

**Appendix E**

**Permit Modification Fact Sheet for the**

**Phase I Municipal Stormwater General Permit**

**Western Washington Phase II Stormwater General Permit**

**Eastern Washington Phase II Stormwater General Permit**

National Pollutant Discharge Elimination System and  
State Waste Discharge General Permit  
For discharges from  
Large, Medium, and Small Municipal Separate Storm Sewer Systems

March 18, 2009

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
OLYMPIA, WASHINGTON 98504-7600

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**I. INTRODUCTION**

This Fact Sheet accompanies the proposed permit modifications for the following National Pollutant Discharge Elimination System (NPDES) stormwater permits:

- *NPDES and State Waste Discharge Permit for Discharges from Large and Medium Municipal Separate Storm Sewers* (the Phase I Permit)
- *Western Washington Phase II Municipal Stormwater General Permit*
- *Eastern Washington Phase II Municipal Stormwater General Permit*

The Washington Department of Ecology (Ecology) issued the permits on January 17, 2007 and they became effective on February 16, 2007. The Fact Sheet serves as the documentation of the legal, technical, and administrative decisions Ecology has made in the process of modifying the permits. Ecology is issuing these permit modifications to address the resolution of appeals under two settlement agreements and as remanded by the Pollution Control Hearings Board (PCHB) in accordance with WAC 173-220-190(1). Copies of the appeals, settlements and PCHB rulings are available at

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/appeals.html>

## II. **PUBLIC INVOLVEMENT OPPORTUNITIES**

### PUBLIC COMMENT PERIOD

Ecology invites public comment on the proposed permit modification and fact sheet from March 18, 2009 until 5:00 p.m. on May 1, 2009. Ecology welcomes all comments that address the permit modifications in these formal draft documents. In order to adequately address comments, include the following information with each comment:

- The permit(s) subject to your comment.
- The specific permit language used in the modification subject to your comment. Include the page number(s) and, where indicated, section reference (i.e., S8.D.2.b).
- A brief, concise comment including the basis for the comment, and in particular the legal, technical, administrative, or other basis for the concern.
- Suggested permit language or a conceptual alternative to address your concern.

Ecology will issue the final permit modifications after it considers all public comments and makes final changes to the draft permit modifications. Ecology will publish a *Response to Comments* document with the final permit modifications addressing comments submitted during the public comment period.

Written comments should be sent to Ecology as follows:

Send permit comments by e-mail to: [SWPermitComments@ecy.wa.gov](mailto:SWPermitComments@ecy.wa.gov)

Send permit comments in hard copy by mail to:

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

People can make oral comments by attending and testifying at the public hearings:

**April 22, 2009 – Moses Lake**

Moses Lake Fire State, 701 E Third St, Moses Lake, Washington, (509) 765-2204

**April 23, 2009 – Tacoma**

Pierce County Library System, 3005 112<sup>th</sup> St E, Tacoma, Washington, (253) 536-6500

The hearings will an opportunity for formal comments on the proposed permit modifications. Each hearing will immediately follow a short workshop with a question and answer session (see table on next page for more information about the workshops).

**PUBLIC WORKSHOPS**

Before each public hearing listed above and on three other dates listed below, Ecology will host a general public workshop on the proposed permit modifications during the public comment period. The purpose of the workshops is to explain the proposed changes to the permit, and to answer questions about the proposed changes. Ecology will not accept formal oral testimony or comments on the draft permit modifications or fact sheet at the public workshops. Each workshop will address all the proposed permit changes.

Additional experts will attend the workshops scheduled in Phase I permit counties as noted in the table below to respond to questions concerning that region's Phase I manual(s). Ecology will hold the public workshops on the draft modified permits at the following dates, times and locations:

<b>Phase I and Phase II Permit Modification General Workshops</b>
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Date and Time	Location
March 26 <sup>th</sup> at 2:00 PM Vancouver, WA <i>Clark County Phase I manual</i>	<b>Workshop only</b> Vancouver City Council Chambers 210 East 13 <sup>th</sup> Street Vancouver, WA 98660
April 6 <sup>th</sup> at 2:00 PM Mount Vernon, WA	<b>Workshop only</b> PUD District #1 of Skagit County 1415 Freeway Drive Mount Vernon, WA 98273
April 8 <sup>th</sup> at 2:00 PM Bellevue, WA <i>King County and City of Seattle Phase I manuals</i>	<b>Workshop only</b> Bellevue City Hall 450 110 <sup>th</sup> Ave. NE Bellevue, WA 98004
April 22 <sup>nd</sup> at 2:30 PM Moses Lake, WA	<b>Pre-hearing workshop</b> Moses Lake Fire Station 701 East Third Street Moses Lake, WA 98837
April 23 <sup>rd</sup> at 2:00 PM Tacoma, WA <i>Pierce County and City of Tacoma Phase I manuals</i>	<b>Pre-hearing workshop</b> Pierce County Library PAC Building 3005 112 <sup>th</sup> Street East Tacoma, WA 98446

