



November 9, 2018

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

RE: City of Oak Harbor Comments on the Preliminary Draft 2019-2024 NPDES Phase II Permit

Dear Comment Committee:

The City of Oak Harbor is updating its comments regarding the preliminary draft of the NPDES II Permit for the 2019-2024 permit cycle. Please see attached the Oak Harbor City Council Resolution 18-24 underscoring the Mayor and City Council's concerns, along with the staff concerns provided in the first letter dated January 18, 2018 and the second letter dated November 2, 2018.

"Stormwater Permit and Regulations" is one of the City of Oak Harbor's top Legislative Priorities for 2019. The City will advocate for sufficient State and Federal funding, extended time of implementation, and special considerations, to assist local jurisdictions in implementing the NPDES Phase II additional requirements, such as sourced control programs and comprehensive stormwater planning.

While many of the proposed permit changes will impact other Western Washington municipalities, they are especially impactful to the City of Oak Harbor. Oak Harbor is geographically unique in its position as a mid-sized municipality on an island. It is even more so isolated by being the only municipality within Island County to be classified as an NPDES Phase II permittee. This status leads to a greater difficulty in permit implementation and contributes to the task of balancing the proposed regulatory changes with budgetary limitations. The application of generalized standards under a "one size fits all" permit is unrealistic due to the City of Oak Harbor's unique status. We encourage the Department of Ecology to address our concerns given our exceptional situation.

The City of Oak Harbor looks forward to an acknowledgement of receipt and responses to our comments.

Sincerely,

Blaine Oborn
City Administrator
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
(360) 279-4501
boborn@oakharbor.org

Enclosed: Resolution 18-24
Attachment A: City of Oak Harbor Letter to DOE dated January 18, 2018
Attachment B: City of Oak Harbor Letter to DOE dated November 2, 2018
Spreadsheet with comments per DOE's online submission requirement

865 S.E. Barrington Drive • Oak Harbor, Washington 98277-4092 • City Hall (360) 279-4500

CITY OF OAK HARBOR
RESOLUTION 18-24

A RESOLUTION OF THE CITY OF OAK HARBOR PROVIDING COMMENTS TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY REGARDING THE DRAFT 2019 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II PERMIT FOR WESTERN WASHINGTON

WHEREAS, the City of Oak Harbor was classified by the Washington State Department of Ecology (DOE) as a Phase II jurisdiction under the National Pollutant Discharge Elimination System (NPDES) Permit on February 16, 2007; and

WHEREAS, the City has diligently pursued and met our obligations under each successive permit since that time; and

WHEREAS, the City has reviewed the obligations intended to be imposed by DOE on all Phase II permittees under the draft 2019 permit; and

WHEREAS, the City intends to meet its obligations under the next Phase II permit, but has concerns as to many of the requirements; and

WHEREAS, on January 18, 2018 City staff provided DOE preliminary review comments on the draft 2019 permit; and

WHEREAS, the City Council wishes to reiterate those comments and to formally transmit them to DOE as their own; said January 18, 2018 letter included with this Resolution as Attachment A; and

WHEREAS, City staff continued to review the draft 2019 permit subsequent to sending the preliminary comments to DOE and determined that additional comments are warranted; and

WHEREAS, while there are many technical comments and questions the City could raise, two new permit sections are especially noteworthy for the purposes of this resolution: S5.C.1, Comprehensive Planning for Stormwater Management, and S5.C.8, Source Control for Existing Development; and

WHEREAS, Section S5.C.1 requires substantial amounts of work by City staff, with the need to hire new staff and outside consultants to accomplish that work, without DOE or the State of Washington providing any funding to off-set the costs to hire the staff or consultants; said lack of funding equating to an unfunded mandate; and

WHEREAS, Section S5.C.8 requires the City to act as the enforcement arm for DOE and inspect businesses legally established under previous regulations and potentially require them to

construct additional facilities and/or change their operational practices because of the conditions of the 2019 permit; and

WHEREAS, the City believes that if such inspections are necessary it is more appropriate for DOE to undertake them; and

WHEREAS, the City Council was briefed on this topic at their workshop of October 24, 2018; and

WHEREAS, at that time staff proposed the Council consider adopting a resolution and formally convey their concerns directly to DOE and the resolution could transmit the January comment letter and a new one from November; said November letter included with this Resolution as Attachment B; and

WHEREAS, the City Council considered this matter at their regular meeting of November 7, 2018;

NOW, THEREFORE, BE IT RESOLVED that via Resolution 18-24:

1. The City Council of the City of Oak Harbor transmits its comments on the NPDES Phase II 2019 draft permit formally to the Department of Ecology as spelled out in Attachments A and B;
2. The City Council of the City of Oak Harbor will focus on Stormwater Permit and Regulations as part of its legislative priorities for 2019 and thus will continue to lobby the State with regard to ecological requirements and unfunded mandates.

PASSED by the City Council and approved by its Mayor this 7th day of November, 2018.

