

Appendix E

RESPONSE TO COMMENTS
ON THE
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
MUNICIPAL STORMWATER GENERAL PERMIT
MAJOR MODIFICATION

May 5, 2010

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INTRODUCTION

Ecology issued a permit to WSDOT on February 4, 2009 that covers discharges from its municipal separate storm sewer system (MS4). MS4s are conveyances or a system of conveyances including roads with drainage systems, streets, catch basins, ditches, man-made channels, and storm drains. The effective date of the permit was March 6, 2009. The permit was appealed by Puget Sound Keeper Alliance within the 30-day post-issuance period. In January 2010, Ecology, WSDOT and the appellant settled on proposed language to modify the permit, resolving the permit appeal. This Response to Comments provides Ecology's responses to comments received during the public notice period of the permit modification.

PUBLIC REVIEW OF PROPOSED CHANGES TO THE PERMIT

On February 3, 2010, Ecology filed a notice with the State Register to modify WSDOT's NPDES and State Waste Discharge Permit for Municipal Stormwater. Ecology invited public comment on the modified permit and accepted written and oral comments on the proposed changes to the permit until 5 p.m., March 31, 2010.

Ecology held a hearing at Ecology Headquarters in Lacey, Washington on March 29, 2010 at 3pm. The purpose of the hearing was to provide an opportunity for formal oral testimony and comments on the proposed permit.

SUMMARY OF CHANGES TO THE DRAFT PERMIT MODIFICATION

The permit modification implements the settlement agreement. The appeal documents can be viewed at: <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/wsdot.html>

The proposed modification adds substantive language to the permit. Ecology also made numerous changes to improve clarity and readability of the permit. Permit sections modified include: S6.C, S7. E.2.d., S8.E., Appendix 7, Stormwater Management Program Plan, Sections 3 and 3.1, 5.4, 6.2, and Appendix 3, Applicable TMDL Requirements.

LIST OF COMMENTERS

Those who commented are listed below. Their comments can be read in full on our website at: <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/WSDOTpermitdocs.html>

Washington State Department of Natural Resources
Washington state Depart of Transportation

THE RESPONSE TO COMMENTS

Each page of comments received has been copied below and is followed by Ecology’s responses.

COMMENTS FROM THE WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (DNR)

DNR comments, page 1:



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

Caring for
your natural resources
... now and forever

DEPARTMENT OF ECOLOGY

MAR 19 2010
WATER QUALITY PROGRAM

March 16, 2010

Kathleen Emmett
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Subject: Comments on the Draft Washington State Department of Transportation Municipal Stormwater Permit, March 2010.

Dear Ms. Emmett:

The Department of Natural Resources (DNR) as steward of State Owned Lands has the obligation to manage and protect those lands for present and future citizens of the state to sustain ecosystems and economic viability. The management of sustainable resources is based upon sound science in a transparent manner with the full benefit of public understanding.

The DNR finds that the new draft Washington State Department of Transportation Municipal Permit (Permit) is a considerable improvement over the last draft permit and represents a step in the right direction. The attention to receiving waters exceeding water quality standards is to be commended. However, DNR continues to be concerned with some aspects of the permit.

DNR finds that the following points have not been effectively resolved:

- The permit by requiring reduction to the “maximum extent practical” does not clearly prohibit discharges that may exceed water quality standards.
- Implementation of AKART as statutorily required is not clearly developed for stormwater. If AKART is already present as required statutorily how is possible for additional measures to result in AKART?
- Ecology must devote appropriate resources to resolution of source control in those waters where TMDLs have been created. The discharge of additional contaminants to receiving water already in excess of that water quality standard must not be allowed as a long term policy.
- The few sites that are monitored will assist in the development of stormwater policies, but it is only a snapshot in time and provides only an opening into the complexities of the issues. Unfortunately the data gathered from this study will be used to develop generalities that may or may not have little applicability except to those sites.