Ecology will issue the final permit modifications after receiving and considering all public comments. If public comments cause a substantial change in the permit conditions from the final draft permit modifications, another public notice of draft modification(s) and comment period may ensue. Ecology expects to issue the final permit modifications in June 2009 and they will become effective 30 days after issuance. Ecology will send a copy of the Notice of Issuance to all persons who submitted written comment or gave oral testimony at the public hearings.

When Ecology issues the final permit modification, the summary of and response to comments will become part of the fact sheet. People submitting comments will receive a notice on how to obtain copies of the final permit and Ecology's response to comments. An Appendix to this fact sheet for the *Response to Comments* will include a summary of the public comments on the draft permit modifications and the resulting changes to the final modified permits.

You may download copies of the proposed permit modification documents and submit comments online at:

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/phaseIpermit/phipermit.html>

You may direct questions about the **workshops, hearings** and requests for printed copies of the draft permit modifications and Fact Sheet to Jocelyn Winz (360) 407-7529 or [jwin461@ecy.wa.gov](mailto:jwin461@ecy.wa.gov)

You should direct questions about the **Public Notice, the Draft Permit Modifications or Fact Sheet** to the appropriate Ecology contact listed below:

Phase I                      Julie Lowe  
Phase I Municipal Stormwater Planner  
Water Quality Program  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600  
Phone: 360-407-6470  
E-mail address: [jlow461@ecy.wa.gov](mailto:jlow461@ecy.wa.gov)

Phase II                     Harriet Beale  
Phase II Municipal Stormwater Planner  
Water Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600  
Phone: 360-407-6457  
E-mail address: [hbea461@ecy.wa.gov](mailto:hbea461@ecy.wa.gov)

### **III.      MUNICIPAL STORMWATER GENERAL PERMIT APPEALS**

Ecology proposes to modify the Phase I, Western Washington Phase II, and Eastern Washington Phase II permits originally issued on January 17, 2007. The proposed modifications implement the outcomes of appeals to the Pollution Control Hearings Board (PCHB) and three settlement agreements.

Notices of appeal, petitions to intervene, PCHB documents, and settlement agreements are available on Ecology's website at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/appeals.html>

#### **IV. EXPLANATION OF PROPOSED PERMIT CHANGES**

##### **A. MODIFICATIONS APPLYING TO THE PHASE I PERMIT AND THE PHASE II WESTERN AND EASTERN WASHINGTON PERMITS**

###### COMMENTS ON EXTENDING INTERIM PERMIT DEADLINES AND REDUCING COSTS

In addition to the proposed changes identified in the permits, Ecology is soliciting input to reduce the costs of permit compliance. We are looking for input on options for extending interim deadlines in the permit as well as innovative and cost-saving ideas to achieve compliance (or better) with the permit at a lower cost. In the current economic situation, budget shortfalls have limited the capacity to ramp up all of the program requirements as quickly as the permit mandates.

In providing input, commenters should address the interim deadlines for existing program elements. Ecology does not intend to change deadlines retroactively, or extend the timelines beyond the expiration date of this permit. We are looking for ways to improve performance and reduce permit implementation costs. We remain committed to the standards in the permit, but are willing to provide flexibility with interim deadlines.

###### S4. COMPLIANCE WITH STANDARDS

The PCHB held a consolidated hearing on Phase I and Phase II appeals of Special Condition 4 (S4) Compliance with Standards from April 16 to April 23, 2008. The PCHB's *Findings of Fact, Conclusions of Law and Order, Municipal Stormwater General Permits Condition S4*, issued by the PCHB on August 7, 2008, applies to the Phase I permit and the Phase II NPDES Municipal Stormwater General Permits for Eastern and Western Washington. The PCHB remanded to Ecology all three permits for modification of permit condition S4.

