

Attachment E
City of Bellevue February 3, 2012 Comment Letter for the
Draft NPDES (2013-2018) Western Washington Phase II Municipal Stormwater Permit

Comments and Recommendations on the draft (2013-2018) Western Washington Phase II Municipal Stormwater

Comment No.	Section	Page	Line No.	COMMENT	Alternative Language or Solution
1	S 5 C 3	21	13	Adds additional requirement to ongoing IDDE program...”prevent”...which can be interpreted as an additional education component or as a proactive inspection component “IDDE Prevention,” much like Fire Prevention	Provide clarity on whether this additional requirement relates to additional education, inspection, or other activities.
2	S 5 C 3 b ii	23	21	Added: “Including but not limited to”, leaving potable water discharges open to more interpretation. Need clarity as this may conflict with emergency activities clauses.	Provide clarity to avoid possible conflict with permissible or emergency activities clauses.
3	S 5 C 3 b ii	24	1	New requirement for dechlorinated swimming pool, spa, and hot tub discharge to be thermally controlled. This new requirement does not seem readily feasible to meet, and the City lacks resources for enforcement.	Provide reasonable alternative or guidance documents for private citizens on how discharges should be thermally controlled, i.e., how to empty your swimming pool, spa, and hot tub.
4	S 5 C 3 v	24 & 25	30-41 & 1-2	<p>The two bullets in this sub-section appear to be describing compliance strategy tools that permittees should have an ability to use in order to address illicit discharges. Bellevue already uses these tools to address illicit discharges based on current Permit IDDE requirements and amended City codes implementing the requirements. Therefore, Bellevue does not think the clarification about available illicit discharge compliance strategy tools is necessary. However, if Ecology or other municipalities believe it is important to more explicitly state that these are available compliance strategy tools for illicit discharges, then Bellevue recommends clarity edits for the two bulleted statements.</p> <p>Note, the last part of the second bullet (after the words “illicit discharges”) was deleted because it was unnecessary and confusing (e.g., implementing the Permit in its entirety is intended to protect water quality and prevent violations of standards).</p>	<p>Recommended edits to the two bullets are in bold font and strike-through.</p> <p>“The Compliance strategy tools should include the application of operational and/or structural source control BMPs for pollutant generating sources associated with existing land uses and activities where necessary to prevent illicit discharges. The source control BMPs referenced in this subsection are in Volume IV of the 2012 Stormwater mManagement Manual for Western Washington, or an equivalent manual approved by Ecology under the Phase I Permit.”</p> <p>“The Compliance strategy tools should address include the maintenance of stormwater facilities permanent stormwater treatment facilities, flow control facilities and catch basins which discharge into the Permittee’s MS4 in accordance with maintenance standards established under S5.C.4 and/or S5.C.5 where necessary to prevent illicit discharges. or violations of surface water, ground water, or sediment management standards.”</p>

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5	S 5 C 3 c i	26	3	<p>This appears to expand current municipal outfall field screening program. It is expanded to include municipal outfalls and conveyances. Permittees have the choice of building on the current Permit outfall screening methodology to include conveyances or developing a new methodology. Conveyances are undefined but assumed to include ditches, swales, pipes and culverts. . In addition it requires field screening of at least 40% of the MS4 within 2.5 years of the Permit's effective date.</p> <p>This appears to be a significant expansion of the current IDDE outfall screening program and requires a much larger part of the MS4 to be screened when other Permit requirements (e.g., municipal drainage system inspections, IDDE response program, construction and post-construction private drainage programs) often result (as a by-product) in screening of the system for illicit discharges. And the city-wide IDDE training and citizen awareness has significantly increased the number of illicit discharges reported (188 in 2011).</p> <p>Bellevue questions whether this program expansion is necessary. If implemented, Bellevue estimates that an additional FTE will be necessary and an increase in resource needs.</p> <p>Ecology approved Outfall screening manual not for conveyance pipe. The alternative is to video conveyance system. Depending on interpretation, additional work could cost up to \$500,000.00 per year for conveyance system screening each year of permit term.</p> <p>Resources will be required to create, develop and prioritize screening the outfalls and conveyance systems (which is not included in current manual).</p>	<p>Ecology and municipalities to work together to determine if proposed program modifications are providing benefits commensurate with increased costs or if other alternatives can achieve improvements while minimizing fiscal impacts to municipalities.</p>

