

Source Control Program for Existing Development (WWA Phase II)

Preliminary draft “fact sheet”

I. Introduction

The Washington Department of Ecology (Ecology) is working on reissuing the Western Washington Phase II Municipal Stormwater Permit. Ecology prepared preliminary draft permit language of specific permit sections and is accepting informal comments until 11:59 p.m. **January 19, 2018.**

Send your comments to: <http://ws.ecology.commentinput.com/?id=tkx29>

Or mail hard copies to:

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

II. Proposal

Ecology proposes to add a “Source Control Program for Existing Development” to the Western Washington Phase II Municipal Stormwater Permit (Permit).

This program is modeled after the requirement in the Phase I permit.

III. What is a “source control program for existing development?”

The source control program for existing development (program) is a proactive, preventative, inspection-based program that is focused on addressing pollution from existing land use and activities that have the potential to release pollutants to the MS4. This program relies on local authority to inspect businesses and properties, and if necessary requires operation or structural source control BMPs in order to prevent pollution from entering the MS4.

Components of the program include:

- Authority to require the use of BMPs to address pollution from existing land use & activities
- Development of an inventory of businesses/properties
- Inspections
- Progressive compliance strategy, including authority to inspect and enforce
- Staff training
- Guide for creating the inventory (appendix)

IV. Why include this program in the Permit?

Ecology received input from a group of permittees that recommends adding this program to the Permit. At Ecology-held listening sessions on permit reissuance (in spring 2017), Ecology proposed adding this program to the Permit and the feedback was mixed. Some saw real value in adding this program as a means to be proactive in their community by:

- preventing illicit discharges.
- leveraging the IDDE field screening requirement.
- building relationships and sharing information.

Others were hesitant to endorse adding the program due to:

- lack of resources and cost effectiveness of program within small municipalities.
- concern of overlap with other inspection programs (e.g. health districts, industrial stormwater permit).
- preference for adding this program to Education and Outreach or relying on technical assistance only, rather than following a progressive compliance strategy to prevent pollution.

Preventing pollutants from coming into contact with stormwater and entering the MS4 is the best way to reduce impacts of municipal stormwater and thus protect receiving waters. This program has been effective within the Phase I permit coverage areas, as well as within Phase II communities implementing similar programs voluntarily. We expect better protection of receiving waters by expanding this program to all western Washington municipal stormwater permittees. The compliance strategy should include technical assistance and education and outreach as the first approach to gain compliance. Enforcement actions are only needed when other approaches are found to be ineffective. While each Permittee will need to have local authority to require the use of BMPs, Permittees may work together or form regional partnerships as a means to implement the inspection program locally.

V. Will there be a transition period to develop this program?

The proposed permit requirement provides a transition period to develop the program and begin inspections. This allows time to form regional partnerships to help meet this requirement. We propose:

- two years to adopt any necessary ordinances and develop the inventory of businesses.
- two and a half years to begin inspections.

These timeframes are based on the input Ecology received at the listening sessions. The number of annual inspections is equal to 20% of the businesses or properties on the inventory list. Follow-up inspections count towards the annual inspection rate. Furthermore, Permittees may prioritize inspections based on local priorities. If a jurisdiction knows that a health district or industrial stormwater inspector will inspect a particular business/property, the Permittee may choose to prioritize other businesses/properties to inspect.

VI. What is Ecology's Local Source Control Partnership?

Ecology's Hazardous Waste program coordinates a program known as the Local Source Control Partnership. Currently, the Local Source Control (LSC) Partnership is comprised of 20 local governments (cities, counties, and health districts), including a number of permittees. Through interagency

Commented [TC1]: To encourage regional partnerships, the Permit should extend the compliance timeline by an additional year to allow for the additional startup time required to develop and gain approval on inter-local agreements, budgeting (with the potential for need for utility rate increases), securing approval for additional staffing, etc. that is associated with the startup of a significant new regional program.

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agreements with Ecology, the local jurisdictions receive funding to conduct site visits to small businesses. During the site visits, pollution prevention specialists show businesses how to properly manage their hazardous waste and help them diagnose and fix stormwater-related issues. The site visits, along with other pollution prevention activities conducted by the local jurisdictions, are designed to reduce or eliminate hazardous waste and pollutants at the source. When unable to resolve high priority environmental issues through technical assistance, the local pollution prevention specialists refer the issues to a local or state regulatory agency.

The LSC program does not include an enforcement component, and therefore does not fully meet this permit requirement.

