



PUGET  
SOUNDKEEPER®

November 14, 2018

Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Re: Comments - Draft 2019 Municipal Stormwater Permits for Phase I and Phase II  
Permittees, Western Washington

Dear Ms. Stockwell:

Puget Soundkeeper (Soundkeeper) submits these comments on the 2019 Draft Municipal Stormwater General Permits for Phase I and Phase II permittees, Western Washington.

Soundkeeper formally repeats its earlier request for an extension of 2 weeks – until November 28 - to review, consider, and incorporate the Governor’s Orca Recovery Task Force Recommendations into our comments.<sup>1</sup> The Orca Recovery Task Force was convened earlier this year to “identify, prioritize, and support the implementation of a longer term action plan needed for the recovery of Southern Residents and necessary to secure a healthy and sustained population for the future.”<sup>2</sup> There are three Work Groups informing the Task Force on the three biggest threats to orca – prey availability, toxic contaminants, and vessel traffic and noise. The Task Force is scheduled to release its Final Report to the Governor on November 16<sup>th</sup> 2018 – two days after Ecology’s comment deadline.<sup>3</sup> Ecology should postpone the comment deadline for the 2019 Permits until after the release of the Final Report, which is likely to include recommendations relating to stormwater, toxics, and salmon. These Recommendations should inform the 2019 Municipal Stormwater General Permits. Should Ecology not extend the deadline, Soundkeeper reserves our right to amend and/or supplement these comments after the release of the Recommendations.

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<sup>1</sup> Soundkeeper previously requested an extension on this basis at a meeting on October 16<sup>th</sup>, 2018. Soundkeeper made the request to Abbey Stockwell during a meeting with Abbey Stockwell, Emma Trewitt, Karen Dinicola, Jeff Killea, and Doug Howie.

<sup>2</sup> [https://www.governor.wa.gov/sites/default/files/exe\\_order/eo\\_18-02\\_1.pdf](https://www.governor.wa.gov/sites/default/files/exe_order/eo_18-02_1.pdf)

<sup>3</sup> [https://www.governor.wa.gov/sites/default/files/TaskForceTimeline\\_Nov16\\_09-24-18.pdf](https://www.governor.wa.gov/sites/default/files/TaskForceTimeline_Nov16_09-24-18.pdf)

As you know, Soundkeeper and its partners have been deeply involved in the Municipal Stormwater General Permit processes since the early 2000's, including multiple iterations and phases of both the Phase I Permit and Phase II Permit for Western Washington, up to and including litigation to strengthen and defend protections in the Permits. Soundkeeper's comments below will address several larger issues with Washington's municipal stormwater programs and permitting.

We have before us a critical opportunity to make meaningful strides to improve water quality in the Puget Sound region through the stormwater Permits as envisioned in the Clean Water Act, and to help stop the decline of our iconic salmon and orca whales. Unfortunately, Ecology's Drafts fall far short of those goals. A brief summary of Soundkeeper's comments includes the following:

## **I. Introduction**

First, at this juncture, after more than a decade (and three-plus decades beyond when Congress ordered this done), it is time for all developed and developing areas in watersheds of Western Washington to come under the jurisdiction of the Municipal Stormwater General Permits, and for the requirements for Phase I and Phase II to be merged, at least in the more highly-populated regions of Puget Sound. Specifically, some level of Permit coverage should be expanded to include all areas that drain to Puget Sound, and all areas in Western Washington that are on or near waterbodies or in a watershed that could be impacted by stormwater runoff - including those outside of urbanized areas.

Second, with low impact development (LID) now enshrined as the preferred and commonly used approach to site development in the Permits, it is time to make this vision a reality on the ground. There are currently too many loopholes and exemptions for permittees to avoid implementing LID, and we have not made enough progress implementing retrofits to protect water quality, salmon, orca whales and people. Where feasible, we must make LID the required approach for *all* new and redevelopment projects in the Puget Sound region.

Third, we must set stronger and much needed minimum performance standards for structural stormwater controls in the 2019 Permit cycle for *all* Puget Sound region permittees.

Fourth, we must require implementation of Stormwater Management Action Plans by *all* permittees in the 2019 Permit cycle.

Fifth, where documented toxicity exists, permittees should be required to take action to save salmon from polluted stormwater runoff.