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RECYCLED PAPER ♻

Response to DNR comments, page 1:

1. Thank you for your comments. Permit requirements regarding the use of the Water Quality Standards and AKART were not subject to the appeal but had been commented on when the permit was issued. Ecology’s response to comments on sections outside of the appeal can be found in Appendix C of this Fact Sheet.
2. Regarding the bulleted comment on TMDLs, the permit is directed at managing discharges from WSDOT’s MS4 rather than Ecology’s source control activities.
3. Thank you for your comments on monitoring.

DNR comments, page 2:

Kathleen Emmett
March 16, 2010
Page 2 of 2

Specific Comments:

1. Page 8 S4F1. Is it possible to be excused from notification to Ecology with a single notification?
2. Page 9 S4F3d. Ecology is to be complemented on the development of a compliance schedules or other enforcement orders if implementation of Best Management Practices continues to result in violation of water quality standards.
3. Page 10 S4F3f Ecology is to be complemented that this permit does not provide a shield to Washington State Department of Transportation (WSDOT) for liability resulting from the discharges.
4. Page 10 S5A2 WSDOT designed the SWMP. Did they write it?
5. Page 11 S5 A5 DNR supports the requirement that WSDOT be required to evaluate Low Impact Development for all projects as an alternative.
6. Page 12. S6 The overall approach to Total Maximum Daily Load issues is good, but it suffers from the lack of responsibility of Ecology to resolve source control issues in TMDL waters.
7. Page 13 S7 "Time of concentration" is used several times without definition.
8. Page 18 S7C1 and 3 DNR applauds the use of toxicity testing for the first flush. P.20 S77 The wording is extremely awkward: If necessary to produce knowledge....

The Permit only begins to resolve long term issues associated with stormwater runoff from the state highway system. Much work needs to be done to address major stormwater issues in the high density urban areas of Washington. Ecology is to be complemented on a major step forward. It is hoped that the full implications of this permit are part of long range planning and ongoing commitment of necessary resources at Ecology to the resolution of stormwater issues.

Sincerely,



Lionel Klikoff PhD
Sediment Quality Unit Supervisor

cc: Naki Stevens, Natural Resources Administrations Assistant
Kristin Swenddal, Aquatic Resources Division Manager

Response to DNR comments, page 2, specific comments:

1. This response applies to comments 1-3 above, which refer to pages 8-10 of the permit regarding subsections of Special Condition S4. Special Condition S4 was not subject to the appeal. Ecology's response to comments on sections outside of the appeal can be found in Appendix C of this Fact Sheet.
2. Response to comment 4: Yes, WSDOT wrote their SWMP. Ecology reviewed and approved it and added it as an appendix to the permit.
3. Response to comment 5: Thank you for your comment.
4. Response to comment 6: The permit is a legal tool used to manage discharges from WSDOT's MS4, it is not used to manage Ecology's source control activities.
5. Response to comment 7: The "time of concentration" is calculated as the time taken for runoff to flow from the most hydraulically remote point of the drainage area to the point under investigation.
6. Response to comment 8 and the following paragraph: Thank you for your comments.

COMMENTS FROM THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

WSDOT comments, page 1:

**WSDOT Comments on the
WSDOT Municipal Stormwater Permit Modification**
March 2010

Page 1

Since the geographic scope of the permit also includes Phase 2 designated areas, the front page of permit should read:

*National Pollutant Discharge Elimination System and
State Waste Discharge General Permit for
Large, and Medium, and Small Municipal Separate Storm Sewer Systems*

Page 12, S6.A.2.

To maintain consistency with the language clarification made in S6 regarding the use of the term *Detailed Implementation Plan*, we suggest the following revision:

*WSDOT shall meet the timeframes identified in either the TMDL or Detailed
Implementation-Plan associated implementation documents.*

Page 17, S7.B.8.a.iii

The word "Phenolics" should appear as a separate parameter (i.e., *S7.B.8.a.vi. Phenolics*). Then correct corresponding numbering of the remaining parameters that follow.

