

Puget Soundkeeper Alliance

Please see the attached letter submitted by Puget Soundkeeper Alliance on the 2019 Municipal Stormwater Final Draft Permits, with our prior comment letter dated 1/19/18 attached as an exhibit. Thank you.



PUGET
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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.¹ 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.”² 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 16th 2018 – two days after Ecology’s comment deadline.³ 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.

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

² https://www.governor.wa.gov/sites/default/files/exe_order/eo_18-02_1.pdf

³ 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 19th, 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.⁴

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.

⁴ <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:

City	County	Population	Notes
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.”⁵ 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.

⁵ <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.⁶ 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

⁶ 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

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.⁷ 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).

⁷ <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,

Chris Wilke
Puget Soundkeeper

Alyssa Barton
Policy Analyst & Executive Coordinator



PUGET
SOUNDKEEPER®

January 19, 2018

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

Re: Comments on Preliminary Draft Language for the 2019 Reissuance of the Municipal Stormwater General Permits (Phase I and Phase II Western Washington) and the Preliminary Draft Package of the 2019 Stormwater Management Manual for Western Washington (SWMMWW or Manual)

To Whom It May Concern:

On behalf of our members, supporters and volunteers, please accept these comments on the Preliminary Draft Language for the 2019 Reissuance of the Municipal Stormwater General Permits (Phase I and Phase II Western Washington) and the Preliminary Draft Package of the 2019 Stormwater Management Manual for Western Washington (SWMMWW or Manual). Our comments regarding the Long-term Municipal Stormwater Planning Proposal (“Watershed Planning Proposal”) will follow by 2/2/2018.

Puget Soundkeeper Alliance’s (Soundkeeper or PSA’s) mission is to protect and preserve the waters of Puget Sound, a mission that brings us out on the water on weekly patrols to identify, report, and stop pollution. This mission forms the basis of our policy, education and outreach, and enforcement work under the Clean Water Act. Stormwater is the largest source of toxic pollutants to the Puget Sound. We are therefore committed to fighting water pollution at the source, including through our administrative advocacy and policy work. It is one of our highest priorities to implement the most protective Stormwater permits for all Permittees in Washington.

A. TOP CONCERNS

- **Need to strengthen LID requirements.** First, infeasibility criteria must be tightened up. This is discussed in greater detail below under our comments on the Manual. Second, we strongly disagree with including the statement that only the first feasible BMP is required. Ecology should adopt some kind of enforceable or accountable metric to the mandatory lists that directs that BMPS be chosen and implemented to eliminate as much

runoff from the site as technically feasible. Third, the 2019 Permits should do more to move away from adding BMPS to a list and move towards a site planning approach. Guidance regarding taking a site planning approach is recommended.

- **The retrofits mandate is an essential piece to the 2019 Permits. They must apply to Phase I's and Phase II's.** Soundkeeper strongly supports Ecology's efforts at implementing a directive for retrofits. Ecology has taken a great step forward, however, the directive is somewhat confusing as framed. Ecology should also extend this mandate to Phase II Permittees. Suggestions to strengthen this section are discussed in greater detail below and suggested revisions are provided.
- **Source control improvements should go further.** We strongly support the new requirements for Phase II's to inventory and inspect businesses. However, both Phase I's and Phase II's should be required to inspect 20% of inventory-listed businesses per year and 100% within each Permit cycle, otherwise these provisions do little to assure compliance and enforcement.
- **Permit coverage area should be expanded.** The Permits should cover all stormwater discharges that flow into Puget Sound. Additional areas should come under the Permits with each 5 year permit cycle.
- **Deadlines for requirements and deliverables should be within 3 years of Permit issuance.** This is especially evident since part of the rationale for delaying the 2018 Permits to 2019 was to provide Ecology time to review watershed planning deliverables from the previous permit cycle.

Finally, we reserve the right to raise additional suggestions and comments during the formal comment period should we identify additional areas for improvement.

