CONSTRUCTION ACTIVITIES
FACT SHEET

For National Pollutant Discharge Elimination System (NPDES)
and State Waste Discharge General Permit
For
Stormwater Discharges Associated With
Construction Activities

WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

10/04/00

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Public Involvement Opportunities

Announcement of Intent to Reissue:

On May 10, 2000, Ecology sent a letter to permit holders and interested parties informing them of the intent to reissue the construction stormwater general permit as-is, without change to existing permit requirements. The letter outlined the process and solicited comments on the proposal. A return postcard was also included and those that returned the card were added to the mailing list of parties that wanted ongoing updates on the permitting process. Ecology also announced its intent in the agency newsletter, *Confluence*.

Public Workshops/ Public Hearings/Public Comment:

Ecology has tentatively determined to reissue the construction stormwater general permit to construction activities as identified in the permit, Special Condition S2. Permit Coverage. The proposed permit contains conditions and requirements as described in the rest of this fact sheet. These conditions and requirements have not been changed from the 1995 permit (as modified in 1998).

Ecology will publish a Public Notice of Draft (PNOD) on August 2, 2000 in the State Register, the Spokesman Review, the Seattle Daily Journal of Commerce, the Daily Olympian, and the Yakima Herald Republic to inform the public that the draft permit and fact sheet are available for review. The notice will also be mailed to all parties identified above as interested parties. Interested persons are invited to submit written comments regarding the draft permit. The draft permit, fact sheet, and related documents are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. weekdays, by appointment, at Ecology's regional offices listed below. Written comments should be mailed to:

Keith Johnson
Water Quality Program
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Ecology will also conduct a workshop and public hearing at two locations in the state. The first workshop/hearing will be held at Ecology's Eastern Regional Office in Spokane on September 7 beginning at 1:30 p.m. The second workshop/hearing will be held at Ecology's Northwest Regional Office in Bellevue on September 12 beginning at 1:30 p.m. Any interested party may comment on the draft permit or testify at a public hearing on this draft permit. Written comments must be postmarked no later than midnight September 14, 2000 and sent to the address above. Public notice regarding the hearing will be circulated at least thirty (30) days in advance of the hearing. People expressing an interest in this permit will be mailed an individual notice of hearing (WAC 173-220-100).

Comments should reference specific text followed by proposed modification or concern when possible. Comments may address technical issues, accuracy and completeness of information, the scope of the facility's proposed coverage, adequacy of environmental protection, permit conditions, or any other concern that would result from issuance of this permit.

Ecology will consider all oral testimony provided at the public hearings and all written comments postmarked by midnight, Thursday, September 14, 2000. Ecology's response to all significant comments will be available upon request and mailed directly to people expressing an interest in this permit.

Further information may be obtained from Ecology by telephone, (360) 407-6442, or by writing to the address listed above.

The permit and fact sheet are available at Ecology's regional offices:

Southwest Regional Office
Water Quality Program
300 Desmond Drive
Lacey, Washington
Phone: (360) 407-6279

Northwest Regional Office
Water Quality Program
3190 - 160th Avenue SE
Bellevue, Washington
Phone: (425) 649-7201

Central Regional Office
Water Quality Program
15 West Yakima Avenue, Suite 200
Yakima, Washington
Phone: (509) 457-7148

Eastern Regional Office
Water Quality Program
N. 4601 Monroe, Suite 202
Spokane, Washington
Phone: (509) 456-6310

Background

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits are issued by the United States Environmental Protection Agency (USEPA), or by state agencies which have been delegated NPDES permit authority by USEPA. Washington is a state that has been delegated this authority.

In 1987, Congress added section 402(p) to the Clean Water Act to establish a comprehensive framework for addressing municipal and industrial stormwater discharges under the NPDES permit program. Section 402(p)(4) of the Clean Water Act clarifies the requirement for USEPA and delegated state agencies to issue NPDES permits for stormwater discharges associated with industrial activity.

On November 16, 1990 (55 FR 47990), USEPA published final regulations on stormwater. (For purposes of this permit, Ecology has defined stormwater as rainfall and snowmelt runoff.) Additional rules related to stormwater permitting were published on April 2, 1992 (57 FR 11394). The goals of the stormwater regulations are to:

- Stop the illegal discharge of waste waters and other pollutants into storm drains.
- Reduce the amount of pollutants washed off in stormwater discharges.
- Establish a permit system for stormwater discharged by municipalities over 100,000 in population.
- Establish a permit system for stormwater discharged from industrial and construction sites.
- Eliminate water quality standards violations caused by stormwater discharges.

The federal regulations require an NPDES permit for listed industrial facilities and those construction activities which will disturb five or more acres of land, that discharge "stormwater associated with industrial activities" directly to surface waters, or indirectly through municipal storm drains. The regulations include a definition of "stormwater associated with industrial activity," and a listing of application requirements for stormwater permits.

Ecology issued its baseline stormwater general permit on November 18, 1992 which covered industrial and construction activities. When reissued in 1995, Ecology decided to take a limited approach due to time limitations and uncertainties on future stormwater permitting strategy. The minimal approach included issuing separate permits for industrial and construction activities, increasing the permit cycle to five years, and excluding mandatory effluent limits and sampling and analysis. Ecology did decide to require compliance with surface water, ground water and sediment standards for stormwater discharges from construction sites. Ecology considered the input of an advisory committee in developing the 1995 baseline general permit for stormwater discharges from industrial and construction activities. Advisory committee members were selected by Ecology from a list of volunteers. The committee included 36 representatives of small and large industries, consultants, environmental organizations, city and county governments, state agencies, business associations, and special purpose districts. Ecology issued the Construction Stormwater General Permit on November 18, 1995.

Based upon federal legislation, the 1995 permit exempted municipal entities under 100,000 population from having to obtain coverage for construction projects that they owned or operated. The permit was appealed based on the argument that it would not adequately protect water quality. In its decision, the Pollution Control Hearings Board determined that the permit provided reasonable stormwater controls (PCHB No. 95-141, Save Lake Sammamish vs. Ecology and the Department of Transportation). However, the board found that there were no provisions in state law to exempt small municipalities from permit coverage and ordered Ecology to "issue a modified permit extending coverage under the general permit for construction activities to municipalities within the state with populations under 100,000". This permit was modified on July 24, 1998, removing the municipal exemption in order to comply with the PCHB's order. This modification did not change any stormwater control requirements of the permit and did not make any other changes to permit coverage.