CITY OF OAK HARBOR



BOB SEVERNS, MAYOR

Attest:



Carla Brown, City Clerk

Approved as to form:



Nikki Esparza, City Attorney

RESOLUTION 18-24 ATTACHMENT A



January 18, 2018

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

RE: Comment letter on the Preliminary Draft 2019-2024 NPDES Phase II Permit

Dear Comment Committee:

The City of Oak Harbor appreciates the opportunity to comment on the preliminary draft of the NPDES II Permit for the 2019-2024 permit cycle. While we understand the continuing vision and purpose of clean water in our community, we observe several areas of concern with the preliminary permit document pertaining to both existing components of the current permit being carried-over to the preliminary version, as well as two new sections addressing “Source Control Program for Existing Development” and “Long-term Municipal Storm Water Planning.

These details of these concerns are listed as follows:

1) Regarding modifications to carry-over language – Controlling Runoff from New Development, Redevelopment, and Construction Sites.

OUR COMMENTS:

- a) We would propose the allowance of increased flexibility for adjustment to Best Management Practices (BMPs) based on local precipitation rates. The 2012/2014 Stormwater Management Manual for Western Washington requires projects utilizing Lists 1 or 2 for On-site Stormwater Management implement prescriptive BMPs that are sized for all of Western Washington - independent of differences in local precipitation rates. Two examples are the Full Dispersion minimum land ratios and the Downspout Full Infiltration minimum trench sizes. These are prescriptively “sized” the same for all communities regardless of local precipitation rates. This uniform sizing places the same requirements on permittees in a rain shadow as permittees located in a rain forest. Both the permit and the manual need to include clear language allowing for modification of the prescriptive BMP parameters based upon reduced local precipitations instead of a “one size fits all” approach.
- b) Department of Ecology (DOE) should provide a clearer definition of the term “Road Related Project”. Many inexperienced engineers are having difficulty knowing when the “Road Related Project” box of Figure 2.4.2 applies. They are attempting to use it in application to commercial

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developments that have required road frontage improvements as a separate project. More clarification on when and how this box in the flow chart applies is necessary.

2) Regarding modifications to carry-over language - Public Education and Outreach (WWA Phase II)

OUR COMMENTS:

- a) Permit section S5.C.1.a.i(a) should be specific in allowing for a narrower entity focus statement than “all businesses” or “all of the general public”. This broad based generalization groups all entities into similar categories regardless of risk exposure. Better statewide program efficiencies could be achieved by focusing on those entities at higher risk of polluting than others. For example, spending significant resources to find and educate a single accountant working at a home office is likely to have negligible results compared to utilizing the limited resources educating restaurant staff or auto repair shop staff.
- b) Permit sections S5.C.1.a.i(a) and S5.C.1.a.ii(a) should include parking lot owner’s or manager’s as a target audience group. Section S5.C.1.a.ii(a) should also include a corresponding spill control retrofit BMP for the behavioral change category. For example, older parking lots that were constructed prior to stormwater regulations can be significant sources of pollutants due to the potential high volume of usage and lack of control over the condition of a vehicle that uses the parking facility. A spill control retrofit BMP would be an easy metric to measure, and the collective pollution prevention to the Puget Sound could be substantial, as well as the clean-up cost savings.

3) New Section: Phase II – S5.C Source Control Program for Existing Development

It is our interpretation that this proposed program is intended to be a proactive, inspection based process focused on addressing pollution from existing land use activities. This program relies on local jurisdictions to inspect businesses and properties, and if necessary, requires the jurisdiction to impose additional operational or structural source control BMPs.

As an impacted jurisdiction, our responsibilities under this new section would include:

- Authority to require the use of BMPs to address pollution from existing land use activities;
- Develop an inventory of businesses or properties;
- Inspect, at a minimum, 20% of the businesses annually; and
- Design and implement a progressive compliance strategy to enforce deficient sites to fall into compliance with the proposed standards.

OUR COMMENTS:

- a) The proposed source control program would require local jurisdictions, such as Oak Harbor, to inspect existing commercial businesses and possibly require them to change their business practices and/or construct physical improvements with the aim of further controlling potential stormwater runoff. This is after the use has already been legally established under a prior set of regulations. This will obviously be viewed as government intrusion into their businesses and has the possibility to financially impact those businesses.

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- b) This proposal is a significant shift from current practices. Currently, identification of illicit discharges may prompt implementation of operational BMPs and/or structural spill control BMPs through enforcement. This is in response to a detected illicit discharge (Permittees are required to have an active illicit discharge detection program). The proposed change incorporates an enhanced, proactive approach in which the permittee will be required to enforce implementation of operational or structural BMPs even when an illicit discharge has either not occurred or may have little probability of occurring. Education, outreach, and incentives are less intrusive methods to achieve the same goal for permittees with limited resources, and is a less intrusive approach to the issue.
- c) If the State wants to enforce BMPs on existing business owners that have not caused illicit discharges, the State of Washington should pass and enforce state laws for the identified businesses to enact the BMPs. The State should not place this burden on small municipalities with limited resources to create and enforce these regulations. A good example as to why these laws should be state laws, is the case of gas stations. If a gas station is just outside the permittee's border, they would not be subject to the same source control BMPs as a neighboring gas station just inside the permittee's border even though they drain to the same water body. The application of these enforcement standards in this example are, therefore, not equitable.