While the PCHB agreed that the permit's adaptive management approach to a violation of water quality standards is a valid regulatory approach, it ordered modifications to the permit language to clarify the intended meaning, operation, and effect of the permit condition S4.F. The PCHB order is intended to address "...*circumstances under which permittees must give notice to Ecology, the standards by which Ecology will direct adaptive management measures to correct identified violations, the manner in which Ecology will address on-going violations of water quality standards, and the effect of compliance with the S4.F process.*" The PCHB's ruling

ordered Ecology to use the permit language in S4.F that is included in these proposed permit modifications.

Notification and Adaptive Management: The PCHB order included minimum requirements for the specific information that a Permittee must include in the notification under S4.F. In addition, the PCHB order clarified the conditions under which Ecology may determine that an adaptive management response is not required. In the adaptive management report, the PCHB order added a requirement for the Permittee to describe monitoring or other assessment and evaluation efforts to determine the effectiveness of the Best Management Practices implemented to address the discharge. Additional language addressed timeframes for Ecology's response and for submittal of a revised report, and options for further action by Ecology should the adaptive management response fail to correct the water quality standard violation.

Permit compliance: The PCHB clarified that when a Permittee follows the notification process in S4.F, the Permittee remains in compliance with permit conditions S4.A and S4.B prohibiting discharges that violate water quality standards.

Settlement Agreement with Utilities - Ecology added a sentence to S4 to implement a settlement agreement with Puget Sound Energy and PacifiCorp clarifying the relationship of S4 to federal and state laws governing cleanup of hazardous substances. The modification removes a conflict with Washington State RCW 70.105D (Hazardous Waste cleanup - Model Toxics Control Act) and the United States 42 USC 9601 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or CERCLA). While the settlement resulted from the appeal of the Phase I permit, Ecology included this sentence in both Phase II permits, as well, for consistency.

### G3 NOTIFICATION OF SPILL AND G20 NON-COMPLIANCE NOTIFICATIONS

Ecology modified General Condition 3 (G3) and General Condition 20 (G20) for consistency with the PCHB order clarifying S4.F Compliance with Standards. The modification moves existing conditions G20.A and G20.C to G3, combining them into one general condition to address discharges and spills into and from the Municipal Separate Storm Sewer System (MS4) that threaten human health, welfare and/or the environment. Condition G20 is now limited to notification of noncompliance with permit conditions, which was formerly G20.B. Ecology also adds some clarifications for both G3 and G20 notifications. The proposed changes are consistent with the clarification in PCHB ruling that Permittees that follow S4.F remain in compliance with the permit.

## DEFINITIONS AND ACRONYMS

Ecology deleted definitions for “equivalent document” (Phase I and Phase II Western Washington) and “equivalent manual” (Phase II Eastern Washington) because these terms are not used in the permits. Ecology also deleted the definitions because they provide no additional information beyond what is stated in the body of each permit.

## APPENDIX 4 – Secondary Permittee Annual Report Form

Ecology revised the Appendix 4 Secondary Permittee Annual Report form as a minor permit modification. The new form includes the questions for all the permit requirements in this five-year permit cycle. The previous version had separate forms for each year. Because Secondary Permittees continue to submit Notices of Intent and may begin permit coverage throughout the permit cycle, each has a different permit coverage date. The resulting deadlines for each Permittee vary for most of the permit requirements. The revised form includes all the requirements in one form, so that Permittees can report on their progress according to individual deadlines. The new form does not change any permit requirements and corrects several inconsistencies with permit requirements in the previous version of Appendix 4.

## MINOR MODIFICATIONS TO CORRECT ERRORS

The proposed permit modifications for the three permits correct several typographic and formatting errors that do not change the permit requirements. In addition, Ecology clarified the following:

- Modified language in the Phase I permit (S5.C.9.b.ix), the Western Washington Phase II permit (S5.C.5.i) and the Eastern Washington Phase II permit (S5.B.6.a.i) in order to achieve consistency across all the permits.
- Added a deadline where there was none for Secondary Permittees to meet condition S6.D.3.f.
- Deleted wording in S6.D.6.b. that is inconsistent with the requirement in the *General NPDES Permit for Stormwater Discharges Associated with Industrial Activities* for the facility operator to apply for coverage.

