City of Vancouver • P.O. Box 1995 • Vancouver, WA 98668-1995
www.cityofvancouver.us
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City of Vancouver's Comments and Suggested Revisions on the Draft 2013-2018 NPDES Phase II Municipal Stormwater Permit

Thank you for providing us with the opportunity to make comments and suggestions on the draft of the 2013-2018 NPDES Phase II Stormwater Permit.

Although the City of Vancouver and other municipalities in the state continue to struggle with budget constraints, we recognize the need to protect all water resources.

The Association of Washington Cities (AWC) has issued a comment letter to Ecology regarding the Draft 2013-2018 Western WA Phase II Municipal Stormwater Permit. This comment letter addresses issues including: low impact development, inspections of stormwater treatment and flow-control facilities, watershed-scale planning, vesting, permit timelines, one-acre threshold, monitoring, and increased liability. We are in support of the general policies and concerns stated within the AWC letter. In addition, Vancouver proposes that the time provided for review of the Low Impact Development (LID) manual and standards, particularly as they relate to LID provisions within the permit language, is not sufficient and should be extended.

Thanks for providing time and staff resources toward the challenges of monitoring and for acknowledging that, because municipalities in SW Washington don't share a common water body, it would not be appropriate to incorporate regional monitoring in the draft.

Our comments focus on modifying language to help make specific permit provisions clearer. We also recommend changes to better bring the scope of permit in line with the intent of the Clean Water Act, which provides the legal authority for the NPDES program.

Vancouver's suggestions and comments are organized by page number and use following font and color scheme:

Blue italics = Vancouver's comments
Red underlines and cross-outs = Vancouver's recommended additions or ~~deletions~~
Teal (small font) = Referenced material from fact sheets or other regulations

Comments and Suggested Revisions

Page 12, S2.A
A. This Permit authorizes the discharge of stormwater to surface waters and to ground waters of the state from municipal separate storm sewer systems owned or operated by each Permittee covered under this permit, in the geographic area covered pursuant to S1.A. These discharges are subject to the following limitations:

1. Discharges to ground waters of the state through facilities regulated under the Underground Injection Control (UIC) program, Chapter 173-218 WAC, are not authorized under this Permit.
2. Discharges to ground waters not subject to regulation under the federal Clean Water Act are authorized in this permit only under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act.

There is a fundamental problem in this permit with the term "ground waters".
The definition for "ground water" on page 75: "**Ground water** means water in a saturated zone or stratum beneath the surface of the land or below a surface water body."

During a storm event the water infiltrating into or below a soil layer saturates that zone so that every place that infiltrates could be regarded as "ground water". In fact when any surface is saturated by rain or runoff it becomes ground water. (Also, according to proposed definition changes all rain events create multiple "outfalls" and "receiving waters" wherever it gets wet. See notes below on those definitions.)

Do drywells and septic tanks discharge directly to "ground water" since when they discharge they saturate a zone beneath the surface? If a septic tank discharges non-stormwater directly to "ground water", is it inherently in violation?

The simple solution to the problem is to eliminate all references to ground waters. Including ground waters in an NPDES permit expands the scope and intention well beyond the Clean Water Act.

It may be that there are legal reasons (beyond our understanding) for including protections to underground water zones or near-surface drinking water aquifers in a stormwater permit. As defined, the term "ground water" is too broad to be used in this context.

We recommend that, if it is truly necessary to increase the regulatory scope of the permit, a more specific term such as "underground waters" be used instead. This is the term used in RCW 90.48 which is the basis for adding these regulations to the permit.
Definition of "Waters of the State" from 90.48.02 (and as also defined in this permit):

> Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

The term "underground waters" would need to be defined not as simply saturated zones but as zones of year-round water saturation. WAC 173-218 makes a similar distinction when defining a drywell by using the term "water table" which also implies a more continuous and measurable body of underground water.

Using a term which better identifies bodies of water residing below the surface might make it possible to expand the definitions for both "outfall" and "receiving water" without adding compliance burdens impossible to meet.

Although our recommendation is to eliminate ground water entirely from the permit, if some regulatory oversight of below surface waters is deemed necessary our suggestion is to replace all instances of the term "ground waters" with the term "underground waters" and define that term as follows:

Underground waters, for the purposes of this NPDES permit, means a continuous water body residing year-round in the stratum beneath the surface of the land or below a surface water body.

That would at least eliminate rain-saturated soils as ground waters while providing protection to a finite number of waters that could in fact carry contaminants.