Sixth, Ecology must apply the State's anti-degradation policy to these Permits. That requires advance analysis of the status of waters that have been receiving and will receive stormwater discharges to ensure that permittees are not contributing to degradation of waters. Soundkeeper has seen no evidence within the Permit itself or in the process of developing the Permit that shows that Ecology has done even the most minimal anti-degradation analysis.

Finally, Ecology should prohibit new pollution sources and implement additional protections for 303(d) listed waterbodies, waterbodies with a TMDL, and waters with confirmed instances of Urban Runoff Mortality Syndrome (URMS), formerly known as pre-spawn mortality syndrome of adult coho salmon.

## **II. Expand and Combine Permits**

The Permits should cover all stormwater discharges to waterbodies in Western Washington, and the Phase I and II Permits should be combined.

### **A. Expand Permit Coverage**

Ecology should expand Permit coverage to include all Western Washington watersheds not currently protected. Soundkeeper first incorporates its comments letter dated January 19<sup>th</sup>, 2018, herein as to the points of expanded coverage and combining the Permits. Please find those comments attached hereto. In regard to expanded coverage, Soundkeeper noted that:

...it is arbitrary to impose stormwater controls on a Phase I County but fail to regulate small cities within that County whose stormwater discharges ultimately intermingle with the County's regulated MS4. Similarly, it is arbitrary to impose one stormwater standard for the designated urban growth areas of Phase II counties but leave the remainder of the county completely unregulated...  
Additional areas should come under the Permits with each 5 year permit cycle.

While two new Phase II permittees came under the Permits in this cycle, this is not enough. A map of the municipal stormwater permit coverage areas in Western Washington shows gaps in permit coverage that leave a significant amount of watersheds un-protected.<sup>4</sup>

Science consistently shows that the most dramatic impacts to beneficial uses from development occur during the earliest phases of development. These first phases include conversion of a watershed from mostly native vegetation to 10% or less of impervious surface. This means that the most "bang for the buck" in terms of regulating new development comes in the areas where there has been the least development. Yet Ecology has again failed to take this opportunity to bring non-urbanized areas and non-UGA counties under the purview of the Permits. Regulating some areas and not others will incentivize development in the unregulated areas with no stormwater controls at all, contributing to urban sprawl that further undermines water quality. Further, it is senseless to impose one stormwater standard for the designated urban growth areas of Phase II counties but leave the remainder of the county complete unregulated. Leaving large swaths of built-out areas unprotected because of a land planning designation is arbitrary and does nothing to address the problems of polluted stormwater runoff. Rural and suburban areas also produce polluted stormwater runoff harmful to nearby waterbodies.

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<sup>4</sup> <https://waecy.maps.arcgis.com/home/webmap/viewer.html?webmap=df7f487bf29b4c24bf195146f22c3cb5>

Ecology should take steps to prevent this now by expanding permit coverage to all areas that drain to Puget Sound, and all areas in Western Washington that are on or near waterbodies or in a watershed that could be impacted by stormwater runoff - including those outside of urbanized areas - in the 2019 Permit cycle. At a minimum, Ecology should immediately expand coverage to include:

<b>City</b>	<b>County</b>	<b>Population</b>	<b>Notes</b>
Belfair	Kitsap	3,931	On the Union River, headwaters of Hood Canal
Carnation	King	2,164	On the Snoqualmie River
Friday Harbor	San Juan	2,162	On Puget Sound
Gold Bar	Snohomish	2,301	On the Skykomish River
Kingston	Kitsap	2,099	On Puget Sound
Manchester	Kitsap	5,413	On Puget Sound
North Bend	King	6,821	On South Fork of Snoqualmie River
Port Townsend	Jefferson	9,527	On Puget Sound
Sequim	Clallam	6,606	On the Dungeness River and Sequim Bay
Shelton	Mason	9,834	On Oakland Bay and Hammersley Inlet
Stanwood	Snohomish	7,096	On the Stillaguamish River and Skagit Bay
Sultan	Snohomish	5,130	On the Skykomish River and the Sultan River

These municipalities have populations over 2,000 and are located on important waterbodies, all of which are impaired. The Skykomish is impaired for PCBs, dissolved oxygen, and temperature. Ecology should start to expand coverage by first expanding to areas with populations over 2,000 and that are in important and/or degraded watersheds, such as those draining to 303(d) listed or TMDL-covered waterbodies. Thereafter, Ecology should expand coverage to all areas that discharge to waterbodies in Western Washington.