## **B. MODIFICATIONS APPLYING ONLY TO THE PHASE I PERMIT**

### S5. STORMWATER MANAGEMENT PROGRAM FOR CITIES AND COUNTIES

#### S5.C.5 Controlling Runoff from New Development, Redevelopment and Construction Sites

S5.C.5.b and Appendix 10 Equivalent Programs for Runoff Controls for New and Redevelopment and Construction Sites: The PCHB issued a *Summary Judgment and Order on Dispositive Rulings for Phase I appeals* on April 8, 2008. The PCHB remanded the Phase I permit to Ecology to modify the permit under WAC 173-220-190 to allow public review, comment and appeal of Ecology's determinations that any alternatives to Appendix 1 or the 2005 *Stormwater Management Manual for Western Washington* proposed by Phase I Permittees are functionally equivalent to Appendix 1 or the 2005 *Stormwater Management Manual for Western Washington*. Under Phase I special condition S5.C.5.b.iv, Ecology reviews and approves Phase I local programs developed to meet Phase I special conditions S5.C.5.b.i, ii and iii.

The PCHB summary judgment agreed with appellants that Ecology's determinations of equivalency lacked a public process and constituted a permit modification. The order requires Ecology to name approved alternative manuals within the permit in order to allow, through the major permit modification requirements in WAC 173-220-060, a public review, public comment and appeal process on Ecology's decision.

Ecology is implementing this order by including a list of approved documents in a new appendix to the Phase I permit, Appendix 10. Each jurisdiction takes a different approach to meeting the permit requirements contained in S5.C.5.b.i, ii and iii that is specific to its municipal code and land conditions. In some cases, Ecology has conditioned its approval. The proposed codes, documents and conditions to meet permit requirements are listed in Appendix 10. The Phase I documents, and records of Ecology's original comments and their resolution, are available on Ecology's website at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/Phase1equivalentstormwatermanualsWestern.html>.

Appendix 10 lists the manual and ordinance packages for five Phase I Permittees: King County, the City of Seattle, Pierce County, the City of Tacoma, and Clark County. In the case of Clark County, Ecology has not approved the entire package. Appendix 10 lists special conditions that Clark County must correct to achieve full compliance with permit requirements. Ecology is working with Clark County to resolve these conditions to achieve compliance. King County's

program includes a provision that, based on recent events, must be addressed as indicated in an associated footnote in Appendix 10. In the case of the City of Seattle, the package has not yet been adopted by the city government. Appendix 10 contains a footnote that addresses potential changes that may occur during the City of Seattle's legislative process. The sixth Phase I Permittee, Snohomish County, does not have an approved manual and ordinance package that Ecology is proposing as equivalent. Ecology and Snohomish County are addressing this under a separate process.

Ecology recommends that reviewers of this proposed modification limit comments to the issue of the appeal and order, which is Ecology's approval that the local ordinance and manual are in fact equivalent to what is required by the permit. Broader issues related to Ecology's manual and Appendix 1 are not the subject of this permit modification. Reviewers can find documentation of Ecology's decision-making process for each manual on Ecology's website at <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/Phase1equivalentstormwatermanualsWestern.html>.

#### S5.C.5.b.iii Low Impact Development

The PCHB conducted hearings on the remaining Phase I permit appeal issues from April 29, 2008 to May 8, 2008. On August 7, 2008 the PCHB issued the *Findings of Fact, Conclusions of Law, and Order, Concurrence and Dissent* on the remaining Phase I issues. The PCHB remanded the permit to Ecology with an order to modify the permit. The order includes language the PCHB drafted for permit condition S5.C.5.b.iii regarding low impact development (LID).

Ecology modified condition S5.C.5.b.iii as follows:

- S5.C.5.b.iii(1) will retain the existing permit language to require Permittees to allow LID. This preserves the progress made to date and addresses the fact that the Phase I Permittees' local manuals and ordinances, prepared under S5.C.5.b.iv and as listed in Appendix 10, were developed to allow LID.
- S5.C.5.b.iii(2) includes the PCHB language that Phase I city and county programs *"...must require non-structural preventive actions and source reduction approaches including Low Impact Development Techniques (LID), to minimize the creation of impervious surfaces, and measures to minimize the disturbance of soils and vegetation where feasible."*

Ecology determined that the LID provision in the PCHB order requires that the agency develop and incorporate into the permit minimum performance standards for LID at the site and subdivision scale. The PCHB found that no broadly accepted performance standard for LID exists. Ecology is obligated to implement the PCHB order in a framework that protects surface and ground water, other natural resources, and public and private property from harm that

could result from inadequate LID practices. Ecology also has a responsibility to provide Permittees with clearly defined performance measures of what constitutes compliance with this requirement.