4) New Section: Phase I & Phase II - Long-term MS4 Municipal Stormwater Planning to Protect and Recover Receiving Waters

It is our interpretation that, imbedded in this proposed new section, is the concern of DOE that existing standards are deficient in protecting water quality conditions:

"The science is clear that a site and subdivision approach to controlling stormwater runoff from developed and developing areas still falls short of protecting receiving water quality conditions. Further, requirements based on new and redevelopment will have little impact on runoff from existing development without innovative program overlays (such as regional facilities or a flow control transfer program)."

Accordingly, it is DOE's desire that the proposed permit intends to support a prioritization and planning process that results in targeted investments in BMPs and capital actions that contribute to preventing and reducing impact to receiving waters. DOE's stated objective appears to "help permittees make informed decisions about how and when to address existing and anticipated flow and water quality problems" by developing an inventory of basins that are all or partially inside the permittee's jurisdictional boundaries, by using existing information to prioritize basins and assess data gaps, by identifying catchment areas for planning within priority basins; and by identifying specific approaches to apply within catchment areas.

As an impacted jurisdiction, our responsibilities would include:

- Our convening an interdisciplinary team of City employees and scientific and technical experts to conduct and coordinate this effort – which may require the City to contract for certain technical expertise;

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- A watershed inventory with key characteristics of each basin;
- The development of a proposed plan, including our rationale, for selected BMPs/actions as well as an estimated budget or funding approach; and
- Compliance with due dates for these deliverables at a date not yet determined.

OUR COMMENTS:

- a) Small to medium-sized jurisdictions do not typically have scientific experts on staff. Requiring such individuals to be part of the interdisciplinary team means an added cost burden to the City. In addition, the additional workload requirements of this section place an increase level of workload on the City's Planning, Engineering, and Public Works operational functions. Again, there is no funding being provided for the implementation of this functions within the City organization.
- b) The proposal includes the provision that:

"The plan developed for the catchment areas will include consideration of the following MS4 and complementary strategies at a minimum: capital projects including regional facilities; land acquisition and/or conservation easements; land use or zoning code adjustments; new critical area designations; protected, enhanced, or restored riparian buffers; enhanced MS4 maintenance; education and outreach". (at 21-25, page 3)

This proposed wording has significant implications for the City. Without new funding sources, the acquisition of land and/or conservation easements for stormwater purposes seems an unrealistic option for the City. While there exist various sources of funding to assist with these acquisitions, they are typically competitive and not sufficient in size to offset the costs. Implementing this concept also has the side-effect of removing land from the property tax rolls, further eroding our ability to fund city government core operations

- c) It is easy to say "land use or zoning code adjustments" but quite another to identify and implement areas for change. What types of adjustments does Ecology expect? This is possibly one area where the differences between the more urbanized Phase I or II permittees and Oak Harbor will be very evident in terms of the range of implementation options. It is not clear what is meant by "new critical area designations." Is it designating more land area under the existing designations or the creation of new categories of critical areas? Both of these concepts have the potential to be incredibly problematic for local jurisdictions and land owners alike.
- d) The long term planning concept has the potential to put the NPDES Phase II permit and GMA on a collision course – a conflict which the DOE appears to acknowledge in their proposal. The proposed changes to our community, such as changes to land use and zoning or the designation of new critical areas, seem to 'establish' that stormwater issues are the most important issues a community must tackle. We are concerned about both this apparent conflict for obvious reasons, and the corresponding premise that this preliminary permit reflects the environmental state of Puget Sound waters near areas that are larger and significantly more urbanized than Oak Harbor. In addition, each municipality may have its own intrinsic characteristics pertaining to topography or other geographical characteristics. For example, the City of Oak Harbor's stormwater

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infrastructure includes multiple *natural* storage and treatment drainage basins that provide natural treatment to stormwater prior to entering into Puget Sound. We take the position that our natural basins are a more economical and sustainable treatment method than structures in highly developed cities consisting mostly of hard, flat surfaces. We are concerned about both this apparent conflict for obvious reasons, and the corresponding premise that this preliminary permit is the environmental state of Puget Sound waters near areas that are larger and significantly more urbanized than Oak Harbor.