#### B. Combine the Permits

Ecology should combine the Phase I and Phase II Permits, requiring Phase IIs to meet Phase I requirements. While we appreciate Ecology’s efforts to combine the Permits in some places by revising Phase II requirements to match Phase I in this Permit cycle, it is time for the Permits to be fully combined. Phase II jurisdictions are subject to less stormwater protections than Phase I jurisdictions. This is not an equitable result for communities, or for their watersheds. At a minimum, Ecology should start by folding the larger Phase IIs, such as Bellevue, Redmond, Everett, and all densely-populated suburbs between Everett and Tacoma, into Phase I, or a Phase I type, coverage.

## **II. Strengthen and Expand LID Requirements**

Despite a clear mandate in federal statute the current Draft Permits do not include sufficient LID requirements to protect water quality. Soundkeeper encourages Ecology to incorporate stronger and expanded requirements around LID principles and practices in the 2019 Permits. Namely, Ecology should require new development, new construction, and redevelopment projects to utilize more BMPs. These stronger BMP requirements should apply to more new development, new construction, and redevelopment projects.

By failing to address the below highly practicable and solvable problems with the LID provisions of the Permits, Ecology has failed to meet the Clean Water Act's MEP mandate, which states that "Permits for discharges from municipal storm sewers... (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable [MEP], including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. § 1342 (p)(3)(B). To adhere to this mandate, Ecology should go farther in the following ways.

### **A. Eliminate Minimum Thresholds**

By not phasing out the high minimum thresholds in Appendix 1 for all new construction, new development, and redevelopment, and failing to close the "50% assessed value" loophole for redevelopment projects, the draft Permits fail to meet legal requirements to mandate control of stormwater to the maximum extent practicable (MEP) and to employ all known, available and reasonable methods of prevention, control and treatment (AKART). This failure also contradicts the clear mandate of the Pollution Control Hearings Board to require low impact development (LID) where feasible.

Despite being affirmed as "AKART" in the Pollution Control Hearings Board's decision on the appeal of the 2007 Permits, LID is still not being comprehensively and adequately applied to the maximum extent practicable.. In order to protect our waterways and to comply with the Clean Water Act, this must change. The most holistic and widespread and proven successful solution to address polluted stormwater originating from new development, redevelopment, and new construction – the solution that would plug loopholes in the regulatory scheme and provide protections to our waterbodies to actually meet the goals and requirements of the Clean Water Act and RCW § 90.48 - is to eliminate the Minimum Requirement Thresholds.

Section 3.1 of Appendix 1 sets Minimum Requirement Thresholds that trigger application of all Minimum Requirements (1-9) for new and redevelopment at 5,000 square feet of new + replaced impermeable surface, or conversion of  $\frac{3}{4}$  acres of native vegetation to lawn or landscaped area (32,670 square feet), or conversion of 2.5 acres or more of native vegetation to pasture. These thresholds are far too high, allowing substantial development with increased impervious surfaces to occur without triggering requirements for LID controls. "As of 2013, the median [size of a residential home] was 2,359 square feet for houses on the West Coast, and the average was 2,524

square feet.”<sup>5</sup> This means the average new or redeveloped home in Western Washington will not be subject to stormwater regulations necessary for stream and salmon protection. Individual home development often happens as part of a larger development or redevelopment. In cities we are seeing a small home with lots of yard and garden being replaced with much larger homes that have a footprint that take up the entire lot. This results in a significant increase overall in impervious surfaces that contribute to polluted stormwater runoff. Excluding development projects and large single family homes from LID obligations does not control stormwater to the MEP and is a missed opportunity, particularly in urban areas.

The best opportunity to implement comprehensive, long-lasting controls is at the point of development, however, for too long we have built our landscapes in an unsustainable way. To halt this trend, we must address all stormwater from all new development, redevelopment, and new construction projects in Western Washington. Ecology should remove the Minimum Requirement Thresholds, applying LID water quality protections across the board.

#### B. Eliminate 50% Assessed Value Loophole

The 2019 Draft Permits contain a large and irrational loophole that must be closed. It will be eliminated when Ecology removes the Minimum Requirement Thresholds. This loophole requires that before any re-development project is required to provide flow control and water quality treatment, the value of the project must exceed 50% of the assessed value of the existing site improvements – which has been interpreted as building value.

