirements.	The fact sheet should include a realistic estimate of the amount of resources required to implement the new permit requirements to provide the public with a basis for evaluating if increased requirements are worth the cost. The fact sheet completely ignores the fact that municipalities are in an unprecedented time of reduced resources. Cities and counties are doing the best they can to meet current requirements. Some consideration of their ability to meet new requirements should be made by Ecology, especially considering that several such as monitoring, creating a watershed plan and extensive code revisions to implement mandated LID will be at great cost (~ \$4 million dollars during the permit term) and do little to improve water quality.
Permit timing	8 - 4	permit issuance and timing	It is apparent that Ecology expects permittees to begin work on actions of the 2013 permit during 2012. For example code and manual adoption. The fact sheet should include some discussion of how this should be accomplished if the permit is under appeal. The fact sheet should also describe the basis for permit timelines not based in an actual permit requirement. How can Ecology expect permittees to perform permit requirements that are not yet part of the permit?
Outfall Monitoring averages	15 p. 5	average concentrations omit nondetects	By not including estimates for values below detection limits, averages are much higher than they should be.
EPA rules	18 p.6	EPA intended flexibility for permittees	EPA's intent to allow flexibility for permittees to focus resources on the greatest needs is not reflected in the phase I permit. For example, an urbanized permittee such as Seattle places a strong emphasis on LID implementation for redevelopment. Counties generally place a greater emphasis on watershed assessment for capital planning and using stormwater regulations to manage impacts from new development.
		EPA rules compared to Ecology permit	It would be helpful for permittees if the fact sheet included a description of how the Ecology permit differs from EPA rules and the rationale for those differences. This would enable us to present this information to elected officials who approve programs and budgets.
State rules	19-20	State Regulations - geographic area of permitting authority	Please include a description of how state law provides authority to impose permit requirements on areas geographically outside the area of authorized discharges under the permit. Requirements such as watershed planning mandate that permittees perform activities outside of the area draining the MS4 in order to be effective and meet the permit requirement. This information would also enable permit managers to describe the legal basis for these requirements to our elected officials.
	19-20	State Regulations - ability to regulate land use rules other than stormwater controls	It would be helpful for permittees if the fact sheet included a description of the legal authority Ecology possesses to regulate land use within the MS4 area and outside of it. This would enable permit managers to describe the basis for permit requirements that include land use planning and site planning requirements such as native vegetation retention to elected officials and the public.
	19-20	State Regulations - ability to reference draft or unpublished manuals in a public review period Draft NPDES permit.	The fact sheet should explain Ecology's legal authority to reference draft manuals (2012 SWMMWW) and unpublished manuals (LID technical manual) in the draft permit if the permit requires their use.
	20	discharges to waters of the state	It would be helpful to understanding of the requirements in S2 and the definition of an outfall if the application of state law under the permit were more thoroughly described here.
S2	27-28	Authorizes discharges to groundwater for discharges not regulated under the Clean Water Act.	It would be helpful for permittees if Ecology described the purpose and authority for regulating non-UIC discharges to groundwater under a state waste discharge permit. Ecology's regulation of UIC and CWA regulated discharges are clearly defined in state law in response to these federal mandates. Regulation of municipal stormwater to non-UIC regulated infiltration BMPs does not fall neatly into NPDES or UIC categories.
S5.B.	29	Maintaining ongoing programs	The fact sheet should note that a permittee's SWMP meeting the permit's performance measures is meeting AKART and MEP standards. The fact sheet should also recognize that federal rules are intended to allow permittee flexibility within the SWMP, which could include reducing efforts in one area by reallocating resources to produce a greater overall benefit. The fact sheet should also recognize that increased permittee knowledge about the effectiveness of a practice could lead to a change in how it is applied, reducing its use from a current level.

Clark County Comments on the 2012 issued Phase I Municipal Stormwater Permits Fact Sheet

NPDES Municipal Permit Requirement or Fact sheet topic	Page and Paragraph	Item	Comment
		WSDOT role	Describe the role of the state, especially WSDOT, in basin planning. Their freeways and highways can have an enormous influence on stream conditions .