- e) The lack of scalability, based on differences in the size and complexity of different municipalities, combined with a lack of funding for this mandated program, places the proposed changes in direct competition with our ability to economically support our core municipal services – the funding for which is already significantly strained. It is clear that DOE is shifting the funding of these efforts (planning and implementation) to the local jurisdiction. This is simply unacceptable. Acknowledging that it is unrealistic to expect the State to offer funding assistance for capital projects, they should, at a minimum, help fund the planning studies required by this proposal. This would follow similar efforts when cities must complete mandated updates to their GMA or SMP plans. During Oak Harbor’s history, we have received either financial assistance or technical assistance with those updates.
- f) We have a tremendous concern that adopting, implementing and enforcing ever more stringent stormwater standards is in conflict with our ability to provide affordable housing for our community. Whether this conflict is real or perceived, it is essential that DOE acknowledge it and provide local jurisdictions tools to address it. This conflict, and the public discussion of it, cannot be ignored.
- g) The changes propose further restriction of available land for development within the GMA, causing a further erosion of available affordable housing. In fact, current Senate Bill 6077 proposes a minimum allowable density of 6 lots per acre in an attempt to combat the dearth of affordable housing in the greater Puget Sound area.
- h) Any additional encumbrance of land currently planned for in Comprehensive Plan and UGA calculations will further reduce projected housing units or cause up-zoning as rural clustering is not possible at urban densities. Changing land use and zoning is likely to have a ripple effect through all community planning including affecting street and utility planning as well as school and public transportation planning.
- i) The proposed requirements to identify and prioritize basins, implement capital improvement retrofit projects, alter land use or zoning, and restrict land availability through new critical area implementation and/or establishment of riparian areas, is similar to enacting a total maximum daily load (TMDL) on the basin without the cause of the receiving water body actually being impaired. Historically, these types of efforts, now being specified as anticipatory, have been implemented as remedies to the basins of impaired waterbodies where there has been a demonstrated need.
- j) This new proposed permit section appears to be applying circumstances from much larger, mostly developed municipalities to all municipalities in a “one size fits all” approach without recognizing that some smaller communities will have developed much more substantially under the DOE’s Stormwater Management Manual for Western Washington. This is comparing “apples to

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oranges” in assessing whether the years of development and redevelopment under the various Stormwater Management Manuals for Western Washington are protecting the receiving waterbodies. Due to growth trends in western Washington, small municipalities are likely to have hit their growth spurt after having adopted utilization of the DOE’s manual and are more likely to have larger percentages of new development constructed under the manual. The larger municipalities are more likely to have had most of their development occur prior to implementation of the DOE’s manual and are more heavily reliant upon redevelopment to retrofit stormwater protections. This is evidenced by certain larger municipalities not being required to implement flow control protections to predeveloped conditions based on the presence of 40% or more impervious surface present in 1985 (2014 DOE Manual, Page 2-34 of Volume I). The DOE should establish a similar limit for this new permit section, exempting smaller communities that have been using a DOE manual, and allowing their growth to occur under the new LID standards. This would give the new LID standards a chance to work before declaring them insufficient.

Conclusion

It is apparent the preliminary draft NPDES II Permit is structured to ensure protection of water quality and human health, with the permit establishing conditions, prohibitions, and best management practices for discharges of storm water. While at first glance, the preliminary permit draft accomplishes the targeted goals of the EPA. However, our concerns, as evidenced above, offer your agency insight into the application of the proposed changes from the perspective of small to mid-sized municipalities that, while cognizant of the need for clean water standards, are tasked with balancing the proposed regulatory changes with budgetary limitations, as well as applying generalized standards to an environment in which our community has its own intrinsic environmental fit characteristics to which “one permit fits all” is not the soundest of approaches.

We respectfully request that your agency consider our comments as you deliberate the Preliminary Draft NPDES II Permit. Again, we appreciate the opportunity to comment on this topic.

Sincerely,



Dr. Douglas A. Merriman, City Administrator
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
(360) 279-4531

RESOLUTION 18-24 ATTACHMENT B



November 2, 2018

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

RE: Comment letter on the Preliminary Draft 2019-2024 NPDES Phase II Permit

Dear Comment Committee:

The City of Oak Harbor is providing additional comments regarding the preliminary draft of the NPDES II Permit for the 2019-2024 permit cycle.

The following comments are from our Engineering staff who have received extensive training regarding the NPDES Phase II Permit:

NEW Section Phase II – S5.C.8 Source Control Program for Existing Development

This section is overly broad, is unclear as to what it is applicable to, and needs clarification of specifics. Part of what needs clarification are the connections to Appendix 8 and the Source Control BMPS in the SMMWW, and how they are intended to work together in a clear concise manner. Some examples that need clarification are:

- 1.** The draft permit language in this section does not clarify as to whether the permittee's staff are expected to enter buildings and does not appear to clearly establish whether the inspection and enforcement is limited to outdoor pollutant generating sources. This section of text should be clear as to whether staff are required to enter and inspect buildings.
- 2.** Subsection S5.C.8.a states "Each Permittee shall implement a program to prevent and reduce pollutants in runoff from areas that discharge to MS4. The program shall include:" In the list to include, is subsection S5.C.8.a.iv which states "Practices to reduce polluted runoff from the application of pesticides, herbicides, and fertilizers discharging into MS4s owned or operated by the Permittee."