Linking environmental protection to the market value of a building has no justifiable basis and results in a harmful loophole authorizing developers to pollute. What is Ecology’s rationale for this loophole? How does it ensure that redevelopment projects will meet the goals of the Clean Water Act and RCW § 90.48? As property values have increased, the likely effect is that less and less LID will be required. This is absolutely the opposite direction of where required LID must move as cities rapidly transform to even more dense and more concretized environments.

#### C. Move Away From LID BMP List Approach

Soundkeeper strongly urges Ecology to move away from an LID BMP “list” approach and move towards a site planning approach. We strongly disagree with the requirements in the Manual that only the first feasible BMP from the appropriate list is required. Requiring only a single BMP on the list completely fails to conform to actually applying LID in a meaningful way and utterly fails to meet MEP requirements.

The core principle of LID is to integrate multiple small-scale BMPs across a site to reduce the generation of stormwater and infiltrate what remains. These help achieve the goal of no-net runoff in all storm events. Ecology should require that BMPs be chosen and implemented to eliminate as much runoff as technically feasible – all BMPS that will further reduce stormwater runoff, reduce effective impervious surfaces, and/or maintain native vegetation should be implemented if feasible. This is consistent with the Clean Water Act and Ecology’s MEP and AKART requirements.

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<sup>5</sup> <https://seattle.curbed.com/2016/7/6/12094572/seattle-houses-bigger-households>

### III. Structural Stormwater Controls (Retrofits)

The retrofits mandate is an essential piece of the 2019 Permits and it is essential for recovering degraded waterways and salmon habitat. Phase I permittees have had structural stormwater control requirements since 2007, yet Ecology proposes to delay the extension of this requirement to Phase II permittees until, at the earliest, 2024. There is no support in fact or law for this position. The retrofits mandate should apply to Phase I and Phase II permittees in the 2019 Permits, and clear performance standards should be defined for both, including a 1,300 points requirement for Phase I permittees.

Increasing retrofits is also consistent with the Governor's Orca Recovery Task Force Draft contaminants recommendation number 31, to reduce stormwater threats and accelerate clean-up of toxics that are harmful to orcas, by actions including: "identify toxic hotspots in the stormwater entering Puget Sound. Prioritize these for retrofits and/or redevelopment to meet current standards." Will Ecology implement the Task Force's recommendations in this round of Permits?

#### A. Phase I and Phase II Permittees Must Have a Defined Retrofits Requirement

As admitted by Ecology in the 2019 Permit Draft Factsheet: "addressing stormwater impacts from new development and redevelopment at the site and subdivision scale **will not adequately address legacy impacts from previous development patterns and practices, nor will it serve to protect areas providing ecological services for stormwater management.** It is clear that we cannot protect the state's waters without also addressing degradation caused by stormwater discharges from existing developed sites. For that reason **stormwater programs must include planning and developing policies that address receiving water needs, including development of policy and regulations, and retrofit provisions.**" [Emphasis Added, Factsheet Page 39]. Why has Ecology's conclusion, that retrofit provisions must be included in stormwater programs, not been translated into minimum performance measures for Phase II permittees?

The Puget Sound Region is highly built out already. Our Southern Resident Killer Whales are dying and a large part of the problem is the toxic contaminants poisoning both Chinook and coho salmon.<sup>6</sup> This contamination affects the survival and fitness of salmon as well as the health of orca whales. We must act now to make the appropriate modifications to our built-out systems to protect our water and aquatic life resources – before they are lost. Seattle has been retrofitting properties since 2007 as required by the Phase I Permit. To give Phase II permittees another five years – until 2024 – before they start to address this known and solvable problem flies in the face of our clean water policies and goals.

#### B. Increase the Minimum Performance Standard for Retrofits

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<sup>6</sup> See, <https://www.theatlantic.com/science/archive/2018/09/pcbs-are-killing-killer-whales/571474/> ; <https://www.nationalgeographic.com/environment/2018/09/orcas-killer-whales-poisoned-pcbs-pollution/> ; [https://www.theguardian.com/environment/2018/sep/27/orca-apocalypse-half-of-killer-whales-doomed-to-die-from-pollution?CMP=Share\\_AndroidApp\\_Gmail](https://www.theguardian.com/environment/2018/sep/27/orca-apocalypse-half-of-killer-whales-doomed-to-die-from-pollution?CMP=Share_AndroidApp_Gmail)

To meet Clean Water Act standards, Soundkeeper suggests a tiered approach to retrofits for Phase I and II permittees based on population, with a 1,300 point requirement for all Phase I permittees and any Phase II permittees that now meet the original Phase I population threshold of 100,000 or more. Medium-sized Phase II permittees should have a points requirement of 800 and small Phase II permittees should have the lower points requirement of 500. This is a reasonable and tailored approach that matches population size and pollution generated from pervious surfaces to a defined level of minimum effort appropriate for each permittee.