Page 12, S2.A.2: "Discharges to ground waters not subject to regulation under the Clean Water Act…"
This initial language is unnecessary since the CWA doesn't take authority over any ground waters. We suggest either eliminating ground water language from the permit or, if necessary, rewrite the provision as:
"Discharges to underground waters are authorized in this permit only under state authorities, Chapter 90.48 RCW…"

Page 14, S4.F: A Permittee remains in compliance with S4. despite any discharges prohibited by S4.A. or S4.B., when the Permittee undertakes ~~the~~ appropriate action steps toward long-term water quality improvement based on the following responses: ~~toward long-term water quality improvement:~~

We appreciate that S4 includes this language offering a pathway to compliance. Without it the permit could be a liability nightmare. Because the list has multiple responses which incorporate different steps, instead of using "the following response" it might be more descriptive to use "appropriate action steps".

Page 20, footnote 7 (to S5.C.1c): [7] New Permittees shall begin measuring the understanding a adoption of target behaviors for at least one audience and one targeted behavior no later than August 1, 2016. By no later than August 1, 2017, New Permittees shall begin using the results to direct education and outreach resources more effectively, as well as to evaluate changes in adopted behaviors.

Not sure what is being required here.

Page 21, S5.C.3 *(summary):* The SWMP shall include an ongoing program to identify, detect, remove and prevent illicit connections and illicit discharges into the MS4.
Page 25, S5.C.3c: Each Permittee shall implement an ongoing program to identify and detect non-stormwater discharges , including spills, and illicit connections into the Permittee's MS4.[12]

The current summary sentence at the beginning of C.3 just says what is prescribed in section S5.C.3c. Also, "The SWMP shall include an ongoing program…" does not read as well as "Each Permittee shall implement an ongoing program…" Recommend re-doing the summary statement to better encompass the whole C.3 section (mapping, ordinance, IDDE program) or eliminating it entirely. An expansion of the C.3 summary, such as the following, would better describe the whole section:
S5.C.3: The Permittee's strategies and SWMP components shall include stormwater system mapping, municipal ordinance development, compliance measures, illicit discharge identification, illicit connection removal, and prevention measures as detailed in this section.

Page 22, S5.C.3.a (minimum performance measures): Mapping of the MS4 (including) i. Known MS4 outfalls, ii. Receiving waters

This section provides a good illustration of some (probably unintended) negative consequences that will result if the definitions of "outfall" and "receiving water" are revised as proposed in this permit draft.

On page 77 "Outfall" has been revised: **Outfall** means point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to surface or ground waters of the State.

On page 5 of App. 1 "Receiving waters" has been revised: ***Receiving waters*** **-** Bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow. Ground water to which surface runoff is directed by infiltration.

The definition for "ground water" on page 75: "**Ground water** means water in a saturated zone or stratum beneath the surface of the land or below a surface water body."

It would be impossible to comply with the mapping of all outfalls and all receiving waters as required by these provisions since any moisture that saturates the ground will create ground water which will then create both an outfall and a receiving water. Our recommendations on revising the way these terms are worded are discussed later in the section on Definitions.

Page 23, S5.C.3.b(ii): Conditionally Allowable Discharges

We appreciate the wording changes using "may allow" instead of the previous "shall prohibit" language which uses a confusing double negative.

This revised permit presents an opportunity to improve this section with some language on car washing. Ecology currently promotes that it is all right to wash your car on "grassy ground" so that you "keep your suds out of Puget Sound". This seems like good advice; however, if saturated grass and soil is now considered ground water and, thus, "receiving waters" then it is a violation of the permit. In Vancouver we have ordinance language which allows discharges such as car washing to "Permeable Surfaces" (VMC 14.26.117D). It should be possible to include in this section of the permit a conditionally allowable discharge of vehicle and boat wash water to the ground.

Here's one suggestion which could be included under "Conditionally Allowable Discharges":

- Residential car and boat wash water shall be allowed to be directed onto permeable surfaces such as the ground or a lawn for infiltration. Permittees shall minimize use of soap and detergents discharged onto permeable surfaces through public education activities and water conservation efforts.

It could also be recognized here that all potable waters can be discharged to the ground without any type of de-chlorination or pH adjustment (lawn sprinklers, for example). OR, a simpler solution would be to rework the permit so that it regulates only surface water as intended by the Clean Water Act.