		Selection criteria for watershed planning areas	Availability of already collected data on flow and water quality should be considered as a criteria for the first study. Especially flow data if no existing calibrated models are available.
			Existing calibrated hydrologic and hydraulic modeling should also be considered .
	35	LID principles	LID principles should be described as land use strategies or regulations and how land use regulation are appropriate as stormwater management tools, along with the other functions such as preserving habitat.
S5.C.5.b.	36	LID hydrologic performance standard	The fact sheet should describe the basis for this untested performance standard. It is not part of any stormwater manual in use in the United States.
S5.C.5.c.	37-38	Basis for watershed planning	The fact sheet notes that using the permit and SWMMWW are not adequate to prevent beneficial use loss due to development and redevelopment. This may be true but there is no real world knowledge to prove that full implementation of the permit's LID, treatment and flow control standard won't work. Considering this, is it factually supportable to have a vague and unstructured watershed planning requirement in the permit?
			As stated in the regulatory section, the fact sheet should describe Ecology's legal authority to mandate land use planning activities and analysis for areas outside the area of authorized discharges under S2.
		p.37 'The challenge for the permittees is to explain what actions they will take that will break this historical pattern of urbanization concurrent with stream degradation and loss of beneficial uses'.	Is there any precedent that this expectation can realistically be met? If so, please cite. If not, perhaps Ecology could find a way to more realistically couch the objectives and expectations for watershed planning.
			Consider study areas that are urbanizing areas of larger watersheds because subwatersheds (5-10 square miles) are manageable and may be largely inside the UGA.
S5.C.a and b	38-39	schedule	The fact sheet should describe the legal basis for expecting permittees to work on a permit requirement that is not part of the effective permit at that point in time.
S5.C.5.	39 p.5.	Ecology does not plan to review broader code revisions for LID implementation	The fact sheet should provide a basis for the schedule for draft code submittal. To meet the permit schedule, permittees will need to submit draft code that is very similar to the final adoption version. Just pulling numbers out of the air is not fact based. Permittees, working diligently and in good faith required 2 to 3 years to make the last code and manual updates. The proposed changes to mandated LID will likely take longer because of the complexity of code revisions beyond stormwater. For example, Clark County began work on road cross section standards in early 2011 that will include accommodating LID features in the right of way. These standards are simple cross sections for placement of traffic lanes, sidewalks, medians, and LID features. They will take over a year to complete.
	40 p.4	Application description	The fact sheet should present the factual basis for the description of a completed application that is recognized in state law and cite that law. Permittees are bound by state vesting law and cannot change standards based on the NPDES permit.
	40 p.5	5-year project window for previous requirements	The language in the permit disagrees with the fact sheet. It only provides a three year window from January 2015 to January 2018.
S5.C.5.	40 - 3	Adoption date and effect date are the same.	Ecology does not recognize experience of past permits where it requires some time to prepare processes to implement newly adopted code. Implementation steps are separate tasks, and are also dependent on the final code language. For these reasons, the fact sheet should recognize the need for a 2 to 3 month ramp up to effective date.
S5.C.5.	40-4	Definition of a completed project application.	The completed project application is recognized in state vesting law and should be the standard applied to all vested projects under the permit. A "fully complete application" See RCW 58.17.033 and 19.27.095.
S5.C.5	40-5	States that the new stormwater requirements would apply to previously approved projects that have not started construction within five years of the effective date of the new stormwater requirements.	This disregards the fact that the state may and has changed vesting rules.
			The fact sheet provides no description of how the permittee would meet this requirement without violating state vesting rules.

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NPDES Municipal Permit Requirement or Fact sheet topic	Page and Paragraph	Item	Comment
	40-41	Cited manuals	The fact sheet references two manuals that do not exist at the time of draft permit and factsheet publication. This provides no factual basis for the requirements of the two manuals.