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This language is not clear as to what it properties it applies to. Is it pertaining to all lawns and landscaped areas in the MS4's boundaries, including single family residences? Is it only pertaining to commercial and industrial properties, or is it pertaining to businesses that perform landscape installation and maintenance, or other?

In addition, this requirement would seemingly apply S411 "BMPs for Landscaping and Lawn / Vegetation Management" to all properties, of which the first listed BMP is "Install engineered soil/landscape systems to improve the infiltration and regulation of stormwater in landscaped areas." It would be extremely difficult to enact the installation of engineered soil/landscape systems to all existing landscaped areas within the MS4's jurisdiction.

3. Reference Subsection S5.C.8.b.i: The first paragraph references "pollutant generating sources" and references Appendix 8 to identify them. Appendix 8 includes the title "Businesses and Activities that are Potential Sources of Pollutants". What specifically are "pollutant generating sources"? A definition pertinent to this permit section would be helpful. The potential to pollute and actually polluting are not the same thing. Are permittees required to enforce all applicable Operational Source Control BMPs on a business or property that has never polluted per the statement "Operational source control BMPs must be required for all pollutant generating sources." in the third paragraph of this section? If this requirement is driven by actual pollution leaving the site, it would seem that enforcing operational or structural source control BMPs is already covered by illicit discharge enforcement.

This same concern over the draft permit language carries through into the first two paragraphs of S5.C.8.b.ii. with conflicting language between the phrases "which have the potential to generate pollutants" and "activities that are pollutant generating". Please clarify the text so that the enforcement of source control for existing development is clear as to whether it applies to the potential to pollute or actual pollution.

4. Clarification is needed as to what the intent of this draft permit section is. Some language is confusing. For example, Appendix 8 includes the group description of "Automotive Dealers and Gasoline Service Stations". When "S409 BMPs for Fueling at Dedicated Stations" is referenced in the draft 2019 SMMWW, it is discovered that the text "For New or Substantially Remodeled Fueling Stations" is immediately above the list of Applicable Operational BMPs. This language is likely to cause disagreement between the MS4 Permittee and fuelers that would fall under inspection and enforcement per S5.C.8 Source Control Program for Existing Development.

NEW Section Phase II – S5.C.1.C.1 Comprehensive Stormwater Planning

5. As part of Comprehensive Stormwater Planning, stormwater transfer control Transfer programs are encouraged. One allowable option is reforestation. The conditions of reforestation appear to be limited to restoration of evergreen forest. Other language states that the new facilities should be designed to meet the historic land cover condition. If the historic land cover condition was something other than evergreen forest, such as Garry oak savannah or prairie, can full transfer credit be granted for restoration of land to Garry oak savannah, prairie, or similar land covers?

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Also, can transfer credits be granted for conversion to economically productive land use such as orchards, vineyards, and other low soil disturbance agricultural land uses? Strictly restricting to evergreen forest will perpetually limit economic return on the land except for logging, reducing available land for local food production and employment opportunities, along with incentive to participate in a stormwater transfer control program.

6. Do basin flow control retrofits apply if there are no receiving waters other than salt water? (If most or all of the MS4's basins drain to a flow control exempt water body though a stable, nonerodible man made conveyance, are basin retrofits expected or required?)

7. Flow control basin retrofits may easily cost into the multimillions of dollars. This is not easily afforded by most small communities. The State should make funds available to all small MS4s to cover these costs.

Conclusion

The City understands the continuing vision and purpose of clean water in our community, however, our concerns, as evidenced above, offer your agency insight into the application of the proposed changes from the perspective of small to mid-sized municipalities that is uniquely located on an island and the only NPDES Phase II City in the County in a non-Phase II County. This uniqueness adds to the task of balancing the proposed regulatory changes with budgetary limitations, as well as applying generalized standards to an environment in which our community has its own intrinsic environmental fit characteristics to which "one permit fits all" is not the soundest of approaches.

Sincerely,



Blaine Oborn
City Administrator
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
(360) 279-4501
boborn@oakharbor.org