Page 18, S7.B.8.b.iii.3) – 6)

Numbering typographical errors need correcting. Number sequencing should read "1)" through "4)" rather than "3)" through "6)".

Page 26, S7.E.7.c

This sentence has a typographical error which should be corrected as follows:

Antecedent dry period, einter-event period and total precipitation depth.

WSDOT Comments on Draft WSDOT Municipal Stormwater Permit Modification

1

Response to WSDOT comments, page 1:

1. Comment on page 1, regarding the name of the permit: Ecology has edited the name of the permit to read, "WASHINGTON STATE DEPARTMENT OF TRANSPORTATION NATIONAL POLLUTANT DISCHARGE AND ELIMINATION SYSTEM AND STATE WASTE DISCHARGE PERMIT FOR MUNICIPAL STORMWATER".
2. Comment on page 12 regarding TMDL implementation documents: Ecology agrees and has modified the permit accordingly.
3. Comment on page 17 regarding the word "Phenolics". Ecology agrees and has modified the permit accordingly.
4. Comment on page 18 regarding a numbering typographical error. Ecology agrees and has modified the permit accordingly.
5. Comment on page 26 regarding a typographical error. Ecology agrees and has modified the permit accordingly.

WSDOT comments, page 2:

Page 27, S7.E.9

The requirement for a final report for each BMP monitored did not appear in the original permit issued on February 4, 2009. Rather it appeared as part of the May 1, 2009 modification. While WSDOT did not have the opportunity to comment on this change, we recognize that an evaluation of the data could be beneficial for WSDOT. However, since Ecology's TAPE relates to testing and evaluating new stormwater treatment technologies rather than Ecology-approved BMPs, we recommend revising the last sentence to read:

The final report shall include an analysis of the performance data collected on the BMP's as described in the appropriate sections of Ecology's TAPE (available on Ecology's website).

Or the permit should identify and list the appropriate sections of TAPE that are being referred to.

Page 30, S8.E.3

S5.A.6 is referencing the wrong permit section. The correct reference should be S5.A.5

Appendix 7, Table of Contents

The following hyperlinks imbedded in the table of contents need to be established or fixed:

- 3.1 Illicit Discharge Identification (*missing hyperlink*)
- 3.2 Notification Procedures (*links to wrong section*)
- 5.4 Consultation with the Services (*missing hyperlink and page number reference*)
- 6.2 Requirements for Stormwater Retrofit in Puget Sound Basin (*missing hyperlink and typographical error*)
- 6.3 Opportunity-based Retrofits Outside of the Puget Sound Basin (*missing hyperlink*)
- 8.3 Information Management (*missing hyperlink*)

The following section reference needs to be added to the table of contents:

- 6.4 Project-triggered Stormwater Improvements

The following sections have incorrect section number references:

- 6.4~~5~~ Stormwater Retrofit Prioritization Process
- 6.5~~6~~ Stormwater BMP Retrofit Program Evaluation

Response to WSDOT comments, page 2:

1. Response to comment on page 27, regarding reporting requirements: Neither a final BMP report nor a report that follows the guidelines in TAPE was new in the February 4, 2009 permit.

Special Condition S8.E.2 of the February 4, 2009 permit (and previously in S8.G of the final draft dated 12/1/08) required:

“A Final Water Quality Monitoring Report for *each* monitoring program outlined in S7 shall be submitted within one month prior to the end of the permit expiration date.”