		Cited manuals	Along with the cited manuals, manuals also cite additional guidance manuals that are not referenced in the permit. The fact sheet should list all of the manuals that permittees will have to follow, both by direct reference in the permit and indirectly by reference in adopted manuals.
		Project types do not include restoration work with potentially higher benefit than stormwater facility retrofits.	There is no explanation of why in-channel projects are not considered as mitigating for stormwater impacts to streams. While these projects are not within the area of the MS4 authorized discharges and can't be required under the permit, they often produce near-immediate benefits to beneficial uses or prevent a near certain loss of beneficial uses. What is the point of having watershed plans, riparian enhancements and stormwater retrofit projects to protect and restore beneficial uses if fish can't get to the area where the plan is implemented? Channel restoration projects have prevented the loss of riparian wetlands due to manageable incision from head cuts. Include wetland restoration projects that are not stormwater facilities as projects to improve stream hydrology and water quality.
S5.C.6.	42 p.1	Structural Control performance	One major concern not listed is that permittees, based on responses from Ecology and the PCHB Clark County ruling, are expected to generally maintain a certain level of effort compared to past years. This removes flexibility that EPA intended in its initial rules.
S5.C.6.	General	Adding a retrofit metric	This is a simple approach to measuring retrofit in aggregate but don't expect it to measure overall benefit.
Appendix 11	44-2	Retrofit incentive calculation	The fact sheet should elaborate on how this was developed and the expectation of its use by permittees, Ecology and the public.
		retrofit incentive name	This is a rating system. At this point Ecology should explain that it is a rating system that places greater value on certain types of projects.
S5.C.7.	44 p.4	removed violations waiver	Can the fact sheet describe why this is removed? It sounds like a burden for industrial permit enforcement is being shifted from Ecology to phase I permittees
			Can the fact sheet describe the basis for an annual site inventory update? If 20 percent are visited each year, does it really matter if the total number of sites varies a bit (up or down) from year to year?
S5.C.7.	45 p.3	Training	Can the fact sheet describe why annual training is required? Source control inspection and outreach include extensive contact with the regulated public. Stormwater programs are not going to send untrained staff to meet the public.
S5.C.8.c	46-47	Screening	The fact sheet should provide a description of why the proposed level of screening is required for counties. Feedback to Ecology from counties has been that ongoing screening of outfalls draining single family subdivisions is not a particularly productive use of time for pollutant reduction.
S8 Monitoring	61	Puget Sound RSMP as basis	The fact sheet should clearly separate description of the Puget Sound process from the rest of the permit area.
S8 Monitoring	61 p.2.	SW WA involvement in Puget Sound RSMP	The fact sheet states there was some involvement by Southwest Washington permittees. This is an overstatement. Clark County did not participate, nor did any other Clark County permittee. These permittees specifically did not participate because the process, especially status and trends monitoring, was intended solely for the Puget Sound region.
S8 Monitoring		Clark County proposal not presented in fact sheet.	The fact sheet should describe the collaborative status and trends approach proposed by SW Washington permittees as alternative permit language and why it was not considered.
S8 Monitoring	62	Regional monitoring supported by municipal permittees	The fact sheet should describe why municipal permittees are expected to foot the bill for the entire RSMP while other stakeholders are involved and the data is not specifically used for permittees' stormwater management decision making.
S8.C Status and Trends monitoring	64	Applicability to the municipal permit	The fact sheet should describe specifically how the proposed status and trends monitoring relates to the permit programs and adaptive management under the long-term NPDES permit approach.
S8	67	SW WA status and trends receiving water monitoring	The fact sheet states that the Clark County proposal was not designed to collect meaningful information because only one sample site per permittee was proposed. This is incorrect. Clark County and Vancouver proposed 10 sites and 2 sites respectively. Smaller permittees were expected to monitor a stream within their jurisdiction. This sample site density is much greater than the Puget Sound proposal because it only samples within the permit area and has between one and 10 sample sites within each jurisdiction.
	67 p.2	Collecting data of use to permittees and others	The fact sheet makes a clear statement that the goal of permit required monitoring is to collect information that is useful for local governments, Ecology and others. Clark County agrees with this goal. Unfortunately the monitoring requirements of the permit do not clearly reflect this goal, especially in the case of mandating continued stormwater monitoring.