Phase I, WW Phase II, and EWA PH II Formal Draft Comments

Document	Section	Page	Comment
WWA Phase II	Source Control Program (WWA)	37-39	<i>This section is overly broad, is unclear as to what it is applicable to, and needs clarification of specifics. Part of what needs clarification are the connections to Appendix 8 and the Source Control BMPS in the SMMWW, and how they are intended to work together in a clear concise manner. Some examples that need clarification are:</i>
WWA Phase II	Source Control Program (WWA)	37-39	1. The draft permit language in this section does not clarify as to whether the permittee’s staff are expected to enter buildings and does not appear to clearly establish whether the inspection and enforcement is limited to outdoor pollutant generating sources. This section of text should be clear as to whether staff are required to enter and inspect buildings.
WWA Phase II	Source Control Program (WWA)	37	2. Subsection S5.C.8.a states “Each Permittee shall implement a program to prevent and reduce pollutants in runoff from areas that discharge to MS4. The program shall include:” In the list to include, is subsection S5.C.8.a.iv which states “Practices to reduce polluted runoff from the application of pesticides, herbicides, and fertilizers discharging into MS4s owned or operated by the Permittee.” This language is not clear as to what it properties it applies to. Is it pertaining to all lawns and landscaped areas in the MS4’s boundaries, including single family residences? Is it only pertaining to commercial and industrial properties, or is it pertaining to businesses that perform landscape installation and maintenance, or other? In addition, this requirement would seemingly apply S411 “BMPs for Landscaping and Lawn / Vegetation Management” to all properties, of which the first listed BMP is “Install engineered soil/landscape systems to improve the infiltration and regulation of stormwater in landscaped areas.” It would be extremely difficult to enact the installation of engineered soil/landscape systems to all existing landscaped areas within the MS4’s jurisdiction.

Document	Section	Page	Comment
WWA Phase II	Source Control Program (WWA)	37-38	<p>3. Reference Subsection S5.C.8.b.i: The first paragraph references “pollutant generating sources” and references Appendix 8 to identify them. Appendix 8 includes the title “Businesses and Activities that are Potential Sources of Pollutants”. What specifically are “pollutant generating sources”? A definition pertinent to this permit section would be helpful. The potential to pollute and actually polluting are not the same thing. Are permittees required to enforce all applicable Operational Source Control BMPs on a business or property that has never polluted per the statement “Operational source control BMPs must be required for all pollutant generating sources.” in the third paragraph of this section? If this requirement is driven by actual pollution leaving the site, it would seem that enforcing operational or structural source control BMPs is already covered by illicit discharge enforcement.</p> <p>This same concern over the draft permit language carries through into the first two paragraphs of S5.C.8.b.ii. with conflicting language between the phrases “which have the potential to generate pollutants” and “activities that are pollutant generating”. Please clarify the text so that the enforcement of source control for existing development is clear as to whether it applies to the potential to pollute or actual pollution.</p>
WWA Phase II	Source Control Program (WWA)	37-39	<p>4. Clarification is needed as to what the intent of this draft permit section is. Some language is confusing. For example, Appendix 8 includes the group description of “Automotive Dealers and Gasoline Service Stations”. When “S409 BMPs for Fueling at Dedicated Stations” is referenced in the draft 2019 SMMWW, it is discovered that the text “For New or Substantially Remodeled Fueling Stations” is immediately above the list of Applicable Operational BMPs. This language is likely to cause disagreement between the MS4 Permittee and fuelers that would fall under inspection and enforcement per S5.C.8 Source Control Program for Existing Development.</p>
WWA Phase II	Comprehensive Stomwater Planning (WWA)	16-19	<p>5. As part of Comprehensive Stormwater Planning, stormwater transfer control Transfer programs are encouraged. One allowable option is reforestation. The conditions of reforestation appear to be limited to restoration of evergreen forest. Other language states that the new facilities should be designed to meet the historic land cover condition. If the historic land cover condition was something other than evergreen forest, such as Garry oak savannah or prairie, can full transfer credit be granted for restoration of land to Garry oak savannah, prairie, or similar land covers?</p> <p>Also, can transfer credits be granted for conversion to economically productive land use such as orchards, vineyards, and other low soil disturbance agricultural land uses? Strictly restricting to evergreen forest will perpetually limit economic return on the land except for logging, reducing available land for local food production and employment opportunities, along with incentive to participate in a stormwater transfer control program.</p>

Document	Section	Page	Comment
WWA Phase II	Comprehensive Stomwater Planning (WWA)	18-19	6. Do basin flow control retrofits apply if there are no receiving waters other than salt water? (If most or all of the MS4's basins drain to a flow control exempt water body though a stable, nonerodible man made conveyance, are basin retrofits expected or required?)
WWA Phase II	Comprehensive Stomwater Planning (WWA)	18-19	7. Flow control basin retrofits may easily cost into the multimillions of dollars. This is not easily afforded by most small communities. The State should make funds available to all small MS4s to cover these costs.
	N/A		Below are comments provided by Douglas Merriman on January 18, 2018 in response to DOE's predraft permit solicitation for comments in resposne to DOE's white paper. These comments carry forward to the draft permit and are supported by a resolution of Oak Harbor City Council (provided via upload).
WWA Phase II	Controlling Runoff (WWA)	28-31	a) We would propose the allowance of increased flexibility for adjustment to Best ManagementPractices (BMPs) based on local precipitation rates. The 2012/2014 Stormwater Management Manual for Western Washington requires projects utilizing Lists 1 or 2 for On-site Stormwater Management implement prescriptive BMPs that are sized for all of Western Washington - independent of differences in local precipitation rates. Two examples are the Full Dispersion minimum land ratios and the Downspout Full Infiltration minimum trench sizes. These are prescriptively "sized" the same for all communities regardless of local precipitation rates. This uniform sizing places the same requirements on permittees in a rain shadow as permittees located in a rain forest. Both the permit and the manual need to include clear language allowing for modification of the prescriptive BMP parameters based upon reduced local precipitationsinstead of a "one size fits all" approach.
WWA Phase II	Controlling Runoff (WWA)	28-32	b) Department of Ecology (DOE) should provide a clearer definition of the term "Road Related Project". Many inexperienced engineers are having difficulty knowing when the "Road Related Project" box of Figure 2.4.2 applies. They are attempting to use it in application to commercial developments that have required road frontage improvements as a separate project. More clarification on when and how this box in the flow chart applies is necessary.
WWA Phase II	Education and Outreach	19-20	a) Permit section S5.C.2.a.i(a) should be specific in allowing for a narrower entity focus statement than "all businesses" or "all of the general public". This broad based generalization groups all entities into similar categories regardless of risk exposure. Better statewide program efficiencies could be achieved by focusing on those entities at higher risk of polluting than others. For example, spending significant resources to find and educate a single accountant working at a home office is likely to have negligible results compared to utilizing the limited resources educating restaurant staff or auto repair shop staff.