The construction stormwater general permit proposed for reissue on October 4, 2000 is based on the 1995 permit (as modified in 1998). There have been no substantive changes to the permit requirements. The only changes made were to make the permit consistent with the revised timeframe, effective as of November 18, 2000 and expiring November 18, 2005.

Ecology's Approach to Reissuance

There are currently about 800 permittees with coverage under the construction stormwater general permit. The existing stormwater general permit expires on November 18, 2000. It is critical that Ecology has a replacement permit in place when the construction stormwater general permit expires. The November date however, did not work well for implementing the new requirements under "Phase II Storm Water Regulations" that were published by the Environmental Protection Agency (EPA) in December 1999. Implementation of permitting for small construction sites (1 to 5 acres) for instance, is not required under Phase II until March 2003. In order to proceed as efficiently as possible and avoid doing the same work twice, Ecology decided to make revising and reissuing this permit a two step process:

Step 1: Reissue the permits "As-Is"

No changes were made to the current permit language other than to reflect the new issuance and effective dates and make permit language consistent with this new timeframe. The reissued permit will become effective November 18, 2000 and will expire November 18, 2005.

Step 2: Revise and Renew the Permits

Immediately after completing the reissue of these permits, Ecology will begin the process to fully consider the stormwater issues associated with this permit and revise the permit as necessary. Ecology will also implement EPA's Phase II Storm Water Regulations as they apply to this permit. Ecology plans to revise and reissue the permit before March 10, 2003, replacing the existing permit before its expiration date and complying with EPA implementation deadlines.

Continuing the General Permit Approach

A general permit approach for construction stormwater is an appropriate permitting approach for the following reasons:

- A general permit is the most efficient method to handle the large number of construction stormwater permit applications;
- The application requirements for coverage under a general permit are far less rigorous than individual permit application requirements;
- A general permit is consistent with USEPA's four-tier permitting strategy, the purpose of which is to use the flexibility provided by the Clean Water Act in designing a workable and reasonable permitting system;

- A general permit is an efficient method to establish minimum regulatory requirements that are appropriate for a broad base of construction activities;
- A general permit is the most practical way to apply Ecology's limited resources for implementing the federal stormwater regulations.

Construction Activity General Permit is an NPDES and a State Waste Discharge Permit

In addition to the authority to issue NPDES permits, Ecology also has authority under state law to issue State Waste Discharge permits for discharges to state surface waters, ground waters and municipal sewer systems. The stormwater general permit for construction activity is issued under both authorities.

This allows Ecology to not only regulate discharges to surface waters under the permit, but also to regulate discharges to the ground. However, Ecology will not regulate under this permit those construction activities which discharge **only** to the ground. Ecology will regulate under this permit, those operations which have a discharge to the ground only if they also have a discharge to a surface water, a municipal storm drain, or a privately owned storm drain which discharges to surface water.

Description and Rationale For Construction Activity General Permit Conditions

Summary:

The General Permit for stormwater discharges associated with construction activities requires application of technology-based stormwater management controls (referred to as Best Management Practices or BMPs) for those construction activities which will disturb five or more acres of total land area (or other minimum land area to be determined by federal regulation). The permit requires the permittee to identify and control pollution sources from their operations.

The pollutant control, inspections, and compliance with standards provisions of this permit include specific requirements as well as references to Ecology's Stormwater Management Manual (SWMM). Each discharger is required to select those BMPs best suited for reducing pollutants in its stormwater based on site-specific conditions.

A Stormwater Pollution Prevention Plan (SWPPP) for construction activities must include a description of stabilization and structural practices to be used at the site to minimize erosion and the movement of sediments on and from the site. The permit requires compliance with six stabilization requirements and five structural requirements, through selection and implementation of appropriate BMPs from the SWMM or equivalent manuals.

Clarification of the term *Point Source:*

To require coverage under the Baseline General Permit, a facility must have a point source discharge to a surface water of the state or to a municipal storm drain or a private storm drain which discharges to a surface water. A point source is defined as:

> *any discernible, confined, and discrete conveyance, including but limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state.*

Stormwater may be discharged in a number of ways. Pipes, channels, and drainage ditches are the most obvious ways. But stormwater discharges can also be small rivulets in wheel-rutted roads, small swales, or other depressions in the ground. Even "sheet flow," like that across a flat area is considered a stormwater discharge if it ends up in a storm drain or a "surface water."

Surface waters include, lakes, rivers, ponds, streams, wetlands, inland waters, and salt waters. Typically, dry draws or intermittent streams, and roadside ditches are classified as surface waters. Surface waters can be man-made or natural, seasonal or year-round.

Ecology intends to embrace the broadest possible definition of point source consistent with the legislative intent of the Clean Water Act and pertinent court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the state.

In most court decisions interpreting "point source," the term has been interpreted broadly. For example, the holding in Sierra Club vs. Abston Construction Company, Incorporated, 620 F.2d 41 (5th Cir. 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site is ultimately discharged to waters of the United States. The following is an excerpt from that court ruling:

> *Conveyances of pollution formed either as a result of natural erosion or by material means, and which constitute a component of a drainage system, may fit the statutory definition and thereby subject the operators to liability under the Act. 620 F.2d at 45."*

Discussion Of Permit Conditions

S1-Application for Coverage:

To obtain coverage for construction activities under the construction stormwater general permit, you must submit an application for coverage. The permit application is called a Notice of Intent (NOI) and must be submitted to Ecology on or before the date of the first public notice and at least 38 days prior to the start of construction activities. Ecology must have the permit application during the public comment period in order to provide the public access to the applications as required by WAC 173-226-130(5). **NOTE:** Ecology cannot grant permit coverage until 30 days after the date of the second Public Notice.

A. **Public Notice Requirement**

At the time of application the permittee must publish a notice that they are seeking coverage under Ecology's general stormwater permit for construction activities. This notice must be published at least once each week for 2 consecutive weeks, in a single newspaper which has general circulation in the county in which the construction is to take place. Refer to the NOI instructions for public notice language requirements. State law requires a 30 day public comment period prior to permit coverage, therefore permit coverage will not be granted sooner than 31 days after the date of the last public notice.