			Regarding Clark County specifically, the program we have in place does provide meaningful information about status and trends in representative streams since 2002. Continuing this program will produce additional meaningful information about streams within the permit area.

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			The fact sheet states that Ecology recommends Clark County become more actively engaged in development of a salmon recovery monitoring program for the lower Columbia River. This statement overlooks the fact that Clark County is actively engaged with regional monitoring efforts not associated with Ecology's current permit requirements.
			If the Ecology goal is regional monitoring coordination beyond the limited geographic area of the municipal permittees, the fact sheet should reflect ongoing regional monitoring and planning above the permit realm in SW WA. That includes work by the Lower Columbia Fish Recovery Board, the Pacific Northwest Aquatic Monitoring Partnership, Integrated Status and Trends Monitoring project, and the Greater Portland Pulse.
S8 Monitoring	67	fact sheet misstates county's current level of involvement in regional monitoring plans and development	PNAMP/ISTM -Pacific Northwest Aquatic Monitoring Partnership, Integrated Status and Trends Monitoring project. Along with Ecology, Clark County is, and has been, an active participant in this effort to promote consistency, data sharing, and efficiency in regional monitoring. The ISTM effort recognizes the need to incorporate and leverage existing monitoring programs, such as the County's, into regional sampling designs and master samples. The permit should recognize the value of county's ongoing status and trends program and support our proposal to continue/expand this effort in cooperation with PNAMP, LCFRB, etc.
			Greater Portland Pulse. Clark County is an active partner in this regional report card and contributed data, analysis, and committee representation to the inaugural 2010 effort. GPP expects Clark County to continue providing status and trends data and we expect to deliver.
			LCFRB RME - Lower Columbia Fish Recovery Board's Research, Monitoring and Evaluation program. Regional program that leverages existing Clark County status and trends monitoring in planning future site selection and addressing regional data gaps.
S8 Monitoring	68 p.2	Effectiveness option for stormwater monitoring	The fact sheet should provide a description of how this extremely expensive monitoring will answer the questions posed at this point in the fact sheet.
S8 Monitoring	68 p.5	Source identification repository alternative	The fact sheet should describe how this alternative will meet the goals of the source identification repository project. The fact sheet should describe the reason quarterly reporting is needed to fulfill this requirement.
Definitions	80	Outfall definition	The fact sheet should better describe the inclusion of open channels that connect two MS4s as an outfall.
			The basis for extension of the term outfall to discharges to groundwater needs to be carefully thought out and explained in the context of an NPDES permit that includes a state waste discharge permit. This is a significant change that should be supported by a more extensive discussion.
			If Ecology needs to define discharge points to waters of the state that are not NPDES outfalls, perhaps it would be more appropriate to coin a separate term for them. Keep outfalls as NPDES outfalls and add a new term such as "state permitted groundwater discharge points" for the discharges to groundwater that are not UIC regulated.
Appendix 1	86-87	LID performance standard	The fact sheet includes a basis for the new 8 percent of the 2-year-peak flow as the threshold for modeling LID flow duration compliance. It notes that this will control flows down to the 10 percent exceedance to more closely mimic natural hydrology. It also references an unpublished study of Juanita Creek. Is this sufficient information to promulgate a new standard?
		LID performance standard	The fact sheet notes that the 8 percent of the two year high flow is about the point where 10 percent of the flows are exceeded. The fact sheet states that the 10 percent exceedance was selected because it was attainable with aggressive use of LID BMPs. In other words, the standard was selected because it could be met, not because of any specific information stating it is appropriate given all considerations of reasonable application of BMPs.
Appendix 10	91	Clark County program	The fact sheet is in serious error by stating that Clark County's regulatory program is entirely non-equivalent based on the PCHB ruling on its approach to one element of the program; the means by which Clark County administers minimum requirement 7 of permit Appendix 1. No other part of the county program was involved in the PCHB decision.