VII. Resources

- Source Control Resources from Ecology's Hazardous Waste Local Source Control program <http://www.ecy.wa.gov/programs/hwtr/lsp/trngws.html>
 - Pollution prevention: <http://www.ecy.wa.gov/programs/hwtr/reducewaste.html>
 - Safer Alternatives: <http://www.ecy.wa.gov/programs/hwtr/p2/SaferAlts.html>

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1. Source Control Program for Existing Development

- a. Each Permittee shall implement a program to prevent and reduce pollutants in runoff from areas that discharge to MS4s. The program shall include:
 - i. Application of operational and structural source control BMPs, and, if necessary, treatment BMPs/facilities to pollution generating sources associated with existing land uses and activities.
 - ii. Inspections of pollutant generating sources at publically and privately owned commercial and industrial properties to enforce implementation of required BMPs to control pollution discharging into the Permittee's MS4.
 - iii. Application and enforcement of local ordinances at sites, identified pursuant to S5.C.6.b.ii, including sites with discharges authorized by a separate NPDES permit. Permittees that are in compliance with the terms of this permit will not be held liable by Ecology for water quality standard violations or receiving water impacts caused by industries and other Permittees covered, or which should be covered under an NPDES permit issued by Ecology.
 - iv. Practices to reduce polluted runoff from the application of pesticides, herbicides, and fertilizer discharging into MS4s owned or operated by the Permittee.
- b. Minimum performance measures:
 - i. No later than August 1, 2021, Permittees shall adopt and begin enforcement of an ordinance(s), or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources associated with existing land uses and activities (see Appendix X to identify pollutant generating sources).

The requirements of this subsection are met by using the source control BMPs in Volume IV of the Stormwater Management Manual for Western Washington, or a functionally equivalent manual approved by Ecology.

Operational source control BMPs must be required for all pollutant generating sources. Structural source control BMPs, or treatment BMPs/facilities, or both, shall be required for pollutant generating sources if operational source control BMPs do not prevent illicit discharges or violations of surface water, groundwater, or sediment management standards because of inadequate stormwater controls. Implementation of source control requirements may be done through education and technical assistance programs, provided that formal enforcement authority is available to the Permittee and is used as determined necessary by the Permittee, in accordance with S5.C.6.b.iv., below.

- ii. No later than August 1, 2021, the Permittees shall establish an inventory that identifies publically and privately owned commercial, and industrial properties which have the potential to generate pollutants to the Permittee's MS4. The inventory shall include:

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- (a) Businesses and/or properties identified based on the presence of activities that are pollutant generating (refer to Appendix X).
 - (b) Complaint-based response to identify other pollutant generating sources, such as: mobile or home-based businesses and multifamily properties.
- iii. No later than January 1, 2022, Permittees shall implement an inspection program for sites identified pursuant to S5.C.6.b.ii. above.

~~(a) All identified sites with a business address must be provided information about activities that may generate pollutants and the source control requirements applicable to those activities. This information must be provided by mail, telephone, electronic communications, or in person. This information may be provided all at one time or spread out over the permit term to allow for tailoring and distribution of the information during site inspections.~~

~~(b)~~(a) The Permittee shall annually complete the number of inspections equal to 20% of the businesses and/or properties listed in their source control inventory to assure BMP effectiveness and compliance with source control requirements. The Permittee may count follow-up compliance inspections at the same site toward the 20% inspection rate. The Permittee may select which sites to inspect each year and is not required to inspect 100% of sites over a 5-year period. Sites may be prioritized for inspection based on their land use category, potential for pollution generation, proximity to receiving waters, or to address an identified pollution problem within a specific geographic area or sub-basin.

~~(c)~~(b) Each Permittee shall inspect 100% of sites identified through legitimate complaints which may count towards the 20% inspection rate.

- iv. No later than January 1, 2022, each Permittee shall implement a progressive enforcement policy to require sites to come into compliance with stormwater requirements within a reasonable time period as specified below:
- (a) If the Permittee determines, through inspections or otherwise, that a site has failed to adequately implement required BMPs, the Permittee shall take appropriate follow-up action(s) which may include: phone calls, reminder letters or follow-up inspections.
 - (b) When a Permittee determines that a facility has failed to adequately implement BMPs after a follow-up inspection, the Permittee shall take enforcement action as established through authority in its municipal code and ordinances, or through the judicial system.
 - (c) Each Permittee shall maintain records, including documentation of each site visit, inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating an effort to bring facilities into compliance. Each Permittee must also maintain records of sites that are not inspected because the property owner denies entry in order to count towards the 20% inspection rate.

Commented [TC2]: King County found this aspect of the program to be ineffective and recommends it be eliminated. King County's experience in regards to this program element appears consistent with research findings concluding that awareness campaigns are insufficient in bringing about desired behavior change. Furthermore, this type of information can be more effectively delivered, in context, via the required progressive enforcement policy.

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- (d) A Permittee may refer non-emergency violations of local ordinances to Ecology, provided, the Permittee also makes a documented effort of progressive enforcement. At a minimum, a Permittee's enforcement effort shall include documentation of inspections and warning letters or notices of violation.
- v. Permittees shall train staff who are responsible for implementing the source control program to conduct these activities. The ongoing training program shall cover the legal authority for source control, source control BMPs and their proper application, inspection protocols, lessons learned, typical cases, and enforcement procedures. Follow-up training must be provided as needed to address changes in procedures, techniques, requirements, or staff. Permittees shall document and maintain records of the training provided and the staff trained.