B. **Stormwater Pollution Prevention Plan (SWPPP) Deadlines**

Permit coverage will not be granted until the permittee has indicated completion of the SWPPP or certified that development of a SWPPP in accordance with S9 of this permit will occur prior to the commencement of the construction activity. SWPPPs are not submitted to Ecology but retained on-site or within reasonable access to the site to be made available to Ecology and local governmental agencies upon request.

C. **State Environmental Policy Act (SEPA) Notification**

The permittee must comply with the SEPA process and provide the following information prior to receiving permit coverage: the type of SEPA document required, the date and agency which issued the final determination and whether or not the permittee is aware of any appeals of the adequacy of the SEPA document. If the above information is not supplied on the NOI it must be supplied in writing to Ecology prior to permit coverage.

S2-Permit Coverage:

This section explains how to obtain coverage under the permit; who is required to apply for coverage; who is not required to apply for coverage (but may apply if they wish), and who is excluded from coverage under this permit.

A. **How to Obtain Coverage**:

Please refer to the section entitled "How and Where to Apply for Coverage Under this Permit," (page 11 in this fact sheet).

B. **Construction Activities Required to Seek Coverage**:

Construction activities that meet both of the following criteria must seek coverage.

1. Construction activity which results in the disturbance of five acres or more land (or other minimum land area to be determined by federal regulation), including clearing, grading, and excavation activities; and those sites or common plans of development or sale that will result in the disturbance of five acres or more total land area; and

2. Construction activities in the above category which discharge stormwater either directly to a surface water or indirectly, through a municipal or private storm drain, must apply for coverage under the baseline general permit.

Applying the five acre threshold:

If the construction is "part of a larger common plan of development or sale," defined as a contiguous area where multiple separate and distinct construction activities may be taking place on different schedules under one plan, the total area that will be disturbed must be considered. For example, if the total land area to be disturbed in the phased construction of a subdivision totals five acres or more, Ecology's stormwater permit must be obtained prior to beginning construction on the first phase.

For construction of subdivisions, the five acre threshold which triggers the National Pollutant Discharge Elimination System (NPDES) permit requirement applies only to land which is disturbed by the land owner, land owner's representative, or a contractor to the land owner. If the owner (or the owner's representative or contractor) is only installing roads and utilities, only land disturbed for that construction is calculated to determine whether the five-acre threshold will be exceeded. Land to be disturbed by independent contractors who purchase lots from the owner should not be considered unless the individual lots are disturbed (e.g., by grading) prior to being sold.

If an independent contractor has purchased contiguous individual lots which will disturb a total of five acres or more, that contractor must obtain a stormwater permit from Ecology.

C. Construction Activities Not Required to Apply:

This is a listing of construction activities which are not required to apply for coverage under this permit. If an operator of one of these facilities wishes to seek coverage under the permit, they may submit a Notice of Intent.

Ecology will consider the application, but reserves the right to refuse coverage. An example situation in which Ecology will likely not require coverage is for Comprehensive Environmental Response Compensation & Liability Act (CERCLA) sites whose stormwater discharges are being regulated under a consent decree or order issued by Ecology or USEPA.

Ecology will also not require coverage for emergency construction, and routine maintenance.

We request that operators wanting permit coverage but that are not required to obtain coverage submit a cover letter with their Notice of Intent. The letter should explain why they are seeking coverage under the permit.

D. Construction Activities EXCLUDED from Coverage Under This Permit:

This is a listing of construction activities for which Ecology will not consider coverage. The list includes silvicultural activities, projects that are federally owned or operated or are on Tribal land and discharges that originate from the site once construction activities have been completed.

E. Coverage for Significant Polluters:

This section allows Ecology to regulate stormwater dischargers which are a "significant contributor of pollutants." The federal Clean Water Act at Section 402(p)(2)(E) gives the state this authority. Ecology, not the discharger, decides whether there is a significant contribution of pollutants warranting coverage under this permit.

F. Coverage for Discharges to Ground Water:

This section highlights that for sites covered under the permit, the permit terms and conditions apply to all stormwater discharges, including discharges to the ground.

S3-Authorized Discharges:

This section authorizes discharge of stormwater from all new and existing point source discharges of stormwater and construction dewatering associated with construction activity to surface waters of the state of Washington and/or to municipal storm drains from sites covered under the permit.

Sampling and analysis may be needed on a case-by-case basis for discharge of construction dewatering waters to ensure compliance with standards. Dewatering in areas where the potential for ground water contamination exists should not be discharged without characterization of the ground water to be discharged. For guidance on the discharge of dewatering waters contact your Ecology Regional Office.

S4-Discharge Prohibitions:

This section prohibits the discharge of process wastewater, domestic wastewater, or noncontact cooling water to a storm drain unless it is under an appropriate discharge permit.

This section also prohibits the discharge of stormwater to sanitary or combined drains unless approved by the municipality receiving the stormwater. This is necessary to limit the dilution of sanitary wastewater and the hydraulic loading of sanitary drains and treatment plants.

This section also makes it clear that illicit discharges are not authorized, including spills of oil or hazardous substances, and does not relieve entities from obligations under state and federal laws and regulations pertaining to those discharges. This addition to the permit is necessary due to a waiver in federal law from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability for discharges authorized by NPDES permits.

S5- Compliance with Standards:

This section highlights that stormwater discharges associated with construction activity are subject to all applicable state water quality and sediment management standards. The permit does not authorize the violation of those standards.

Where construction sites are not in compliance with these standards the permittee shall take immediate action(s) to achieve compliance by implementing additional BMPs and/or improved maintenance of existing BMPs. Note that even if an operation is not causing a water quality standards violation with its current stormwater discharge, it is still obligated to apply and maintain reasonable BMPs to prevent and control the discharge of pollutants in stormwater.

Compliance With Technology-Based And Water Quality-Based Requirements Of The Clean Water Act And State Law

Discharges of stormwater must meet all applicable provisions of Sections 301 and 402 of the Clean Water Act. These provisions require control of pollutant discharges to a level equivalent to Best Available Technology Economically Achievable (BAT) for toxic and unconventional pollutants, and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants, and any more stringent limitations necessary to meet water quality standards. In addition, state law requires discharges to apply all known, available, and reasonable (methods) of treatment (AKART) to prevent and control the pollution of the waters of the state of Washington. State law also requires any other more stringent limitations necessary to meet all applicable state standards.