The BMP monitoring program outlined in S7.E.8 (S7.E.7 of the 12/1/08 redlined draft permit) of the original permit stated:

Beginning with the first annual monitoring annual report (due September 1, 2011), WSDOT shall include in each Annual Report for BMP Evaluation Monitoring the following information for each *site*:

- a. Status of implementing the monitoring program and a description of Stormwater Treatment and Hydrologic Management BMP Evaluation Monitoring programs that are still in progress at the end of the reporting year
- b. WSDOT shall compute and report cumulative (including previous years) performance data for each treatment BMP test site, and for both sites of the same treatment BMP type, consistent with the guidelines in appropriate sections of Ecology's guidance for "*Evaluation of Emerging Stormwater Treatment Technologies*" and USEPA publication number 821-B-02-001, "*Urban Stormwater BMP Performance Monitoring*," including information pertinent to fulfilling the "*National Stormwater BMP Data Base Requirements*" in section 3.4.3. of that document.
- c. Status of cumulative (including previous years) performance data in terms of statistical goals for each test site and for both test sites of the same treatment BMP type;
- d. Status of performance data concerning flow reduction performance for the hydrologic reduction BMP; and
- e. Any proposed changes to the monitoring program that could affect future data results.

The addition of S7.E.9 in the redlined errata version of concern was added to clarify these existing requirements. However, Ecology does make the assumption that WSDOT will be able to perform an analysis of the performance data collected. If WSDOT's statistical goals are NOT met at this time WSDOT will still have to submit a "final" status report, due one month prior to the expiration of the permit. A final BMP report, a report that follows the guidelines of the TAPE protocol and EPA guidance, was always required.

S7.E.8 quoted above requires WSDOT to compute and report performance data for each treatment BMP test site and for both sites of the same treatment BMP type, consistent with the guidelines which are: "guidelines in appropriate sections of Ecology's guidance for "*Evaluation of Emerging Stormwater Treatment Technologies*" and USEPA publication number 821-B-02-001, "*Urban Stormwater BMP Performance Monitoring*," including information pertinent to fulfilling the "*National Stormwater BMP Data Base Requirements*" in section 3.4.3 of that document."

The language from the appropriate sections of the Revised January 2008 TAPE requires a report that includes:

- A statement of the QAPP objectives
- All deliverables specified in the QAPP
- A thorough description of the technology, including sizing methodology, flow diagrams and appropriate illustrations.
- All relevant performance test results, statistical analyses, factors other than performance, and operating and maintenance activities including all the information requested in any prior PULD or CULD.
- Any available non-standard data (data not collected per the TAPE, such as laboratory testing, out-of-state testing not indicative of the Pacific Northwest, or field performance testing with real storms not meeting protocol guidelines).

- Conclusions and recommendations including the technology's development level, recommended operating and maintenance (O&M) procedures and frequency, pretreatment requirements, and use limitations.
- Capital and projected annual costs, including O&M costs.
- An executive summary.
- Additional testing recommendations, if needed.

These guidelines must be used for reporting monitoring data *regardless* of whether a GULD has been obtained. This has always been required. We repeat this requirement to use the TAPE guidelines and EPA guidance in S7.E.4 and S7.E.8.

This is an excerpt from the EPA document referenced:

EPA-821-B-02-001; April 2002, 3.4.3 Report Results

The results of your monitoring program should be presented in one or more reports. The appropriate report frequency and content depends on your monitoring program objectives and your audience. If you are monitoring to comply with a permit, the permit will generally specify the minimum frequency and content of the reports.

Most monitoring programs involve two types of reports: status (or progress) reports and final reports. To determine the appropriate frequency of status reports, consider your monitoring frequency and objectives, particularly any permit requirements. Many programs produce status reports on a quarterly or semi-annual basis. *A typical status report may contain the following information:*

- Summary of work accomplished during the reporting period
- Summary of findings
- Summaries of contacts with representatives of the local community, public interest groups, or state federal agencies
- Changes in key project personnel
- Projected work for the next reporting period

You should prepare more comprehensive reports at the end of the monitoring program (for short-term programs) or at the end of each year (for multi-year programs). Consider including the above-listed information and the following information in your annual or final report:

- Executive summary
- Monitoring program background and objectives
- Monitoring station descriptions, analytical parameters, analytical methods, and method reporting limits
- Summary descriptions of the conditions and stations, equipment inspections and calibrations, etc.
- Sample collection, precipitation, and flow measurement methods

Flow, precipitation, and water quality results and data validation information Qualitative and statistical data evaluations/hypothesis testing as required for your specific program objectives (see Section 3.4.2 and Appendix I)

- Summary and conclusions, including any caveats or qualifying statements that will help the reader understand and use the reported information in the appropriate context
- Recommendations regarding management actions (e.g., changes in monitoring program, implementation of BMPs)

..... several tables follow.

To clarify then, S7.E.9 summarizes the requirement that WSDOT submit BMP performance data and analysis collected at each site. This is due when statistical goals are met for BMPs. S8 requires a final report at the end of the permit term. If the statistical goals are met in the very last year of the permit cycle, and it is highly unlikely that the statistical goals will be met before the last year of the permit term, Ecology will accept one report which covers requirements in S7.E.9 and S8.F.2.

S7.E.9 clarifies that in order to comply fully with S7.E.4 (*WSDOT shall use appropriate sections of Ecology's TAPE for preparing, implementing, and reporting the results of the BMP evaluation program*), WSDOT would have to submit performance data.

If the statistical goals are NOT met by the last month of the permit term WSDOT will have to submit one final report without this information. The report due date for the report analysis required in S7.E.9 is really dependent upon when goals are met. This report may be requested in the next permit term.

In sum, thank you for your comment, no change to the permit.

Response to WSDOT comments on page 2 continued:

2. Comment on page 30 regarding a reference to the wrong permit section. Ecology agrees and has modified the permit accordingly.
3. Comment on Appendix 7, Table of Contents. The hyperlinks have not been restored due to lack of Ecology support resources. The numbering and typographical errors have been corrected.

(Page 3 of comments received from WSDOT continue on the following page.)

Appendix 7, Page 2-3, Section 2.2.2

To maintain consistency with the language clarification made in S6 regarding the use of the term *Detailed Implementation Plan*, we suggest the following revisions:

3. *WSDOT participates as a member of Ecology's TMDL advisory committees for those TMDL Water Quality Improvement Plans and associated TMDL implementation documents*
~~*Water Quality Implementation Plans identified by WSDOT as priorities in Step 2.*~~
4. *WSDOT may participate when invited in adaptive management meetings convened to document implementation efforts in those areas where TMDL Detailed Implementation Plan actions have been assigned to WSDOT.*

Appendix 7, Page 6-5, Table 6-1

To improve readability, we suggest adding a page break so that Table 6-1 appears all on one page.

Appendix 7, Page 6-6, Table 6-1

To maintain consistency with the language clarification made in S6, we suggest the following revision:

Locally identified erosion or pollution problems	Consult local basin plans, recovery plans, and associated TMDL implementation documents water clean up plans for identified problems associated with stormwater runoff	Factors in well informed local knowledge	3
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To improve clarity, we suggest the following revision:

Phase 2 synthesis	Sites received Phase 2 score of 8 to 12 are high priority, and those with 7 are medium priority, then those with next phase 2 highest score are with the next priorities ranked in descending order based upon their Phase 2 Field Reconnaissance score.	Gives higher priority to factors evaluated in Phase 2	1
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Response to WSDOT comments, page 3:

1. Comment on Appendix 7, pages 2-3 language changes: Ecology agrees and has modified the permit accordingly.
2. Comment on Appendix 7, page 6-5, page break: Ecology agrees and has modified the permit accordingly.
3. Comment on Appendix 7, page 6-6, language clarifications: Ecology agrees with the first clarification and has modified the permit accordingly. Ecology reworded the second proposed revision for clarity. It now reads, "Sites receiving a Phase 2 score of 8 to 12 are high priority. Those with a score of 7 are medium priority, and those with next Phase 2 highest score are the next priorities."