As a result, Ecology will initiate a process to define the scope of LID techniques, the criteria for determining the feasibility of using LID techniques, and a LID performance standard. The process will include a technical advisory group with members such as regional science experts, practitioners of LID, and Permittee technical staff. A second advisory group of stakeholders will address policy concerns and will plan for implementation. The policy group will invite participation by local officials of permitted cities and counties, development industry representatives, and environmental groups. The timing of the process will depend on available funding. When the process is complete, Ecology will modify the permit to incorporate the performance standard other technical definitions and guidance, and associated deadlines for local manual and ordinance development and adoption.

Related permit modifications: Ecology incorporated three proposed permit modifications into permit section S9 Reporting to address LID as follows:

- The PCHB order included Permittee reporting requirements related to LID. In accordance with the order, permit condition S9.E.10 requires Permittees to include a summary of barriers to implementation of LID and actions taken to overcome those barriers.
- In addition to the PCHB order that Permittees require LID at the site and subdivision scale, the Findings of Fact also addressed stormwater management at the watershed or landscape scale. The PCHB found that Ecology should prepare to include requirements in future permits to implement LID principles in land use planning and regulation through basin or watershed planning. The order provided language that Ecology proposes to incorporate as permit condition S9.E.11, requiring that Permittees annually report on the extent they are conducting basin or watershed planning in the jurisdiction.
- Permit condition S9.E.12 incorporates a third requirement for Permittees to *“...identify, prior to the end of the permit cycle, areas within their jurisdiction for potential basin or watershed planning to incorporate development strategies as a water quality management tool to protect aquatic resources.”*

Ecology will provide guidance for these reporting requirements as needed.

### S5.C.6 Structural Stormwater Controls

In the PCHB *Findings of Fact, Conclusions of Law, and Order, Concurrence and Dissent* issued on August 7, 2008, the PCHB remanded the permit to Ecology with an order to modify permit condition S5.C.6.b.ii related to Structural Stormwater Controls programs. Ecology included the PCHB language for that condition in this proposed permit modification.

The PCHB ruling strengthens the minimum performance measures for this program to address stormwater problems caused by existing development. In addition to the existing requirement to submit a list of planned retrofit projects to correct problems, the PCHB language requires Permittees to submit to Ecology a description of the criteria and procedures they used to develop the list. This revision facilitates Ecology oversight to evaluate whether the Permittees applied MEP and AKART standards at a programmatic level as they prioritized projects. Permittees will submit this information with each Annual Report.

### S6 STORMWATER MANAGEMENT PROGRAM FOR CO-PERMITTEES AND SECONDARY PERMITTEES

#### S6. E Stormwater Management Program for the Port of Seattle and the Port of Tacoma

##### S6.E.7 Source Control in Existing Developed Areas

In the PCHB *Findings of Fact, Conclusions of Law, and Order, Concurrence and Dissent* issued on August 7, 2008, the PCHB also remanded the permit to Ecology with an order to modify permit condition S6.E.7 related to the Source Control in Existing Developed Areas requirements for the Port of Seattle and the Port of Tacoma.

Ecology incorporated in the proposed permit modification the PCHB's language that exempts environmental mitigation sites from the requirement to develop Stormwater Pollution Prevention Plans (SWPPPs) for Port-owned lands.

### S7 and APPENDIX 2. COMPLIANCE WITH TOTAL MAXIMUM DAILY LOAD REQUIREMENTS

Ecology and Snohomish County reached a settlement agreement to resolve the Snohomish County appeal regarding Total Maximum Daily Load (TMDL) requirements. The PCHB issued the *Order on Motion for Remand (S7 and S8 Settlement)* on April 2, 2008. Ecology incorporated into the proposed modification the revisions to S7 and Appendix 2 that clarify Ecology's original intent as follows:

- A deleted sentence in the introductory paragraph of S7 eliminates confusion over a broad reference to “requirements of applicable TMDLs.” The TMDL requirements are specified in S7.A, B and C and Appendix 2.
- The clarification added to “all upstream tributaries” addresses the geographic limitations of the permit.
- Revisions to the first paragraphs of the “Action Required” sections of the Snohomish River Tributaries and North Creek TMDL requirements in Appendix 2 clarify Ecology’s original intent. The ordinance developed under IDDE requirements is now properly referenced, and the terms *commercial animal handling areas* and *commercial composting facilities* are now defined.
- The parallel paragraph in the Swamp Creek TMDL requirements, under the heading “Pollution Source Control Activities,” is revised to reference the ordinance, rather than the IDDE program, and provides definitions. This section also refers to source control BMPs that Permittees must require, as applicable, for the types of facilities that can be sources of bacterial pollution.
- Revisions to the Swamp Creek “Water Quality Monitoring” paragraph that apply specifically to Snohomish County properly reflect that this is a Swamp Creek TMDL water quality monitoring requirement, and refer to the timelines specified in Appendix 2 rather than to a separate document.