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6	S5.C4.a	29	24-25	The definition does not reflect that a development application that includes land use review or approvals must be deemed complete for project review to begin under the Local Project Review Act, Chapter 36.70B RCW. <i>See</i> 36.70B.070 RCW.	Amend lines 23-24 to read: “The local program adopted . . . shall apply to all <u>complete</u> applications....” Delete footnote 19.
7	S5.C4.a	29	23 - 26	Applying the local program to projects approved before January 1, 2016 and that have not started construction by January 1, 2021, conflicts with the vesting provisions of Chapter 58.17 RCW.	Amend lines 26-27 to add the following text: <u>This provision does not apply to subdivisions approved under Chapter 58.17 RCW.</u>
8	S5.C4.a	29	Footnote 20	Permittees may have differing definitions or policies regarding when construction starts. To avoid confusion about where Ecology’s definition applies, Bellevue recommends amending the definition to clarify that it applies only for the purpose of the Phase II permit. We also request that substantive information be elevated into the body of the permit language.	<u>For the purposes of administering this permit</u> , “started construction” means the site work associated with
9	S 5 C 4	29	Footnote s 19, 20	Bellevue appreciates Ecology’s efforts to improve the readability of the draft permit by placing provisions applicable to new permittees in footnotes. Substantive provisions, however, that apply to all permittees should not be included in the footnotes; rather these provisions should be elevated to the main text. Placing these provisions in footnotes creates the opportunity for readers to miss provisions applicable to all permittees on the mistaken belief that the footnotes apply only to new permittees.	Elevate substantive language into body of the permit.
10	S 5 C 4 b i. iv	31	26-28	Need to clarify that the permit condition requiring permittees to verify a maintenance plan is completed for	Alternative language: Verify that a maintenance plan is completed and responsibility for maintenance is assigned

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				<p>stormwater treatment and flow control BMPS/ facilities. Does flow control BMPs mean MR5, MR7 or both? If it includes both, permittees would need to enforce maintenance on single family sites with rain gardens. Bellevue is not staffed to inspect single family sites.</p> <p>Increased inspection requirements as a result of having to inspect “small-scale, distributed” LID BMPs, versus traditional end-of-pipe detention and treatment BMPs. This could easily be another FTE or more, depending on future development patterns.</p>	<p>for stormwater treatment (MR6) and flow control BMPs/facilities (MR7).</p> <p>Need time to assess impacts to staff and resources.</p>
11	S 5 C 4 h	35	12-17	This requirement does not affect Bellevue this permit round. However, Bellevue is concerned with the potential loss of local control, with governance and costs associated with the watershed-scale stormwater planning requirement.	None at this time.
12	S 5 C 5 f	38	6	Disposal of snow? Ice?	Need clarity on requirement to develop procedures for disposal of snow and ice.
13	S 5 C 5 f	38	11	“Appropriate application of fertilizers, pesticides, and herbicides...using environmentally friendly alternatives.” This may affect procedures/SOP’s developed in last permit cycle.	Provide phased timeline to review and update existing SOPs/procedures. Suggest approval timeline of one year from effective date of permit for revising procedures and another year for implementation.
14	Section 8.B	50		Monitoring section.	To provide regulatory certainty, the permit language needs to state that payment of the fees for the regional stormwater monitoring program constitutes compliance with Condition S8. Consistent with the Fact Sheet at page 70, revise Condition S8.B to include the following statement: “Permittees participating in the regional stormwater monitoring program that make payments in accordance with the schedules set forth by Permittee in conditions S8.C1, S8.C1.a, S8.D1.and S8.E1. constitutes compliance with Condition S8.