Page 25, S5.C.3c:

Since the permit will require prioritizing areas of the MS4 along with implementing "source" identification procedures, the C.3c section could be modified to better reflect the full intent:

c. Each Permittee shall implement an ongoing field screening program which prioritizes areas in the MS4 for screening, identifies and detects sources of non-stormwater discharges, and eliminates illicit connections into the Permittee's MS4. The program shall include the following components:

~~i. Procedures for conducting investigations of the Permittee's MS4 for the purpose of detecting illicit discharges and illicit connections. The program shall include field screening and methods for identifying potential sources.~~

If the c summary is modified to encompass the whole section, as above, this component can be deleted and (i) – (v) can be reorganized:

i. A prioritization of conveyances and outfalls within the Permittee's coverage area.

ii. Procedures for conducting investigations of the Permittee's MS4 for the purpose of detecting illicit discharges and illicit connections. The program shall include methods for identifying potential sources of pollutants and illicit discharges.

Screening shall be done for at least 40% of the MS4 no later than February 2, 2016, and 20% each year thereafter. The screening methodology applied shall be appropriate to the characteristics of the MS4 and water quality concerns.

Screening for illicit connections may be conducted using: *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, or another methodology of comparable or improved effectiveness. If another method of field screening is developed and implemented the Permittee shall document the field screening methodology in the relevant Annual Report.

iii. A publicly listed and publicized hotline or other telephone number for public reporting of spills and other illicit discharges.[14]

iv. An ongoing training program for all municipal field staff, which, as part of their normal job responsibilities, might come into contact with or otherwise observe an illicit discharge and/or an illicit connection to the MS4 ~~on the~~. Training shall include the identification of an illicit discharge and/or connection and ~~on~~ the proper procedures for reporting and responding. ~~as appropriate.~~ *("proper" implies appropriate)* ~~, to the illicit discharge and/or connection.~~ Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staffing. Permittees shall document and maintain records of the trainings provided and the staff trained.[15]

v. ~~Permittees shall~~ A methodology for informing public employees, businesses, and the general public of hazards associated with illicit discharges and improper disposal of waste.
Phrasing needs to indicate a program "component" as prefaced in c above.

Page 27, S5.C.3d(iv):

Two new bullet points have been added which are vague and probably unnecessary.

The first bullet point under S5.C.3d(iv) says to respond to illicit discharges judged to be urgent. That addition isn't necessary here as it is already sufficiently covered in G3. Recommend deleting,

The second bullet point is as follows:

- Investigate (or refer to the appropriate agency with the authority to act) within 7 days, on average, any complaints, reports or monitoring information that indicates a potential discharge.

This provision has a reasonable intent – look into complaints within 7 days – but it is made confusing with the vague addition of "reports or monitoring information" and "potential discharge" which could have broad interpretations. Adding "on average" makes this a recording and calculating challenge. Recommend rewriting or deleting.

The third bullet has added "illicit connection" which shouldn't be a problem, but it is because its definition has changed along with the definition of MS4. See specific comments on those definitions.

Pages 29-32, S5.C.4 Controlling Runoff from New Development, Redevelopment and Construction Sites

The minimum performance measures are:

a. The program shall include an ordinance or other enforceable mechanism that addresses runoff from new development, redevelopment, and construction site projects. Pursuant to S5.A.4., existing local requirements to apply stormwater controls at smaller sites, or at lower thresholds than required pursuant to S5.C.4., shall be retained. The ordinance or other enforceable mechanism to implement (i) through (iii), below, shall be adopted and effective no later than December 31, 2015. The local program adopted to meet the requirements of S5.C.~~5~~4.a(i)
(note that the provision reference should be S5.C.4.)
through (iii), below shall be adopted and effective no later than December 31, 2015. The local program adopted to meet the requirements of S5.C.5.a(i) through (iii), below shall apply to all applications[19] submitted after January 1, 2016 and shall apply to projects approved prior to January 1, 2016, which have not started construction[20] by January 1, 2021[21].

19 In this context, "application" means, at a minimum a complete project description, site plan, and, if applicable, SEPA checklist.

20 "Started construction" means the site work associated with, and directly related to the approved project has begun. For example: grading the project site to final grade or utility installation. Simply clearing the project site does not constitute the start of construction.