The requirements of this permit are narrative. The permit requires the development and implementation of a SWPPP which includes BMPs to prevent the pollution of stormwater and to reduce the amount of pollutants discharged. USEPA has proposed that implementing BMPs constitutes BAT and BCT for most stormwater discharges. Ecology considers that development of the SWPPP and implementation of available and reasonable BMPs constitutes implementation of AKART.

In this permit, Ecology requires construction project owners (or the owners agent) to use the SWMM (or an equivalent manual) to make a judgment of which BMPs are necessary to achieve compliance with the BAT and BCT requirements of federal laws, as well as the AKART requirements of state law. Although Ecology will not review the vast majority of SWPPPs prior to their implementation, it reserves the right to review those plans and require additional measures to prevent and control pollution.

Ecology expects that the selection and implementation of appropriate BMPs outlined in the SWMM, or equivalent manuals, will result in compliance with standards for stormwater discharges from construction sites. Erosion and sediment control planning guidance and design criteria for BMPs to control stormwater runoff quantity, erosion and sediments as well as other pollutants are provided in the SWMM. Proper implementation and maintenance of these controls should be all that is necessary to adequately control any adverse water quality impacts from construction activity.

Mixing Zones:

Mixing zones are sized for the pollutant with the largest potential to violate water quality standards. Stormwater discharges from construction sites have historically caused violations of state standards for turbidity caused by suspended solids. The following is a summary of the factors that must be considered in determining whether a mixing zone should be authorized for a particular discharge:

(1) A discharger shall be required to fully apply all known available and reasonable methods to prevent and control pollution (AKART) prior to being authorized a mixing zone. In this case, as discussed above, an adequate SWPPP and implementation are considered compliance with AKART.

(2) Mixing zone determinations shall consider critical discharge conditions.

(3) The mixing zone will not cause a loss of sensitive or important habitat.

(4) Water quality standards will not be violated outside of the boundary of the mixing zone.

(5) The size of a mixing zone and the concentrations of pollutants shall be minimized.

(6) The size of a mixing zone shall consider the following:

The overlap of adjacent mixing zones; discharge and receiving water flow; width of the receiving water; downstream and upstream conditions; and depth of water over the discharge port(s).

Mixing zones are not set in the construction stormwater general permit due to the wide variety of discharge situations. It would be impractical to include mixing zone language that could account for conditions at all the sites covered under the permit. Ecology is taking a discretionary approach to compliance with standards with respect to dilution zones.

Permit compliance will be based, in part, on the adequacy of the stormwater plan and its implementation to prevent the discharge of toxic materials, settleable solids, and to reduce turbidity in the discharge.

In determining in-stream compliance with standards, Ecology will, on a case-by-case basis consider dilution zones. Ecology will take into account weather conditions as they relate to design storms for which BMPs are sized, and available dilution and background conditions in the receiving water. Dilution zones will only be considered when adequate SWPPPs have been prepared and implemented.

Pollutants that might be expected in the discharge from construction activity are: turbidity, pH, and petroleum products. The majority of surface water discharges are to Class AA & A waters of the state. The water quality standard for turbidity and pH for these classes of waters is:

Class AA & A Waters :

Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (marine water) with a human-caused variation within a range of less than 0.2 units for Class AA waters and 0.5 for Class A waters.

Although there is no specific water quality standard for petroleum products the hazardous waste rules under RCW 90.56 can be interpreted under RCW 90.48 to allow no visible sheen in the stormwater discharge or in the receiving water.

S6- Sampling and Analysis:

Ecology does not require monitoring (i.e., sampling and analysis of stormwater) in the permit. At this time, Ecology expects that many operations, through the proper selection, implementation, and maintenance of BMPs, have or will have minimized their potential for discharging pollutants.

Although we are not requiring stormwater sampling and analysis, Ecology encourages permittees to do so. Monitoring can provide important information about the sources and types of pollutants in stormwater. This information can be useful when designing or modifying BMPs, and when evaluating the effectiveness of BMPs.

If permittees choose to do some monitoring, we encourage them to follow the referenced sampling and analysis procedures. Following the recommended procedures will help in establishing a base of comparable stormwater data which could have various benefits to the discharger and to the environment.

S7- Fees:

State law requires Ecology to recover the cost of the Water Quality Permit Program. Stormwater fees are determined through a rule development process that includes the input of an advisory committee. There will be opportunities for public comment on any new fee proposal. Fees are set by amending the existing fee regulation (Chapter 173-224 WAC).

S8- Solid and Liquid Waste Disposal:

This condition is intended to ensure that disposal and handling of solid or liquid wastes generated to comply with the requirements of this permit do not result in a violation of applicable solid and hazardous waste regulations (Chapter 173-303 and 173-304 WAC). It is expected that containment, collection, separation and settling are some of the control techniques for stormwater which will result in the generation of solid and liquid wastes. In some cases, management and housekeeping techniques could also generate solid and liquid wastes. Examples include drip traps, cleanup of process areas and spill removal. Therefore, Ecology views this permit requirement as an important component of the overall stormwater pollution control strategy.

S9- Stormwater Pollution Prevention Plan for Construction Activities:

This section outlines the requirements for the preparation and implementation of a stormwater pollution prevention plan for construction activities.

A. Objectives:

The objectives of the permit are to implement Best Management Practices (BMPs) to minimize erosion and sediments from rainfall runoff at construction sites, including construction dewatering, and to reduce, eliminate, or prevent the pollution of stormwater, to eliminate discharges other than stormwater, to implement BMPs to prevent, reduce and control the discharge of pollutants, to prevent violations of water quality standards, and to control the quantity of stormwater runoff.

B. General Requirements:

Ecology requires the owner of the construction project to be the permittee. Having the owner as the permittee is necessary so that there is enough time to prepare the SWPPP prior to initiating construction. Ecology requires the owner to identify a contact person on the NOI who is always available to respond to Ecology inquiries or directives and has control over the day-to-day operation of the site. The contact person must have authority over SWPPP implementation. This person can be the owner, an employee, a construction manager, a developer, or an on-site contractor. Having the owner obtain the permit will simplify permit compliance responsibility. It does not change the historical contractual relationship between a site owner and a contractor and does not necessarily protect the contractor from Ecology enforcement actions for water quality violations caused by the contractor.