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WWA Phase II	Education and Outreach	19-21	b) Permit sections S5.C.2.a.i(a) and S5.C.1.a.ii(a) should include parking lot owner's or manager's as a target audience group. Section S5.C.1.a.ii(a) should also include a corresponding spill control retrofit BMP for the behavioral change category. For example, older parking lots that were constructed prior to stormwater regulations can be significant sources of pollutants due to the potential high volume of usage and lack of control over the condition of a vehicle that uses the parking facility. A spill control retrofit BMP would be an easy metric to measure, and the collective pollution prevention to the Puget Sound could be substantial, as well as the clean-up cost savings.
WWA Phase II	Source Control Program (WWA)	37-39	a) The proposed source control program would require local jurisdictions, such as Oak Harbor, to inspect existing commercial businesses and possibly require them to change their business practices and/or construct physical improvements with the aim of further controlling potential stormwater runoff. This is after the use has already been legally established under a prior set of regulations. This will obviously be viewed as government intrusion into their businesses and has the possibility to financially impact those businesses.
WWA Phase II	Source Control Program (WWA)	37-39	b) This proposal is a significant shift from current practices. Currently, identification of illicit discharges may prompt implementation of operational BMPs and/or structural spill control BMPs through enforcement. This is in response to a detected illicit discharge (Permittees are required to have an active illicit discharge detection program). The proposed change incorporates an enhanced, proactive approach in which the permittee will be required to enforce implementation of operational or structural BMPs even when an illicit discharge has either not occurred or may have little probability of occurring. Education, outreach, and incentives are less intrusive methods to achieve the same goal for permittees with limited resources, and is a less intrusive approach to the issue.
WWA Phase II	Source Control Program (WWA)	37-39	c) If the State wants to enforce BMPs on existing business owners that have not caused illicit discharges, the State of Washington should pass and enforce state laws for the identified businesses to enact the BMPs. The State should not place this burden on small municipalities with limited resources to create and enforce these regulations. A good example as to why these laws should be state laws, is the case of gas stations. If a gas station is just outside the permittee's border, they would not be subject to the same source control BMPs as a neighboring gas station just inside the permittee's border even though they drain to the same water body. The application of these enforcement standards in this example are, therefore, not equitable.

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WWA Phase II	Comprehensive Stormwater Planning (WWA)		<p>a) Small to medium-sized jurisdictions do not typically have scientific experts on staff. Requiring such individuals to be part of the interdisciplinary team means an added cost burden to the City. In addition, the additional workload requirements of this section place an increase level of workload on the City's Planning, Engineering, and Public Works operational functions. Again, there is no funding being provided for the implementation of this functions within the City organization.</p>
WWA Phase II	Comprehensive Stormwater Planning (WWA)		<p>b) The proposal includes the provision that: "The plan developed for the catchment areas will include consideration of the following MS4 and complementary strategies at a minimum: capital projects including regional facilities; land acquisition and/or conservation easements; land use or zoning code adjustments; new critical area designations; protected, enhanced, or restored riparian buffers; enhanced MS4 maintenance; education and outreach". This proposed wording has significant implications for the City. Without new funding sources, the acquisition of land and/or conservation easements for stormwater purposes seems an unrealistic option for the City. While there exist various sources of funding to assist with these acquisitions, they are typically competitive and not sufficient in size to offset the costs. Implementing this concept also has the side-effect of removing land from the property tax rolls, further eroding our ability to fund city government core operations</p>
WWA Phase II	Comprehensive Stormwater Planning (WWA)		<p>c) It is easy to say "land use or zoning code adjustments" but quite another to identify and implement areas for change. What types of adjustments does Ecology expect? This is possibly one area where the differences between the more urbanized Phase I or II permittees and Oak Harbor will be very evident in terms of the range of implementation options. It is not clear what is meant by "new critical area designations." Is it designating more land area under the existing designations or the creation of new categories of critical areas? Both of these concepts have the potential to be incredibly problematic for local jurisdictions and land owners alike.</p>