## S8. MONITORING

Ecology, Pierce County, Snohomish County, Clark County, City of Seattle, City of Tacoma, King County, the Port of Seattle and Port of Tacoma reached a settlement agreement on a number of appeal issues related to permit condition S8 Monitoring. Ecology and the Permittees signed the settlement agreement to *“Resolve Monitoring Issues Raised on Appeal by Phase I Permittees Under Special Condition S8 of the 2007 Phase I Municipal Stormwater Permit”*, dated March 6, 2008.

Most of the modifications to S8 Monitoring clarify existing permit requirements. The settlement agreement included the following changes:

- S8.D.2.a. This change is based on statistical data presented to support the Permittees’ objection to collect 67% of qualifying storm events at a storm event criteria of 0.2 inches. The new language:
  - Changes the requirement to collect samples from a maximum of fifteen (15) storm events per year to a maximum of fourteen (14) storm events per year.
  - Allows the Permittee to meet the fourteen (14) events per year by submitting data collected from up to three (3) storm events that do not meet the rainfall volume storm event criteria of 0.2 inches. This addresses storms

for which the Permittee deploys at the beginning of a storm, but in which the storm volume falls slightly below 0.2 inches.

- S8.D.2.a.iii. Moves bacteria from the list of parameters to be collected in a composite sample to a parameter collected as a grab sample (S8.D.2.e)
- S8.D.2.d. Clarifies the toxicity sampling language to reflect Ecology's intent for toxicity monitoring.
- S8.D.2.d.i. Changes toxicity sampling to allow the Permittee to collect samples using either time-weighted or flow-weighted programming schemes to allow for the large volume needed to run the test successfully. Changes also clarify that a separate volume is needed for analysis for a successful test. The modified language also removes parameters from the referenced list in S8.D.2.b.i through vii (turbidity, conductivity, BOD5 and nutrients) that do not have known causes of toxicity in fish. This section includes further clarification of follow up actions and clarifies data analysis procedures.
- S8.D.2.f. Allows a qualitative process for analyzing grain size in the field due to the large volume of sediment needed for the previously specified grain size analysis. The most representative technique for collecting stormwater discharge sediments (a sediment trap) results in limited sediment volumes for analysis. Ecology supports the preference to obtain chemistry data on listed permit-required parameters.
- S8.D.2.g. Changes requirements for reporting data from the calendar year to the water year. This is a more valid approach since scientists collect stormwater data and report pollutant loads based on wet and dry seasons.
- S8.H. The change to reporting based on the water year necessitates this change to address partial water year submittals in Annual Reports.

## S9. REPORTING REQUIREMENTS

Ecology modified city and county reporting requirements in S9.E of the Phase I permit to incorporate elements of the PCHB order related to LID requirements (S5.C.5.b.iii). Page 12 of this document includes a description of Related Requirements that addresses the modifications to reporting requirements.

## APPENDIX 1. MINIMUM TECHNICAL REQUIREMENTS FOR NEW DEVELOPMENT AND REDEVELOPMENT

Ecology clarified and corrected the following requirements:

- Added to section 4.2 Minimum Requirement #2 (page 12 of 29) a statement clarifying that an abbreviated Stormwater Pollution Prevention Plan for land disturbing activities

of less than an acre also applies to individual parcels within a larger, common plan of development.

- Clarified that Minimum Requirement #2, element 12.c on page 18 of 29 applies to sites that disturb one or more acres, for consistency with requirements of Ecology's Construction Stormwater General Permit.

## APPENDIX 9 – LABORATORY METHODS

Ecology modified Appendix 9 of the Phase I permit based on a significant update to 40 CFR Part 136 (March 2007) that occurred after the permit effective date of February 2007. In the March 2007 update, Ecology revoked the methods EPA revoked in 40 CFR part 136. Ecology also added analytical methods to Appendix 9 for broader application where reporting limits were equal to or less than the permit required limit.

### Proposed permit modifications to Appendix 9:

#### Table 9-1 Analytical Procedures in Stormwater:

- Ecology proposes to revoke the methods EPA revoked in 40 CFR part 136:
  - EPA Method 160.2 for TSS
  - EPA Method 405.1 for BOD<sub>5</sub>
  - EPA Method 150.1 for pH
  - Standard Method 4500 NO<sub>3</sub> I for Nitrate/nitrite
- The reference to PSEP 1997 for Grain Size Analysis is an error and has been corrected to read ASTM 1997 (applies to Table 9-2 as well).
- Standard Method 4500 P I for total phosphorus and Standard Method 4500 P G for orthophosphorus are no longer listed in 40 CFR part 136.