With this new language and Footnotes 19 and 20, Ecology is venturing into the uncertain subject area of "vesting" and the interaction between the federal law mandates of the Clean Water Act and Washington's state's minority position (one of 4 states with this type of law) regarding vesting. Vesting is the ability of property owners to pursue development projects under the standards in effect at the time they applied to develop, rather than under the law in effect at the time they build. Ecology's approach here raises some concerns. ***Perhaps it would be best to just say nothing and leave it to the courts.***

- *The effect of the proposed change is to adopt a limited 5 year vesting period for the applicability of old stormwater regulations. This appears to be an attempt*

to avoid eternal vesting, and at the same time to acknowledge Washington's vesting law, BUT

- *Ecology and its Assistant Attorney General representatives have argued to the PCHB that stormwater regulations are not development regulations and thus are not subject to vesting, in the Clark County cases. The PCHB has agreed, specifically disapproving Clark County's limited vesting against stormwater regulations.*
- *By adopting limited vesting for a 5 year period**, some but not all** developments that are currently subject to 10 year approvals will lose their stormwater vesting. This looks like a potential administrative nightmare for local governments. One standard would be best.*
- *Specifically adopting any type of vesting opens up the permit, **and local jurisdictions who apply it,** to challenge under federal Clean Water Act: state vested rights doctrine may preempted by federal law. Federal law preempts state law where "to the extent that compliance with both laws is physically impossible, or state law would be an obstacle to the accomplishment of the full purposes and objectives of Congress." Sayles Hydro Assocs. v. Maughan, 985 F.2d 451, 455 (9th Cir. 1993).*

- *Footnote 19 attempts to define an "application." This is beyond the scope of Ecology's authority, and it is a very weak definition. Every local jurisdiction defines a "fully complete" application in great detail in connection with individual categories of development applications; they do so under the specific statutory authority of state land development statutes. If the "application" is going to trigger vesting, Footnote 19 should say **"'Application' means an application as defined in local land development regulations."***
- *Footnote 20 also improperly attempts to define start of construction, which is also a development regulation that typically is within the authority of local jurisdictions. Suggest: **'Started construction' means started construction as defined in local land development regulations."***

b. The program shall include a permitting process with site plan review, inspection and enforcement capability to meet the standards listed in (i) through ~~(iv)~~ (vi) below, for both private and public projects, using qualified personnel (as defined in *Definitions and Acronyms*). At a minimum, this program shall be applied to all sites that meet the thresholds in S5.C.4.a, above. To meet the program requirements of this section the Permittee shall:

i. Review ~~of~~ all stormwater site plans for proposed development activities.
ii. Inspect, prior to clearing and construction…
iii. Inspect all permitted…
iv. Inspect all permitted…
v. Achieve at least 80% of scheduled inspections during this permit term. Compliance with the inspection requirements in (ii), (iii) and (iv) above shall be determined by the presence and records of an established inspection program designed to inspect all sites.

vi. Develop and implement an enforcement strategy to respond to issues of non-compliance.

These list items (i) – (vi) need a lead-in statement at the end of b, as suggested above. Items i, v and vi need to be phrased to work in parallel with the lead-in.

Page 30, lines 27-30 and page 32, lines 3-18

These two sections appear to require two different things. Page 30 specifies that the permittee must have authority to inspect and enforce maintenance standards on all private stormwater facilities "that discharge into the MS4", but the language on page 32 does not make such a qualification, instead requiring "annual inspections of all stormwater …facilities permitted by the permittee". What is Ecology's intent? Are permittees expected to enforce maintenance standards on all privately maintained stormwater facilities within their geographic boundary or only ones with a discharge into the MS4?

Page 37, Line 23 S5. C5.d.i.

*Correct reference in last sentence. Should be S5.C.**5**.a.*

Page 50, S8. Monitoring, – General comment

The City of Vancouver continues to partner with other southwest Washington permittees to determine whether and how a regional status and trends monitoring program can feed into a broader statewide effort to collect and provide quality data in a meaningful way. The City continues to implement a long-term monitoring program to characterize receiving water quality, identify trends, and provide feedback for adaptive strategies to protect water resources. This data is submitted for inclusion in Ecology's Environmental Information Management system.

Page 66, General Conditions, G3. Notification of Discharge, Including Spills

If a Permittee has knowledge of a discharge, including spills, into or from a MS4 storm sewer which could constitute a threat to ~~human health, welfare, or~~ the environment, the Permittee shall

A. Take appropriate action to correct or minimize the threat to ~~human health, welfare and/or~~ the environment., and,

Humans are a part of the environment. It is probably not necessary to include "health and welfare". If necessary, "environment" could be defined in the permit to include humans. Also note that the heading sentence uses "or the environment" while G3.A. uses "and/or".