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15	Permit Definition	73-81		Several terms are missing definitions. For example: Draft Permit – need definition for “conveyance.” IDDE requirement S5.C.3.c.i refers to “conveyances” on page 26, line 3.	All terms need to be defined in order for permittees to assess draft Phase II Permit and draft Manual requirements.
16	Permit Definition	75	29-34	The proposed amended definition of illicit connection has the possible unintended consequence of rendering legally-established connections to the MS4, as illicit connections, subject to enforcement action. For example, many homes throughout the region were constructed before issuance of the Phase II Rules and Ecology’s issuance of the Phase II Permit. It is unlikely that the associated roof drains were either designed or permitted for collecting and conveying stormwater as specified in the Phase II permit. Connections that were legally established should be allowed to continue and be maintained without threat of enforcement.	Revise definition as follows: “Illicit Connection means any infrastructure connection the MS4 that is not designed, permitted or used for collecting and conveying stormwater or other allowed discharges as specified in this permit. <u>Provided that any infrastructure connection that was legally-established under a permittees development or stormwater regulations before [insert effective date of this permit] is not considered an illicit connection.</u> ”
17	Permit Definition	75	38	Wording added to definition of Illicit Discharge: “... <u>infiltration/exfiltration of non-stormwater that takes place in pipe bedding</u> ...” Pipe bedding materials have historically varied, as well as pipe materials and the coating on the outside of them. Does this apply to all buried utilities? What will be the remedy if it is discovered a water main is buried in cinder that is surfacing and causing an ID? What if a fiber optic system buried in concrete is leaching to the surface? This could be very costly should groundwater surface from trench bedding, which is not un-common in Bellevue.	This is an unreasonable inclusion as part of IDDE, nearly impossible to trace, track, or eliminate. Recommend deleting added text: “... <u>infiltration/exfiltration of non-stormwater that takes place in pipe bedding</u> ...”
18	Permit Definitions	77	3	Maximum Extent Practicable (MEP) should be defined.	Provide a definition of Maximum Extent Practicable.
19	Permit	77	36-80	Receiving Waters definition now includes groundwater to	This is an unreasonable inclusion as a point of compliance

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	Definition			<p>which surface runoff is directed by infiltration. This would include all LID BMPs and other infiltration BMPs.</p> <p>Outfalls are defined under the federal regulation as a point source. Infiltration, by its very nature is diffuse. The proposed amendment is inconsistent with a well-known and adjudicated term of art.</p>	<p>for MS4.</p> <p>Revise the definition to read:</p> <p>“Outfall means point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to <u>surface or ground</u> waters of the State. Outfall and does not include open conveyances connecting two municipal separate storm sewer systems, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the state <u>surface waters</u> and are used to convey <u>primarily surface</u> waters of the State.”</p>
20	Permit Definition	79	36	<p>The definition for stormwater includes, “...surface runoff, drainage or interflow. Interflow was added to the definition. The quantification and measurement of interflow (a form of groundwater) is challenging.</p> <p>Interflow: shallow subsurface water... added to definition of stormwater, increases responsibility for compliance to shallow ground waters</p> <p>Increase liability, potentially costs of response to 3rd parties... assessment of interflows for compliance requires installation of shallow ground water monitoring equipment.</p> <p>In some places interflow is present regardless of precipitation making compliance and investigation very costly and difficult to determine.</p>	Drop interflow from the definition of stormwater.
21	Permit Definitions	80	5, 7,8	The stormwater management manual for western Washington should refer to the 2012 version not the 2005 version.	Refer to the final 2012 version and delay permit issuance until the 2012 version goes through a public review process.
22	Permit Definitions	80	14-16	The definition for stormwater treatment and flow control BMPs/facilities should be separated.	Provide separate definitions for stormwater treatment control BMPs/Facilities (MR 6) and stormwater flow control BMPs/Facilities (MR 7) rather than one definition.