C. SWPPP Contents and Requirements:

The Stormwater Pollution Prevention Plan for construction activities must define how a site will be managed to control erosion and limit sediment flowing into waters of the state. The SWPPP must include a description of the site and it must describe the stabilization and structural practices that will be implemented to prevent erosion from occurring and to minimize the transport of sediments on and from the site. It must be retained on-site or within reasonable proximity to the site and the BMPs identified in the plan must be implemented.

Most of the enumerated requirements for stabilization and structural practices are excerpted from Ecology's fifteen minimum requirements for erosion and sediment control from Chapter I-2 of the SWMM. Fourteen of those fifteen minimum requirements are included in the construction permit. Ecology considers the 14

minimum requirements of the SWMM to be reasonable. They have been developed after several years of review by outside experts.

Experience with use of the minimum requirements of the SWMM over the next few years by some local governments will help identify any problems and lead to their refinement. Ecology may include more specific minimum requirements, including references to maximum time frames for exposed and unworked soil, and to specific discharge flow rates, in the next version of the SWMM.

Selection of Stabilization and Structural BMPs:

Permittees are required to select appropriate BMPs to meet the requirements of stabilization and structural practices from the Ecology SWMM, and the Erosion and Sediment Control Handbook, by Goldman, et al. `Permittees may select BMPs not discussed in those manuals if they determine that they are equivalent and appropriate for their situation.

Ecology requires the Erosion and Sediment Control Plan to consist of a narrative and a set of site plans. The SWMM is referred to for guidance on the format of the Erosion and Sediment Control Plan. Permittees are not required to follow this suggested format. However, Ecology will use the suggested format as guidance for evaluating the adequacy of plans and their implementation.

Coordination with Local Requirements:

The permit does not relieve the permittee of compliance with any more stringent requirements of local government. As required by the Puget Sound Water Quality Management Plan, local governments within the Puget Sound Basin are to adopt minimum requirements for construction which are at least equivalent to the 15 minimum requirements listed in Chapter I-2 of Ecology's SWMM. Where Ecology has determined such local requirements to be equivalent, compliance with the local requirements meets the requirements of this permit.

At the issuance date of this permit the following manuals have been deemed equivalent: Seattle, King County, Washington State Department of Transportation (WSDOT), Snohomish County, Lacey-Olympia-Tumwater-Thurston County (LOTT), Sequim, Mason County, City of Everett, Kitsap County, and Clark County.

S10-Notice of Termination (NOT) for Construction Sites:

This section describes how permittees can terminate permit coverage once they have finally stabilized their site. When soil disturbing activities have ceased and all exposed soils have a permanent vegetative cover, or equivalent permanent stabilization measure which prevent erosion, the permittee shall submit a Notice of Termination form (Appendix 2 of your permit). A Notice of Termination for a construction site will end the permit coverage and responsibility of the permittee(s) to be subject to the conditions of the permit. The permittee is responsible for submitting the termination notice in order to end permit coverage. Unless the permit is terminated, Ecology will continue to assess a fee for the permit.

General Conditions:

The General Conditions of this permit are requirements based on federal or state laws and regulations which must be included in all NPDES general permits, either expressly or by reference. Ecology has decided to incorporate the relevant requirements of federal and state law expressly.

How And Where To Apply For Coverage Under The Construction Permit

A. How to Obtain Permit Coverage:

The Notice of Intent (NOI) is the official permit application document required to request coverage under Ecology's Stormwater General Permit for construction activities. Ecology intends to notify applicants by mail

of their status concerning coverage under the permit within 10 working days of Ecology's receipt of a complete NOI. An NOI is only deemed complete after the 30 day public notice requirement has been satisfied, a stormwater pollution prevention plan has been developed, a final SEPA determination has been made, and all other NOI information has been supplied.

Upon receipt of a complete NOI Ecology will notify the applicant of their status either through written authorization of permit coverage or by sending a letter to the applicant giving a date when permit coverage will automatically commence. Coverage will begin from the date of Ecology's written authorization or will automatically commence on the date specified by Ecology. The submission deadlines for NOIs are included in Special Condition S1 of the permit.

B. Where to Apply for Permit Coverage

For construction activities, the site owner, or the entity obtaining a use agreement for the site, is responsible for completing and submitting the NOI for Construction Activity. An NOI, signed by an appropriate corporate, local government or other official responsible for the site shall be submitted to the following Ecology office:

Washington Department of Ecology
Water Quality Program
Stormwater Permitting
P. O. Box 47696
Olympia, WA 98504-7696

Permit Issuance and Announcement

Ecology intends to sign this permit on October 4, 2000. An announcement of permit issuance will appear in the state register on October 18, 2000. The permit becomes effective on November 18, 2000.

In addition to the announcement in the State Register, Ecology will publicize the issuance of the permit by mailing the announcement to our interested parties list.

The terms and conditions of the permit are subject to appeal by any person within 30 days after issuance of the general permit as noticed by publication in the State Register (no later than November 17, 2000). An Ecology decision concerning coverage of an individual discharger under the permit is subject to appeal within 30 days of the effective date of coverage of that discharger.

Small Business Economic Impact Statement (SBEIS):

Ecology prepared a small business economic impact statement for the original permit issued on the November 18, 1992. The SBEIS was updated when the permit was reissued in 1995. Since the proposed permit is being reissued with no changes to the 1995 permit requirements, the SBEIS was not revised. A copy of the SBEIS may be obtained by calling (360) 407-7156 or by download from Ecology's webpage (www.wa.gov/ecology/biblio/9567.html).

Appendix A – Response to Public Comments

The Puget Soundkeeper Alliance and Smith & Lowney, P.L.L.C. submitted timely public comments on the Construction Stormwater General Permit. No testimony was given at the public hearings and no comments were received after the close of the comment period.

Comments have been grouped together where they address similar topics. Topic headings were provided and numbered to improve readability. No major changes were made to the permit because of the comments received. A minor change was made to Special Condition S4.B. for clarification.

S4. Discharge Prohibitions

Existing:

B. Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to Chapter 173-245 WAC. Discharges of stormwater to sanitary or combined sewers shall not occur without the approval of the municipality which owns or operates the sanitary or combined sewer system.

Changed to (change underlined):

B. Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to Chapter 173-245 WAC <u>and WAC 173-226-100</u>. Discharges of stormwater to sanitary or combined sewers shall not occur without the approval of the municipality which owns or operates the sanitary or combined sewer system.