Soundkeeper supports the original Pre-Draft minimum performance standard of 1,300 retrofit points for Phase I permittees. This is easily achievable, as various combinations of projects could combine to meet the minimum point requirement of 1,300, which includes 1,000 design-stage retrofit incentive points and 300 complete/maintenance-stage incentive points. For example, designing new flow control facilities serving 200 acres (300 points) + new runoff treatment facilities serving 200 acres (400 points) + new LID BMPs serving 150 acres (300 points) would reach the 1,000 point design-stage retrofit minimum. The new facilities would serve a total of 550 acres, or 110 acres/year over a 5-year Permit cycle. For completed or maintenance-stage incentive points, maintenance projects would only have to serve 1,200 acres to reach the 300 point minimum. This is a reasonable approach. Each Phase I has thousands of acres per jurisdiction.

Yet instead of requiring 1,300 points in the Drafts, at the request of Phase I permittees Ecology has lowered the points requirement from the 1,300 points proposed in the Pre-Drafts, to 300 points. This is unacceptable. It is inappropriate to calibrate ability to comply with a new requirement based on past performance under a structure with no defined level of effort. Phase I permittees did not have a defined level of effort in the 2012 Permit cycle thus benefitting from 5 more years to plan for more retrofits. Ecology should require permittees to go farther. The goal of the Clean Water Act is to ensure that all our waters are drinkable, fishable, and swimmable, and as Ecology noted in the Permit Factsheet, we must retrofit our built out environments if we are ever to reach that goal.

Phase I permittees proved themselves capable of performing retrofits valued at more than 300 points in their comments letter dated May 16, 2018. Their letter demonstrates that, if the current points system is applied to projects planned or completed in the last Permit cycle, Tacoma's retrofits projects for the 2012 Permit cycle would have totaled 503 points, Pierce County's would have totaled 325, and Clark County 204. Under the current scheme of 300 retrofits points, some permittees will do less retrofits in the 2019 Permit cycle than they did in the 2012 Permit cycle. This does not comport with the anti-backsliding provisions of 33 U.S. Code § 1342(o) or the Clean Water Act.

#### **IV. Stormwater Management Action Planning (SMAP).**

As drafted, Ecology has failed to require meaningful watershed planning in the 2019-2024 Permit cycle because the Draft Permit requirements merely require Phase I and Phase II



permittees to develop SMAPs by December 31, 2022. Ecology must require implementation within the next Permit cycle.

Soundkeeper has long viewed watershed planning requirements as a core component of these stormwater Permits. If done right, the SMAP requirements have the potential to provide a strong framework for many other Permit requirements if done right. While we are encouraged to see some recognition of the value of watershed planning in the Permits, the proposed permit conditions are exceedingly modest and will not achieve the necessary protections to ensure water quality standards are met.

As early as 2016, Soundkeeper and partners participated in 2018 Stormwater Permit Subgroup to identify guiding principles for the watershed planning requirement. The Subgroup noted that a watershed plan should:

1. Prioritize a watershed
2. Identify impairments
3. Identify and begin to execute projects or actions to address impairments
4. Assess progress, and
5. Adaptively manage

Phase I permittees previously developed watershed-scale stormwater plans per the 2013-2018 Permit. Rather than starting from scratch, Phase I permittees are merely required to “develop a Stormwater Management Action Plan for the watershed-scale plans developed in the 2013-2018 Permit.” This is where Phase I requirements end. Over a five-year period, Phase Is are required to create a SMAP based on their pre-existing basin plans, and that is all. Neither Phase I or Phase II permittees are required to actually implement their SMAPs during the next five year Permit cycle. This is unacceptable.

We must expedite the Stormwater Management Action Plan (SMAP) process to include implementation in the 2019 Permit cycle for Phase I and II permittees. Each Permit cycle is 5 years. Five-year Permit cycles allow permittees plenty of time to inventory, prioritize, plan, and start to implement their SMAPs, thus implementation must commence within the 2019 Permit cycle.