The reporting limits for dissolved lead and cadmium were increased from 0.02 ug/L to 0.1 ug/L. Ecology proposes this change based on the likely range of concentration of these parameters in stormwater, and because the original reporting limits require special handling techniques for low level metals which are not compatible with the sample collection requirements of S8.

#### Table 9-2 Analytical Procedures in Sediments

- EPA Method 200.9 for cadmium, copper and lead was an error.
- Herbicide and pesticide analytes were added to the herbicide and pesticide sediment analysis list for clarification. Analytes including prometon, 2,4-D, MCP, Triclopyr and Dichlobenil are hydrophilic (not known to attach to sediments).
- Analytes for herbicide analysis in sediment samples (Pentachlorophenol, Diazinon, Chlorpyrifos and Malathion) and reporting limits were added to Table 9-2.
- Analytical methods and reporting limits were added for total phosphorus and total volatile solids. These methods were not originally included in Appendix 9, but are required parameters in S8.F.6.

### C. MODIFICATIONS APPLYING ONLY TO THE WESTERN WASHINGTON PHASE II PERMIT

The PCHB conducted hearings on the remaining Western Washington Phase II issues from October 23, 2008 to October 31, 2008. On February 2, 2009 the PCHB issued the *Findings of Fact, Conclusions of Law, and Order* on the remaining Phase II issues. The PCHB remanded the permit to Ecology with an order to modify the permit regarding low impact development (LID).

#### S9. REPORTING

The PCHB found that “...Ecology must take additional steps in the Phase II Permit to ensure that Phase II jurisdictions undertake actions to implement, or ready themselves to implement LID.” The PCHB concludes that the Phase II jurisdictions must implement LID requirements in future permits, but leaves to Ecology’s technical expertise the determination of the timing for this requirement in future versions of the permit.

Ecology modified Special Condition S9 Reporting to add S9.E.4 reporting requirements as specified in the PCHB order. Ecology incorporated the PCHB reporting requirements into annual reporting requirements S9.E.4.a and S9.E.4.b. Permittees must submit reports under these conditions no later than March 31, 2011.

- Each Permittee must submit a report under S9.E.4.a to identify barriers to using LID in the jurisdiction, and measures to address those barriers. This information will help Ecology staff understand the local conditions, regulatory barriers, local government capacity, development community experience, and other factors that impede the Permittees’ progress in requiring LID for new and redevelopment projects. Ecology will use the information as it drafts the next version of the permit and to target technical assistance on LID. The report will also help Permittees identify and begin to address the barriers to LID, consistent with the language of the PCHB order.
- Permittees may develop reports to meet the proposed requirements of S9.E.4.b.i through iv either individually or in a group of multiple Permittees. The reports will help Permittees develop plans for advancing LID. Through these reports, Permittees (or groups of Permittees) will outline the steps and possible timelines for incremental but steady progress toward requiring LID for development and redevelopment projects in the future. Reports on LID practices currently available and being implemented, and on potential and planned non-structural actions and LID techniques will inform Ecology as it considers additional requirements in the next permit. Permittee input on goals and metrics to identify, promote, and measure LID and potential or planned schedules for broader implementation will help Ecology track progress and develop the incremental

steps and timing of future requirements. Ecology will also use the information to provide technical assistance to Permittees.

Some Phase II jurisdictions in Western Washington have substantial experience with LID in both public and private development projects. Others, particularly in areas outside of Puget Sound, lack experience and training with LID practices and techniques. Many of the contractors and developers in those communities are not familiar with LID practices. Ecology expects these reporting requirements to help prepare and advance all Western Washington Permittees along the path to requiring LID in the future.

## S5. STORMWATER MANAGEMENT PROGRAM FOR CITIES, TOWNS AND COUNTIES

### S5.C.4 Controlling Runoff from New Development, Redevelopment and Construction Sites

Ecology provided an effective date of November 16, 2009 for the ordinance or other enforceable mechanism to control runoff from new development, redevelopment and construction sites. Ecology learned after issuing the permit that it is common practice for cities and counties to allow several months between the adoption and effective date of ordinances, especially those that significantly change internal procedures and staffing. Implementation of the new standards requires that the Permittees revise internal permit review procedures, train staff, and inform the local development community. Ecology adds language for an effective date for the ordinance or other enforceable mechanism that is no later than three months after the August 16, 2009 deadline for adopting the ordinance.