1. Issuing the Construction Stormwater General Permit Without Update Is Unacceptable:

Comment - Smith & Lowney, P.L.L.C.

Stormwater discharges from construction sites can be some of the most polluted discharges covered by Ecology's NPDES program. Stormwater discharges can cause very serious environmental degradation – especially as a greater percentage of our land is covered by impervious surfaces and our salmonids disappear. Due to the lack of numerical effluent limitations, monitoring and reporting requirements, and the unavailability of stormwater pollution prevention plans for public review, we have been very frustrated over the past five years when confronted with covered dischargers who appear to cause pollution problems. When combined with the General Permit's lack of an unequivocal requirement that water quality standards be attained, the General Permit is essentially unenforceable by citizens in most situations. A primary policy goal of the Clean Water Act is the elimination of water pollution and the purpose of the National Pollutant Discharge <u>Elimination</u> System is just that. The General Permit should be rewritten to move covered facilities towards this goal.

In drafting this General Permit, Ecology seems more interested in assuring dischargers that compliance will be easily attained than in protecting the environment. While we appreciate the potential for backlash against regulatory requirements by the regulated community, such potential cannot justify the issuance of permit that fails both to meet legal standards and provide meaningful environmental protection.

Comment - Puget Soundkeeper Alliance

The Puget Soundkeeper Alliance is concerned that the (presume construction was intended) *Industrial Permit was reissued without any significant changes to the permit. The goal of the Clean Water Act is to eliminate the discharge of pollutants to the nation's waters; however, the Department of Ecology is ignoring this goal by reissuing essentially the same permit for another 5 years.*

Stormwater discharges from industrial (presume construction was intended) *facilities are a significant contributor to the degradation of Puget Sound. To reissue the permit at a time when salmon species are threatened with extinction and many other species including Pacific herring, rockfish, and even Orcas are at risk is not a responsible action by the agency mandated to protect the waters of Puget Sound and the state.*

The goal of the Clean Water must be met and the Department of Ecology must do its part to insure compliance. Individual National Pollutant Discharge and Elimination System (NPDES) permits are slowly reducing the discharge of effluents. There is absolutely no reason why industrial stormwater dischargers should not be held to the same standard.

The Puget Soundkeeper Alliance recommends that the General Industrial Stormwater Permit be rewritten to insure compliance with the goals of the Clean Water Act.

Response

Ecology agrees that stormwater discharges from construction sites can be a significant source of pollution. This is why the construction stormwater general permit requires the permittee to achieve compliance with water quality standards through implementation of best management practices to prevent contamination of stormwater to the maximum extent practicable and treat contaminated stormwater before discharge. Ecology does not agree that there are any fatal flaws in the permit as written that require immediate attention to assure environmental protection.

The U.S. Environmental Protection Agency (EPA) has also promulgated new stormwater permitting requirements. These regulations, known as the Phase II stormwater regulations, do not become mandatory until March 2003. Because Ecology will reopen the permits in order to address and implement the new federal regulations, enhancing and clarifying language will be considered as part of that process.

2. The Expiration Date Should Be March 10, 2003:

Comment - Smith & Lowney, P.L.L.C.

The expiration date of the General Permit should be March 10, 1993 (assume 2003 was intended)*, rather than the proposed expiration date of November 18, 2005. In the draft fact sheet, Ecology states that it intends to revise and reissue the General Permit by March 10, 2003, to comply with EPA implementation deadlines for its Phase II Storm Water Regulations. Draft Fact Sheet at 3. The expiration date should be changed to reflect this intent and to avoid illegal delay in the next reissuance.*

Response

Ecology is committed to a revision process that will address the new federal regulations within the federally mandated timeframe. This will result in reissuing these permits before they expire. However, as a standard practice, Ecology typically issues permits for the maximum time

statutorily allowed and finds no compelling reason to do otherwise for these permits. The federal deadlines are sufficient to assure an early consideration and reissue.

3. Permit Fails to Require Compliance With Standards

Comment - Smith & Lowney, P.L.L.C.

The General Permit should clearly and unequivocally require compliance with state surface and ground water quality standards. Per 40 C.F.R. § 122.44(d), WAC 173-226-070(2), and WAC 173-201A-160, compliance with state water quality standards must be a requirement of the General Permit. Instead of a clear statement such as "discharges that cause or contribute to a violation of water quality standards are prohibited," the General Permit states that, for permit compliance purposes, compliance with standards means that a SWPPP has been prepared and implemented. Condition S5. Nothing in the General Permit makes it illegal per se for a discharger to cause a violation of water quality criteria as the law requires. WAC 173-201A-160(3).

Comment - Puget Soundkeeper Alliance

The General Stormwater Construction Permit must require compliance with the state surface and groundwater quality standards. Condition S.5. never clearly states that compliance with water quality standards is a requirement and that violations of the standards are prohibited. The only discussion states that an adequate Stormwater Pollution Prevention Plan (SWPPP) has been prepared and fully implemented.

The Puget Soundkeeper Alliance recommends that the draft permit be rewritten to include language mandating compliance with the water quality standards.

Response

The construction stormwater general permit does not authorize the illegal discharge of pollutants to waters of the state. Special Condition S5. Compliance with Standards states: “The permittee is responsible for achieving compliance with state of Washington surface water quality standards (Chapter 173-201A WAC), sediment management standards (Chapter 173-204 WAC), ground water quality standards (Chapter 173-200 WAC), and human health based criteria in the National Toxics Rule (Federal Register, Vol. 57, No. 246, Dec. 22, 1992, pages 60848-60923).” The permit language places the responsibility to comply on the permittee.

The permittee is required to develop a stormwater pollution prevention plan (SWPPP) which identifies the best management practices (BMPs) that will be implemented to manage stormwater discharges. Because compliance is achieved by implementing BMPs it is measured by an evaluation of the SWPPP. Special Condition S5. states (in part):

> *For permit compliance purposes compliance with standards means:*
>
> i) *An **adequate** SWPPP has been prepared and fully implemented;*

Adequate should not be construed as whatever the permittee deems as sufficient but as the plan that achieves compliance with standards. Ecology reserves the right to determine by best professional judgement or sampling and testing if the permittee is successful and in compliance. Since compliance with standards is already required, no change is necessary.