B. Notify the Ecology regional office and other appropriate spill response authorities immediately but in no case later than within 24 hours of obtaining that knowledge. The Ecology Northwest Regional Office 24-hour number is 425-649-7000 and for the Southwest Regional Office the number is 360-407-6300.

Section G3.B is problematic. The Compliance With Standards section S4.F. effectively gives the Permittee a compliance pathway for handling the reporting of a discharge with defined response provisions. This pathway can play a critical role in keeping municipalities in compliance and out of court.

This General Condition G3.B. muddies that pathway by requiring a 24-hour notice to a regional Ecology office. It is not always obvious when the water going to a storm system is a threat to the environment. The phrase "could constitute" is open to interpretation. For example, construction sites usually have some

accompanied increases in sediment levels, but it is not realistic to report every construction site as a potential threat.

It is often necessary to sample and analyze a discharge to determine if there is even a threat. This can take more than 24 hours. Reporting a discharge immediately that might constitute a threat to the environment could be interpreted by third parties as a water quality violation when in reality that may not be the case.

If the goal here is to report verifiable environmental threats to the regional office then it is recommended that G3.B be rewritten to be more specific and less problematic, such as:

B. Notify the Ecology regional office and other appropriate spill response authorities when a discharge is confirmed to be a threat to the environment immediately but in no case later than within 24 hours of obtaining that confirmation ~~knowledge~~. The Ecology Northwest Regional Office 24-hour number is 425-649-7000 and ~~for~~ the Southwest Regional Office spill response number is 360-407-6300.

Page 67, G3.D.

Is it the intent of the permit to have all spills of oil, gasoline, etc. reported to WA Emergency Management Division regardless of spill size and location? If not, this should be re-written to acknowledge the difference between large spills and smaller events. It is our understanding, through discussions with Ecology and other response agency staff, that not all spills of oil or hazardous substances (such a s a vehicle accident or a gallon of motor oil left at curbside recycling) need to be reported to the WA Emergency Management Division. As written, the permit would require thousands of calls to WA Emergency Mgmt Division each year for spills that they would not need to respond to.

Pages 74-77, Definitions and Acronyms

"Circuit" *definition should be moved after* "Census urban area" *so it is listed alphabetically.*

Illicit Connections means any infrastructure connection to the MS4 that is not designed, permitted, or used for collecting and conveying stormwater or other allowed discharges as specified in this permit. …

This change becomes problematic if the definition of MS4 is modified to include ground waters. This would effectively make anything discharging to the ground, such as a water sprinkler, an illicit discharge.

Illicit discharge means any discharge into or from a municipal separate storm sewer that is not composed entirely of storm water or which is not an allowed discharge as specified in this permit. Illicit discharges include, but are not limited to, spills, and discharges associated with illicit connections. ~~, and infiltration/exfiltration of non-stormwater that takes place in pipe bedding.~~

Including infiltration/exfiltration of non-stormwater in pipe bedding is confusing. What exactly is this referring to and what is the concern? As written

it could be interpreted that if water pipes (or sanitary sewer) happen to have a leak near stormwater pipe bedding that could be an illicit discharge. This is probably not enforceable and is well beyond the scope. Suggest deleting references to infiltration/exfiltration and to bedding.

MS4 means a conveyance, or system of conveyances … that discharges to waters of ~~Washington State~~ the United States.
First suggestion: go back to "waters of the United States". The definition of "Waters of Washington State" is significantly broader than the definition of "Waters of the United States" as defined in the Clean Water Act because it includes "underground waters" where the CWA does not claim jurisdiction. Modifying this definition creates a conflict with UIC rules promulgated under the Safe Drinking Water Act and puts permittees in the position of having infiltration facilities subject to both SDWA and CWA simultaneously.

If the change has to be made, the only way it works is if, as commented on in previous sections, the definition of "waters of the state" does not include everything that could possibly result in saturated ground. The permit should be clear that UICs and stormwater discharges to UICs are not covered under the permit.

Outfall means point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to ~~surface or ground~~ waters of the United States.
Three reasons why adding ground waters to the definition of Outfall is problematic: 1) It expands the scope of the permit well beyond the Clean Water Act and RCW 90.48. 2) It really doesn't make sense to call infiltration an "outfall" (it's more like an "infall"). 3) This minor change in how an outfall is viewed could have major impacts in local, state and federal water quality regulations which currently define an outfall as it truly is, a point where stormwater discharges "out" to surface water.