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23	Appendix 1. Section 2	2-7		Definitions Related to Minimum Requirements. Several terms are missing from the definitions list. For example: Appendix 1 – need definition for “conveyance system.” Appendix 1 - 4.8 MR #8 Wetlands Protection requirement on page 33, line 39 refers to “conveyance system.”	Several terms need to be defined in order for permittees to assess draft Phase II Permit and draft Manual requirements.
24	Appendix 1. Section 2	3	13	Previous charts for Minimum Requirements have replaced the term “impervious surface” with “hard surface” which includes impervious surfaces, permeable pavement and green roofs.	Hard surface should not include permeable pavement.
25	Appendix 1 Section 2. Definitions Related to MRs	3	3-8	Most of the definition is for “ineffective impervious area”.	Limit the definition to the first sentence and include a definition for “ineffective impervious area” using the remaining language.
26	Appendix 1 Section 2. Definitions Related to MRs	3	13	The new hard surface definition may create more projects that meet the thresholds for projects requiring Minimum Requirements 5-7, which could potentially disincentivize vegetated roofs and permeable pavement.	Use the old definition of impervious surface in the minimum requirements applicability determination.
27	Appendix 1 Section 2. Definitions Related to MRs	4	4	LID best management practices include “roof downspout controls”. Uncertain as to what this BMP is?	Delete “roof downspouts controls” from definition.
28	Appendix 1 Section 2. Definitions Related to	5	31-33	Receiving Water definition.	Infiltration assumes separation between the soil and the groundwater. Remove strikeout text. Bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or

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	MRs				via sheet flow. Ground water to which surface runoff is directed by infiltration.
29	Appendix 1. Section 3	9-12	Fig 3.2, 3.3, section 3.2 & 3.3	Using this definition of “hard surfaces” will result in less incentive to install LID infiltration techniques such as permeable pavement and green roofs under proposed hard surfaces definition if their areas count against your surface area threshold calculation.	Drop this definition and only use the old definition of impervious surface.
30	Appendix 1. Section 3.4	12	5-20	Revise the hard surface definition to the project triggers. Otherwise there will be less incentive to install LID infiltration techniques such as permeable pavement and green roofs under proposed hard surfaces definition if their areas count against your surface area threshold calculation.	Drop this definition and only use the old definition of impervious surface.
31	Appendix 1. Section 4.2	13	34	Revise the hard surfaces definition otherwise there will be less incentive to install LID infiltration techniques such as permeable pavement and green roofs under proposed hard surfaces definition if their areas count against your surface area threshold calculation.	Drop this definition and only use the old definition of impervious surface.
32	Appendix 1. Section 4.5	25	2-7	Does the LID performance standard mean for an infeasible site the flow control standards is 50% of the 2 year peak flow rate through the 50 year? Or do you need to provide detention for down to 8% of the peak flow rate?	Recommend strike out “Project sites that must meet minimum requirement #7 – full flow controls – must match flow durations between 8% of the 2 year flow through the full 50 year flow.” Sentence conflicts with MR7 on pg 32, lines 33-35 Flow Control Standards.
33	Appendix 1. Section 4.5	25	21	The permit considers amended soils feasible everywhere without limitations.	Solution- There should be some limitations to this BMP for example on steeper slopes (35%) in a non-infiltrating soil such as glacial till.
34	Appendix 1. Section 4.6	27	1	Revise new hard surfaces definition that will trigger the need for MR 6. Otherwise there will be less incentive to install LID infiltration techniques such as permeable pavement and green roofs under proposed hard surfaces	Drop this definition and only use the old definition of impervious surface.

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				definition if their areas count against your surface area threshold calculation.	
35	Appendix 1. Section 4.7	32	14-15	Revise new hard surfaces definition that will trigger MR 7. Otherwise there will be less incentive to install LID infiltration techniques such as permeable pavement and green roofs under proposed hard surfaces definition if their areas count against your surface area threshold calculation.	Drop this definition and only use the old definition of impervious surface.
36	Appendix 1. Section 4.7	33	5-7	Appendix I-G is missing from draft document.	Include Appendix I-G in final draft and allow adequate time for permittees to review.
37	Appendix 1. Section 8	37	15	Slopes up to 15% for bioretention facilities are too steep.	Solution: if the site cannot be graded to steps of < 8%, bioretention should be infeasible
38	Appendix 1. Section 8	38	29	There is no “high use” definition in 2012 SWM.	No matches for “high use” in Volume V in SMMWW. Provide definition in section.
39	Appendix 1. Section 8	38	Add new lines	There is concern regarding the potential in high pollutant loading sites (e.g. industrial) to potentially threaten groundwater quality through the inappropriate use of bioretention facilities. There is insufficient data available on groundwater impacts as a result of LID.	Add the following text to Appendix 1 page 38 after line 10: “Where the land use is industrial and there is a high probability of spills of hazardous materials.”
40	Appendix 1. Section	37-40	Add new lines	More extensive LID may have adverse effect on utilities, especially on small sites. Most jurisdictions lack clear utility clearance requirements. They would have to develop those on a jurisdiction by jurisdiction basis, or worse, they may forget to do so and we could see issues with utilities’ performance, life span, maintainability down the road.	Provide recommended utility clearance criteria in the feasibility criteria and perhaps in the manual under design guidance.
41	Appendix 1. Section 8	39	3-5	Unclear sentence, “Portions of pavements that must be laid at greater than 5 percent slope must prevent drainage from up gradient base courses into its base course”. Does this mean check dams or similar devices are needed in the	Solution: Clarify what is meant. If check dams are required say so.