4. Require Numeric Effluent Limits

Comment - Smith & Lowney, P.L.L.C.

The General Permit should set numerical effluent limitations for pollutants for which industrial (presume construction was intended) *stormwater discharges have reasonable potential to violate. Since WAC 173-201A-160(3) and 173-226-070(2)(a) mandate that the General Permit require compliance with water quality standards, WAC 173-226-070(6)(a) applies to require the inclusion of numerical effluent limitations on pollutant quantitative mass or concentrations.*

Comment - Puget Soundkeeper Alliance

There are no numerical effluent limitations for pollutants.

The Puget Soundkeeper Alliance recommends that the permit be amended to include specific numerical limits for stormwater discharges in compliance with the water quality standards.

Response

WAC 173-201A-160(3) identifies application of best management practices (BMPs) as the primary approach to achieve compliance with standards for nonpoint and stormwater discharges. This approach is also consistent with U.S. Environmental Protection Agency guidance on implementing water quality-based effluent limitations in stormwater permits. The construction stormwater general permit correctly applies narrative requirements through implementing BMPs to achieve compliance with standards.

None of the referenced administrative code in the comments above requires that a general permit include numeric limits to assure compliance with water quality standards. WAC 173-226-070(2)(a) lays the basis for including water quality-based effluent limitations **"if necessary"** to achieve compliance. Likewise, WAC 172-226-070(6)(a) does not require the inclusion of effluent limits but rather it lays out how water quality-based effluent limits are to be applied in a general permit **if** limits are included. Ecology believes that the appropriate focus should remain on the choosing and applying of best management practices as outlined in the permit. Although Ecology will consider monitoring options and possible application of limits in the future, we do not believe that they are essential to compliance with standards under this general permit. Numeric limits will not be added at this time.

5. Permit Must Require Monitoring

Comment - Smith & Lowney, P.L.L.C.

Ecology should include monitoring requirements in the General Permit as authorized by WAC 173-226-090. Actual monitoring of stormwater discharges is necessary to gauge compliance with water quality standards. How can anyone determine whether a discharge is an actual environmental problem without monitoring?

Comment - Puget Soundkeeper Alliance

The permit does not require any sampling or monitoring of pollutant discharges, so it is not certain how the Department of Ecology will determine or a facility will know whether or not it is in compliance with water quality standards.

The Puget Soundkeeper Alliance recommends that the permit be rewritten to include monitoring requirements to insure compliance with water quality standards.

Response

The construction stormwater general permit does require monitoring. The permit requires the application of BMPs to comply with standards and under Special Condition S9.C.1.d. requires that "All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance." These inspections are required at least once every seven days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period. Since the pollutant of concern is sediment, visual inspection is a very effective way to determine how well BMPs are working. No additional monitoring will be required at this time.

6. Require Submission of SWPPPs

Comment - Smith & Lowney, P.L.L.C.

The General Permit should require permittees to submit SWPPPs and regular inspection reports to Ecology. Development and implementation of a SWPPP are the central requirements of the General Permit. Determining whether a discharger has complied with these requirements should be simplified by having these documents on file at Ecology's offices. As the General Permit is now drafted, it is virtually impossible for a concerned citizen to determine whether a discharger has developed or is implementing a SWPPP because they are generally not available for public review.

Comment - Puget Soundkeeper Alliance

There is no requirement in the permit for the permitted facility to submit its SWPPP to the Department of Ecology so that it available not only for agency oversight, but public review as well. This is a significant flaw in the existing permit, which hinders citizen involvement in the enforcement of the Clean Water Act.

The Puget Soundkeeper Alliance recommends that S.9. be amended to include a provision requiring the submittal of a SWPP prior to the issuance of the General Industrial (presume this should be Construction) *Stormwater Permit.*

Response

Ecology determined that collecting large quantities of stormwater pollution prenvention plans (SWPPPs) at the Ecology office provided very little value added and would result in considerable cost in time and effort to maintain and administer. Maintaining a central repository of SWPPPs would be challenging because coverage of construction sites is very dynamic with a high volume of sites obtaining coverage and terminating coverage. Permittees are also required to continually examine the success of their BMPs and update the SWPPP as necessary. All these factors would result in a labor-intensive task that would divert considerable Ecology resources just to maintain the repository. Since the most valuable location for these documents is onsite in use by the permittee and available for review during an Ecology inspection, permittees were not required to submit their SWPPP and associated updates.

However, the permit does recognize the need for public access. Special Condition S9.B.3. states: "The public may obtain a copy of a permittee's SWPPP by request from Ecology." S9.B.4. requires the permittee to make these documents available to Ecology upon request. Any citizen concerned about a discharger has only to request the information for that discharger. Ecology does not believe this is an unreasonable burden; permit language will remain as it is.

7. Permit Fails to Protect Impaired Waterbodies

Comment - Smith & Lowney, P.L.L.C.

Facilities that discharge to waterbodies on the 303(d) list should not be eligible for coverage under the General Permit. The 303(d) list includes waterbodies that do not meet water quality standards. 33 U.S.C. § 1313(d). Those who discharge industrial (assume construction was intended) *stormwater to such listed waters should be covered under NPDES permits specifically tailored to ensure that their discharges do not exacerbate identified water quality problems. Ecology has developed total maximum daily loads ("TMDLs") for some of the 303(d)-listed waterbodies. WAC 173-226-070(3)(c) requires that a general permit for a discharge to a waterbody with a TMDL "implement any legally applicable requirements necessary to implement total maximum daily loads." The General Permit must be changed to ensure that this requirement will be met for qualifying dischargers.*

Comment - Puget Soundkeeper Alliance

The draft permit fails to address two significant issues: the enforcement of the "take" provision of the Endangered Species Act and the relationship between the 303(d)-listed waterbodies and stormwater discharges.

The Puget Soundkeeper Alliance recommends that facilities discharging to 303(d) listed waterbodies or taking species listed as threatened or endangered not be issued a permit.

Response

It is true that the permit does not specifically single out discharges to 303(d) listed waterbodies or waterbodies where a TMDL has been applied. However, the permit does require compliance with standards and that is typically considered protective of impaired waterbodies. As with all general permits, Ecology reserves the right to require an individual permit when site specific conditions indicate. A 303(d) listed water body or TMDL where the pollutant of concern is sediment, could be such a condition if typical application of BMPs would be insufficient to achieve environmental protection and compliance with waste load allocations. This would have to be on a case-by-case basis.