Appendix 1

Page 5, Definitions Related to Minimum Requirements
Rain Garden – A non-engineered shallow landscaped depression, with compost-amended native soils and adapted plants. The depression ponds and temporarily stores stormwater runoff from adjacent areas. Designed to allow stormwater to pass through the amended soil profile. Stormwater that exceeds the storage capacity is designed to overflow to an adjacent drainage system. ~~Refer to the Rain Garden Handbook for Western Washington Homeowners (WSU 2007 or as revised) for rain garden specifications and construction guidance.~~
Reference to specifications and construction guidance should not be part of the definition.

Receiving waters **-** Bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow. ~~Ground water to which surface runoff is directed by infiltration.~~
This addition to the definition could have major impacts on municipalities since many local, state and federal regulations also use the term "receiving waters" but

in a more realistic and limited sense. Infiltration of stormwater is regulated under UIC regulations.

Page 8, Section 3.1,
Figure 3.1
With the change in definition for MS4 to include waters of Washington State, this figure implies Permittees apply Minimum Requirements for projects that discharge to MS4 regulated under the UIC regulation. Is that Ecology's intent?

Page 19 of 40, Line 12
"…volume contained in the largest take within the containment structure…"
'take' should be 'tank'

Page 21 of 40, Line 27
Correct section numbering. There are three letter c's under Element 12.

Page 25 of 40, Lines 10-40
Page 26 of 40, Lines 11-39
All references to SMMWW sections should include the Volume number. Mandatory lists are too prescriptive in specifying the order the BMP must be used. The project applicant should be allowed to select any BMP from the list as long as it is feasible.

Page 27 of 40, Section 4.6, Line 2
PGIS should be PHGS

Page 33 of 40, Section 4.7, Line 6
There is no Appendix I-G in the SMMWW.

Appendix 10, Page 2
Cost Overruns:

~~Ecology will not be responsible for cost overruns.~~ The total project cost estimate for which [Jurisdiction]'s share has been determined includes a refundable 10% contingency. Costs beyond this contingency are not authorized by this contract.

Appendix 10, Attachment A, p. 5, Ecology Task 0.6.

Contract with successful applicants and provide project management oversight to ensure that quality data and other products are produced in a timely fashion and within budgetary constraints

Additional comments on the Permit Fact Sheet and on regulating ground waters:

From the Permit Fact Sheet, pg. 5:
"As authorized by RCW 90.48.030 and RCW 90.48.162, Ecology also takes action through this permit to control impacts of stormwater discharges to all waters of Washington State, including ground waters, unless the discharges are authorized by another regulatory program."

There seems to be a problem with justifying stormwater discharges to ground water using the statutes referenced in Ecology's Fact Sheet. RCW 90.48.162 specifically addresses discharges of wastes to "sewerage systems". The provision 90.48.162:

> "Any county or any municipal or public corporation operating or proposing to operate a sewerage system, including any system which collects only domestic sewerage, which results in the disposal of waste material into the waters of the state shall procure a permit from the department of ecology before so disposing of such materials."

The definition of sewage system from RCW 70.118B is:

> (4) "On-site sewage system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. …. **A system into which storm water or industrial wastewater is discharged is not included in the definition of on-site sewage system.**

Permit issuance wording from 90.48.520:

RCW 90.48.520, Review of operations before issuance or renewal of wastewater discharge permits — Incorporation of permit conditions:

In order to improve water quality by controlling toxicants in wastewater, the department of ecology shall in issuing and renewing state and federal wastewater discharge permits review the applicant's operations and incorporate permit conditions which require all known, available, and reasonable methods to control toxicants in the applicant's wastewater.

Chapter 90.48 provides regulatory authority to permit or prohibit point source discharges of wastewater to both surface and ground waters. This Chapter, however, doesn't appear to provide any justification above and beyond the CWA for including provisions in a municipal discharge permit regulating stormwater discharges to ground waters. In other words, it is not clear that rainwater collected by a municipal storm system during a storm event and directed to infiltration is: 1) wastewater, 2) from a point source, and 3) regulated by 90.48.

Our view is that blending the 90.48 waste discharge regulations into an NPDES permit designed to regulate stormwater exposes permitted municipalities to greater liabilities and program costs, and does so without demonstrating offsetting water quality benefits.