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WWA Phase II	Comprehensive Stomwater Planning (WWA)		<p>d) The long term planning concept has the potential to put the NPDES Phase II permit and GMA on a collision course – a conflict which the DOE appears to acknowledge in their proposal. The proposed changes to our community, such as changes to land use and zoning or the designation of new critical areas, seem to ‘establish’ that stormwater issues are the most important issues a community must tackle. We are concerned about both this apparent conflict for obvious reasons, and the corresponding premise that this preliminary permit reflects the environmental state of Puget Sound waters near areas that are larger and significantly more urbanized than Oak Harbor. In addition, each municipality may have its own intrinsic characteristics pertaining to topography or other geographical characteristics. For example, the City of Oak Harbor’s stormwater infrastructure includes multiple natural storage and treatment drainage basins that provide natural treatment to stormwater prior to entering into Puget Sound. We take the position that our natural basins are a more economical and sustainable treatment method than structures in highly developed cities consisting mostly of hard, flat surfaces. We are concerned about both this apparent conflict for obvious reasons, and the corresponding premise that this preliminary permit is the environmental state of Puget Sound waters near areas that are larger and significantly more urbanized than Oak Harbor.</p>
WWA Phase II	Comprehensive Stomwater Planning (WWA)		<p>e) The lack of scalability, based on differences in the size and complexity of different municipalities, combined with a lack of funding for this mandated program, place the proposed changes in direct competition with our ability to economically support our core municipal services – the funding for which is already significantly strained. It is clear that DOE is shifting the funding of these efforts (planning and implementation) to the local jurisdiction. This is simply unacceptable. Acknowledging that it is unrealistic to expect the State to offer funding assistance for capital projects, they should, at a minimum, help fund the planning studies required by this proposal. This would follow similar efforts when cities must complete mandated updates to their GMA or SMP plans. During Oak Harbor’s history, we have received either financial assistance or technical assistance with those updates.</p>
WWA Phase II	Comprehensive Stomwater Planning (WWA)		<p>f) We have a tremendous concern that adopting, implementing and enforcing ever more stringent stormwater standards is in conflict with our ability to provide affordable housing for our community. Whether this conflict is real or perceived, it is essential that DOE acknowledge it and provide local jurisdictions tools to address it. This conflict, and the public discussion of it, cannot be ignored.</p>
WWA Phase II	Comprehensive Stomwater Planning (WWA)		<p>g) The changes propose further restriction of available land for development within the GMA, causing a further erosion of available affordable housing. In fact, Senate Bill 6077 proposed a minimum allowable density of 6 lots per acre in an attempt to combat the dearth of affordable housing in the greater Puget Sound area.</p>

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WWA Phase II	Comprehensive Stomwater Planning (WWA)		h) Any additional encumbrance of land currently planned for in Comprehensive Plan and UGA calculations will further reduce projected housing units or cause up-zoning as rural clustering is not possible at urban densities. Changing land use and zoning is likely to have a ripple effect through all community planning including affecting street and utility planning as well as school and public transportation planning.
WWA Phase II	Comprehensive Stomwater Planning (WWA)		i) The proposed requirements to identify and prioritize basins, implement capital improvement retrofit projects, alter land use or zoning, and restrict land availability through new critical area implementation and/or establishment of riparian areas, is similar to enacting a total maximum daily load (TMDL) on the basin without the cause of the receiving water body actually being impaired. Historically, these types of efforts, now being specified as anticipatory, have been implemented as remedies to the basins of impaired waterbodies where there has been a demonstrated need.
WWA Phase II	Comprehensive Stomwater Planning (WWA)		j) This new proposed permit section appears to be applying circumstances from much larger, mostly developed municipalities to all municipalities in a “one size fits all” approach without recognizing that some smaller communities will have developed much more substantially under the DOE’s Stormwater Management Manual for Western Washington. This is comparing “apples to oranges” in assessing whether the years of development and redevelopment under the various Stormwater Management Manuals for Western Washington are protecting the receiving waterbodies. Due to growth trends in western Washington, small municipalities are likely to have hit their growth spurt after having adopted utilization of the DOE’s manual and are more likely to have larger percentages of new development constructed under the manual. The larger municipalities are more likely to have had most of their development occur prior to implementation of the DOE’s manual and are more heavily reliant upon redevelopment to retrofit stormwater protections. This is evidenced by certain larger municipalities not being required to implement flow control protections to predeveloped conditions based on the presence of 40% or more impervious surface present in 1985 (2014 DOE Manual, Page 2-34 of Volume I). The DOE should establish a similar limit for this new permit section, exempting smaller communities that have been using a DOE manual, and allowing their growth to occur under the new LID standards. This would give the new LID standards a chance to work before declaring them insufficient.