The permit also requires that those applying for coverage under the construction stormwater general permit must comply with the State Environmental Policy Act (SEPA) and must public notice their application for coverage, clearly identifying the waterbody(ies) that they will discharge to. These actions provide significant opportunity for the public to voice their concerns and the SEPA process should identify and address concerns about discharges to an impaired waterbody.

8. Permit Not Protective of Threatened and Endangered Species

Comment - Smith & Lowney, P.L.L.C.

The General Permit should be changed to ensure that permitted discharges do not result in the "take" of fish species listed as threatened or endangered under the federal Endangered Species Act ("ESA"). WAC 173-226-070(3)(b) requires that general permits meet the requirements of federal laws besides the Clean Water Act. There are now numerous ESA-protected stocks of salmonids and other fish species, as well as miles of waterbodies designated as critical habitat

for these, throughout Washington. Construction stormwater discharges, by their potential to carry pollutants to which ESA-listed fish are especially sensitive and to substantially contribute to harmful scouring and peak flow effects, likely contribute to the "take" of ESA-listed fish in violation of ESA § 9 and applicable ESA § 4(d) rules. By authorizing discharges that result in "take" and by failing to ensure in the General Permit that discharges harmful to ESA-listed species are prevented, Ecology subjects itself to liability for illegal "take," as well as violating WAC 173-226-070(3)(b). See, Strahan v. Coxe, 127 F.3d 155 (1st Cir. 1997).

Response

Ecology issues wastewater (stormwater) discharge permits based on state law and applicable federal regulations and guidance. State law implements the federal Clean Water Act and must be at least as stringent as federal requirements. Compliance with the state water quality and sediment standards is considered protective of aquatic organisms and thereby protective of endangered species that frequent the state's waters. The construction stormwater general permit requires the implementation of BMPs necessary to comply with standards. Protection is assured by compliance with the permit and additional language is not necessary. Public notice and SEPA requirements as noted above, also provide additional opportunity to address site specific concerns.

9. Discharge to Municipal Sewer Systems Inappropriate

Comment - Smith & Lowney, P.L.L.C.

The General Permit must incorporate pretreatment standards for discharges to municipal sewer systems. WAC 173-226-070(4) states, "general permits authorizing the discharge into a municipal sewerage system shall satisfy the applicable pretreatment requirements of the [Clean Water Act]." These pretreatment requirements are found, perhaps among other places, at 40 C.F.R. § 403. The General Permit authorizes discharges to municipal sewerage systems, Condition S4.B., but nowhere requires compliance with applicable requirements of 40 C.F.R. § 403 or other "applicable pretreatment requirements" in violation of WAC 173-226-070(4).

Comment - Smith & Lowney, P.L.L.C.

The General Permit must incorporate the prohibition on discharges identified in WAC 173-226-100. WAC 173-226-100 sets forth both an absolute prohibition on the authorization of particular discharges via general permit and a prohibition on particular discharges to municipal sewerage systems. These mandatory prohibitions appear nowhere in the General Permit.

Response

There should be no question that the intent of S4.B. is to typically prohibit discharge to a municipal sewerage system since the heading is "Discharge Prohibitions". However, the prohibition as described in WAC 173-226-100 is not an absolute prohibition on discharges of stormwater to a municipal sewerage system. Ecology does agree, however, that the complete limitation is not clear as currently written and will revise the first sentence of S4.B. to read (additional language underlined):

> Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to Chapter 173-245 WAC and WAC 173-226-100.

Ecology does not agree that additional language must be added to "satisfy the applicable pretreatment requirements". The permit does require that a discharger receive permission to

discharge stormwater to a municipal sewerage system and not add to problems with combined sewer overflows. This requirement assures that the quantity of discharge will be acceptable to the sewerage system and not lead to upset. The permit also requires the application of BMPs to minimize the introduction of pollutants into stormwater and to remove sediment before discharge. No additional changes.

10. Require All Permittees to Apply Revised Stormwater Manual

Comment - Smith & Lowney, P.L.L.C.

The General Permit should require all permittees to update their SWPPPs to meet the requirements of the soon-to-be-released updated Stormwater Management Manual for The Puget Sound Basin ("SWMM") upon its issuance, expected in January, 2001. (K. Johnson 9/12/00 workshop). As the General Permit is now written, only new facilities submitting their NOIs approximately April, 2001, or thereafter would be required to use the updated SWMM. This is because Condition S9.C.1.c. only requires use of the updated SWMM by those who are not required to select BMPs until at least 120 days after the updated SWMM is available. Since Ecology has chosen to make the SWPPP and implementation of selected BMPs the central requirement of the General Permit and is reissuing the General Permit near in time to the SWMM update, it would make sense to require its use by all permittees. To do otherwise, as the draft General Permit proposes, exposes Ecology's true primary concern – to make the General Permit requirements as easy as possible for dischargers to meet – and the secondary status of environmental protection in this permitting action.

Comment - Puget Soundkeeper Alliance

The General Construction Stormwater Permit also fails to require facilities to meet the requirements of the updated Stormwater Management Manual for the Puget Sound Basin.

The Puget Soundkeeper Alliance recommends that the permit be amended to include compliance with the new manual.

Response

The construction stormwater general permit requires the permittee to achieve compliance with water quality standards, ground water standards, and sediment standards through the application of best management practices (BMPs). It would not make sense to require an existing site that is in compliance to redo their SWPPP. The focus of time and effort should be on sites that are not attaining compliance. Here application of the revised stormwater management manual for western Washington is appropriate and would be required.

Ecology takes issue with the suggestion that this permitting action gives “secondary status” to environmental protection. Ecology would not consider reissuing this permit in its current form if it were not environmentally protective. The work of Ecology is multifaceted and there are many competing demands for the time and effort of staff and other resources. Since the resources are not unlimited, prioritizing and scheduling these efforts are critical to Ecology’s mission: “… to protect, preserve and enhance Washington’s environment, and promote the wise management of our air, land and water for the benefit of current and future generations.” Deferring a full consideration of enhancing and clarifying language to consideration with implementation of the new federal regulations does not sacrifice environmental protection but allows Ecology to more effectively complete the task within the full spectrum of work to be done.