An NPDES permit is a regulatory tool to protect designated uses of our waterways. It is not a “how-to” manual for random acts of kindness. In order to make meaningful progress to recover degraded waterways and protect designated uses, a general timeframe for all deliverables must be included in the Permit, and permittees must start implementing retrofits pursuant to their SMAPs before the final year of the Permit cycle. Permittees cannot delay implementing changes that we know will work and that are a necessary component, as stated by Ecology, to stop stormwater pollution when our orca whales and salmon are dying. Permittees should start retrofitting now, they should expedite their SMAPs, and they should continue retrofitting areas pursuant to their SMAPs once the SMAPs are finalized.

Phase I and Phase II permittees should also be required to prepare more than one SMAP – at a minimum, the amount of SMAPs should be a proportion of the total number of degraded basins

in their jurisdiction, with the number set to ensure that all degraded basins will have fully implemented SMAPs within 3 Permit Cycles, or 15 years.

As we articulated in our comment letter dated February 2, 2018, the timeline for Phase II permittees to implement their SMAPs should be calibrated to achieve water quality benefits by the end of the 2019-2024 permit cycle. An example could run as follows:

- Within six months of date of Permit issuance (Feb 1, 2020): complete basin assessment
- Within one year of date of Permit issuance (July 1, 2020): complete basin prioritization.
- By end of year two of Permit cycle (July 1, 2021): Craft complete SMAPs for the requisite number of basins. Ecology will approve, disapprove, or require modification within ninety days. Obtain approval by Ecology of final SMAPs.
- By end of year four of Permit cycle (July 1, 2023): Commence implementation of the SMAPs in as many priority basins as possible.
- By year five annual report date (March 31, 2024): Achieve demonstrable water quality improvement in at least one priority basin within the 2019 – 2024 Permit cycle.

Ecology should require implementation of SMAPs by Phase I and Phase II permittees in the next permit cycle, which dovetails with implementing a minimum level of effort requirement for both Phase I and Phase II permittees to accrue a certain number of retrofits points.

## **V. Take Action on Urban Mortality Runoff Syndrome (URMS)**

Soundkeeper urges Ecology to incorporate a requirement for permittees to accept and investigate reports of Urban Runoff Mortality Syndrome (URMS), and to plan and implement Corrective Action Plans to stop URMS when URMS is reported and verified in the permittees jurisdiction.

The documented effects of URMS demonstrate the death of adult coho salmon within hours of reaching fresh water. URMS is an irrefutable indicator of a water quality violation, as it is a reliable indicator of toxic stormwater runoff so polluted that coho salmon die within a few hours of exposure. This is exactly the type of pollution the Permits are designed to address, and any instance of fish mortality requires a serious and dedicated response by permittees. The law on State NPDES programs is clear on this. NPDES permit “[I]mitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” 40 CFR § 122.44 (d)(1)(i).

An URMS Investigation and Corrective Action Planning requirement could read as follows:

“Within 48 hours of receipt of reports of URMS incidents the permittee must investigate and verify if URMS is occurring. Within 90 days of verifying an URMS report, permittees must submit a proposed Corrective Action Plan to Ecology for all verified URMS incidents. The Corrective Action Plan must demonstrate the corrective actions that permittee will take to remove pollutants or

cease discharges to the waterbody. Ecology will have 30 days to approve or deny the Corrective Action Plan. If denied, Ecology must work with the permittee to finalize the Corrective Action Plan within 90 days. Once finalized, permittees must fully implement the Corrective Action Plan within two years.”

The University of Washington is spearheading a reporting platform so that people living in the Puget Sound region can report salmon exhibiting URMS.<sup>7</sup> A Permit requirement to investigate reports of URMS could utilize this platform. Modifications to Ecology’s pollution reporting hotline could also incorporate an URMS reporting function. To make this effort meaningful, investigation and responses must be time-bound and have an endpoint that achieves water quality protection.

The Corrective Action Plans can and must inform retrofit and Stormwater Management Action Planning requirements in those sections of the Permits. Further, permittees should have ongoing reporting requirements regarding their Corrective Action Plans and results thereof.