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				base course?	
42	Appendix 1, Section 8	40	Add new line after 14	There should be an infeasible condition if the cost to construct a vegetated roof exceeds a conventional roof on a life cycle cost basis of 20% more.	Add after line 14: Vegetated roofs are considered infeasible where their costs exceed conventional roof costs by 20% on a life cycle cost basis.
43	Appendix 1, Section 8	40	20-38	<p>Thank you for including a section addressing competing needs when addressing the feasibility of LID. Consideration of competing needs is an essential tool when determining the feasibility of implementing LID.. Generally, to make the document more reader friendly, we recommend Ecology provide the precise names and citations to the corresponding code provisions, in addition to providing a hyperlink to the Department of Archaeology and Historic Preservation website. Providing a hyperlink presumes that all readers have access to the internet, which may not be true for all members of the public. Also, we have provided suggested edits to provision II.B which we hope provides more clarity while capturing Ecology's intent. Bellevue is concerned that Ecology did not specifically include the State Building Code Act, Chapter 19.27 RCW, which includes the state building and fire codes, and the Electrical code, Chapter 19.28 RCW, into the competing needs section and this omission must be corrected. For example, the International Fire Code contains provisions related to vegetated roofs and rooftop gardens in IFC Section 317 and which will become part of the State Building Code in 2013. Section 317 regulates the maximum vegetated area, size, setbacks to vertical combustible surfaces, equipment, and habitable spaces, flame-spread abatement and roof maintenance. As with stormwater requirements, local jurisdictions cannot provide less stringent requirements. These life and safety requirements should fall directly within the scope of</p>	<p>The On-site Stormwater Management LID requirements can <u>may</u> be superseded or reduced where they are in conflict with:</p> <p>A. Requirements of the following federal or state laws, rules, and standards: Historic Preservation Law and Archeology Laws as listed at http://www.dahp.wa.gov/learn-and-research/preservation-laws, federal Superfund or state Model Toxics Control Act, Federal Aviation Administration requirements for airports, American with Disabilities Act.</p> <p>B. Local design codes, standards and rules that have been reviewed under the code revision process required in S5.C5.c to remove barriers and to require the use of LID principles and BMPs. Where an LID requirement has been found to be in conflicts with the design criteria for a special zoning or land use district design criteria adopted and being implemented pursuant to a community planning process, the <u>LID requirement</u> existing local codes may be superseded or reduced the LID requirement.</p> <p>C. Public Health and Safety Standards, including but not limited to, the <u>State Building Code, Chapter 19.27 RCW</u>.</p> <p>D. Transportation regulations to maintain the option for future expansion or multi-modal use of public rights-</p>

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				competing needs. Ecology must also include compliance with the GMA as a competing need. Please see corresponding comments in Bellevue's comment letter.	of-way. E. <u>Requirements of the GMA as they relate to planning for and addressing growth, balancing planning goals, and other planning or code development requirements under the GMA.</u>
45	Appendix 1, Section 8	40	26	There should be another competing need condition regarding GMA conflicts.	Add GMA to end of line 26, pg 40 (S8.IIA)
46	Appendix 6		24	Discharge to <u>MS4</u> requires approval of sewer authority?	Likely an error. Recommend correcting to previous language "municipal sanitary sewer".