## S7 and APPENDIX 2. COMPLIANCE WITH TOTAL MAXIMUM DAILY LOAD REQUIREMENTS

Ecology incorporated the modifications for S7 and Appendix 2 from the agreement with Snohomish County into the Phase II Western Washington permit. Because these portions of the permit are identical in both permits, consistent language helps prevent confusion. The proposed modification does not change the requirements for Phase II Permittees in the Snohomish River Tributaries and North Creek or any other TMDL.

## APPENDIX 1. MINIMUM TECHNICAL REQUIREMENTS FOR NEW DEVELOPMENT AND REDEVELOPMENT

Ecology clarified and corrected the following requirements:

- In Figure 3.1 (Appendix 1, page 8 of 31) added “not” to the box in the lower right corner of the flow chart. With this change, the figure is consistent with the narrative requirements on page 7 of Appendix 1.
- Added to section 4.2 Minimum Requirement #2 (Appendix 1, page 13 of 31) a statement clarifying that an abbreviated Stormwater Pollution Prevention Plan is allowed for land disturbing activities of less than an acre. This statement applies to individual parcels within a larger, common plan of development.
- Clarified that Minimum Requirement #2, element 12.c (Appendix 1, page 19 of 31) applies to sites that disturb one or more acres, for consistency with requirements of Ecology’s Construction Stormwater General Permit.

#### **D. MODIFICATIONS APPLYING ONLY TO THE EASTERN WASHINGTON PHASE II PERMIT**

In addition to the proposed modification of S4 Compliance with Standards, general conditions G3 and G20, and Appendix 4, Ecology proposes several modifications to the Eastern Washington Phase II permit for consistency, to clarify the intent of the permit and to correct errors.

##### **S5.B.4.a and S5.B.5.a – CONSTRUCTION RUNOFF CONTROL AND POST-CONSTRUCTION STORMWATER MANAGEMENT FOR NEW DEVELOPMENT AND REDEVELOPMENT**

Ecology clarified the effective dates in both S5.B.4.a and S5.B.5.a for ordinances or regulatory mechanisms adopted no later than three years from the effective date of the permit. The ordinances must be effective no later than four years from the permit effective date. The ordinance effective dates of three years conflict with permit conditions S5.B.4.b and S5.B.4.c as well as S5.B.5.b. and S5.B.5.c for requirements to implement the ordinances. The implementing requirements state that the Permittees must adopt and implement site plan review processes, training, inspection, recordkeeping, enforcement procedures no later than four years from the permit effective date.

Ecology’s proposed change clarifies that Eastern Washington Phase II Permittees must adopt the ordinance or other enforceable mechanism by February 16, 2010 and must implement them no later than February 16, 2011. In the Phase II Eastern Washington Fact Sheet dated March 22, 2006, pages 31-32, Ecology stated its intent to provide an additional year after adoption for Permittees to implement the ordinances or other regulatory mechanisms. This proposed permit modification corrects an internal inconsistency in the permit and clarifies Ecology’s intent.

## S7 – COMPLIANCE WITH TOTAL MAXIMUM DAILY LOAD REQUIREMENTS

Ecology modified S7 of the Eastern Washington Phase II permit to match the proposed changes in S7 of the Phase I permit implementing the agreement reached with Snohomish County (see page 14). Ecology proposes deleting the last sentence in the introduction of S7 for consistency across the three permits.

Ecology modified Appendix 2 to include in the Eastern Washington Phase II permit specific Total Maximum Daily Load (TMDL) requirements for the Selah Ditch. *The Selah Ditch Multiparameter Total Maximum Daily Load* was developed by Ecology and approved by the Environmental Protection Agency Region 10 on October 25, 2006. The TMDL approval occurred several months prior to issuing the Eastern Washington Phase II permit.

Ecology added actions for the City of Selah's municipal storm sewer system to this permit modification from the Water Quality Improvement Report (Ecology publication #05-10-020, June, 2006). The TMDL actions require the City of Selah to complete the Water Quality Improvement Plan by January 2010, and a survey for illicit connections to the MS4 by January 2011. The City must remove the illicit connections by January 1, 2012. Ecology consulted with the City of Selah prior to adding these actions. Additional information on the Selah Ditch TMDL and Water Quality Improvement Report is available on Ecology's webpage for water quality improvement projects in Water Resources Inventory Area 39 at

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