Currently, municipal stormwater permittees are causing or contributing to water quality violations that are killing coho, and it is imperative that Ecology address this. Permits should not be used to justify the killing of salmon. Coho salmon support treaty fishing, sport fishing and form part of the Southern Resident Killer Whale diet. Continued inaction on this topic flies in the face of Puget Sound Recovery and orca recovery goals. Without a proactive and robust response to the acute environmental harm caused by polluted stormwater runoff, the Permits risk doing only lip service to correcting one of our most severe environmental problems, and thus legalizing and legitimizing a dangerous pollution source.

## **VI. Permittees Must Meet State Anti-degradation and Water Quality Standards**

Ecology must perform an anti-degradation analysis for all new and expanded sources seeking permits to discharge pollutants to state waters, consistent with 40 C.F.R. § 131.12, RCW § 90.48, and WAC 173-200-030. Permittees should be required to demonstrate that Permit issuance is in the overwhelming public interest, or the Permit should be denied. Further, permittees should be required to demonstrate that they meet the new water quality standards.

The Clean Water Act requires that State water quality standards protect existing designated uses by establishing the maximum level of pollutants allowed in surface water. The standards must also be more protective of higher-quality waters than the standards require. 33 U.S.C. § 1313(d)(4)(B).

40 C.F.R. §131.12 outlines three “tiers” of waters, held to three tiered standards.

For Tier one waters – the lowest standard - policy and implementation methods must be consistent with “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. §131.12 (a)(1).

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<sup>7</sup> <http://news.cahnrs.wsu.edu/article/salmon-are-dying-from-toxic-stormwater-runoff-puget-sound-area-residents-can-help-scientists-figure-out-why/>

For Tier two, high quality waters:

“(2) Where the quality of the waters exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water, **that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State’s continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.** In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.” 40 C.F.R. § 131.12 (a)(2). [Emphasis added].

For Tier three waters, high quality waters constitute an outstanding National resource, no degradation is permitted.

To ensure consistency with the Clean Water Act and Washington’s antidegradation policy, Stormwater Management Plans (SWMPs, under Section S.5 of the Permits) should require that discharges must not cause or contribute to violations of State water quality standards. Section S.5.B of the Phase I Permit states: “[t]he SWMP shall be designed to reduce the discharge of pollutants from MS4s to the MEP, meet state AKART requirements, and protect water quality.” The phrase “protect water quality” is too vague to allow for accurate evaluation of this Permit condition, does not ensure consistency with Washington’s antidegradation policy, and does not go far enough to address already degraded waters. This section should be revised to clarify that the SWMP must ensure compliance with water quality standards, prevent water quality violations, and prevent degradation of waters unless necessary to accommodate important economic or social development in the area in which the waters are located.

## **VII. Requirements For Hard Surfaces in Basins Draining to Degraded Areas**

Ecology should mandate that permittees prohibit the addition of any new hard surfaces, and further take steps to disincentivize use of motor vehicles, in basins with 303(d) listed waterbodies and/or Total Maximum Daily Loads (TMDLs) in place, and in basins with verified documented instances of URMS. These steps could include: adding bike lanes, increasing bus routes, incentivizing car-pooling, and redirecting traffic flow. Furthermore, permittees should implement plans to reduce the effective impervious surface area in these basins. These three measures could be accomplished through the SMAP and/or the Structural Stormwater Controls sections of the Permits, and with a revision to section S.7 and Appendix 2 of the Permits.

We know that impervious surfaces pose the biggest threat to stormwater, and new research points to cars and more specifically, tires, as a significant source of toxic stormwater pollution. It is well-settled law that MS4 NPDES “permits must also include...any more stringent effluent

limitations based on an approved [TMDL] or equivalent analysis...” *Puget Soundkeeper Alliance v. Ecology*, 2009 WL 434836, at \*4 (PCHB Feb. 2, 2009); 40 C.F.R. § 122.34(d)(1). However, the Permits do not require permittees to comply with TMDLs that are issued after the issuance date of the permit, nor do they require special considerations for development, construction or redevelopment projects in TMDL and/or 303(d)-listed watersheds. This is a significant gap, as TMDLs can potentially constitute the clearest roadmap towards resolving site-specific water quality problems associated with stormwater.

## **Conclusion**

Thank you for this opportunity to provide feedback on the Draft 2019 Municipal Stormwater Permits for Phase I and Phase II Permittees, Western Washington.

Sincerely,

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