B. GENERAL COMMENTS

1. Permit coverage area should be expanded.

Virtually all stormwater discharges contribute harm to salmon (a protected designated use in most of Western WA under the Water Quality Standards) – hence all stormwater discharges should be regulated under the Permits. Additionally, EPA regulations require coverage of municipal separate stormwater systems that are physically connected to regulated MS4's. 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. For years, many have urged broader coverage areas – as regulations some areas and not others will incentivize development in the unregulated areas with no stormwater controls at all, contributing to sprawl that further undermines water quality. In sum, the Permits should cover all stormwater discharges that flow into Puget Sound.

2. Deadlines for requirements and deliverables should be within 3 years of Permit issuance

As expressed previously by Soundkeeper and other stakeholders, deadlines should fall earlier in the permit cycle. This is especially evident since part of the rationale for delaying the 2018 Permits to 2019 was to provide Ecology time to review watershed planning deliverables from the previous permit cycle. Section 402(p)(4) of the Clean Water Act, 33 U.S.C. § 1342(p)(4) requires that permits “provide for compliance as expeditiously as possible, but in no event later than 3 years after the date of issuance of such permit.” Three year max deadlines for all permit requirements and deliverables will also provide time for Ecology to review and consider data prior to the issuance of the next round of Permits. Ecology should therefore shorten the time allowed for all requirements and deliverables to as soon as possible, or within 3 years at the most (by 2022).

3. Increased transparency and accountability needed

We reiterate our earlier concerns from our October 7th, 2016 comment letter. It is vital that there be meat behind the permit’s planning and reporting requirements. We urge Ecology to increase transparency and accountability in the following sections:

- Phase I Permit Conditions S9.D.2 and S9.E.2 and Appendix 12
- Phase II Permit Conditions S9.D.2 and S9.E.1 and Appendix 3

Annual reports and Stormwater Management Program Plans (SWMP’s) must contain more information about permittees’ activities to increase transparency and accountability. The current annual reports primarily consist of ‘yes’ or ‘no’ questions that do very little to inform the public or the Department of Ecology of the permittee’s activities. Some of the questions ask for numeric values but provide no context with which to evaluate the numeric value. Municipalities should be required to provide more informative answers or to submit more supporting documentation so that the public and the Department of Ecology can evaluate their activities.

4. Combining the Permits

Overall, these 2019 Permits should do more to combine Phase I and II requirements. Soundkeeper appreciates and supports efforts by Ecology in these preliminary drafts to pave the way towards combining the Phase I and Phase II permits, however, more can be done. The Permits should be combined as soon as practicable.

C. COMMENTS ON DRAFT PERMIT SECTIONS

1. S.5.C.2 and S.5.C.0 Mapping Requirements (Phase I and Phase II)

a. Mapping deadlines should fall within first 3 years of permit cycle

The Mapping Requirements factsheet indicates that “Ecology will commit to working with permittees to voluntarily associate outfall data with NHD reach and measure and load into the

Water Quality Atlas during the 2019-2024 permit cycle.” The Permit should require that all outfall data be input as soon as possible and no later than within 3 years at the very most (2022).

Footnote 1 on page 3 of the Draft Mapping Requirements for Phase II’s indicates that New Phase II Permittees shall have until February 2nd, 2024, to comply with the requirements to map their MS4’s. This is not reasonable. New Permittees should have no longer than 3 years to comply (2022).

All mapping requirements should be completed as soon as possible, and in no case later than within 3 years (2022). This should provide sufficient time (2 years) for review and consideration of all mapping data prior to the issuance of the next round of Permits, and enable Ecology to make adjustments as needed in the next round of Permits.

The Draft Mapping Requirements for both Phase I and Phase II Permittees requires that as outfall records are updated or added, “For all known MS4 outfalls, the following attributes shall be mapped: size and material, where known, no later than August 1, 2021.” We agree with this deadline.

It is also reasonable to require mapping in electronic format for both Phase I and II’s.

b. The new term “permanent stormwater facilities” should be revised to “stormwater facilities,” must be defined to read broadly, and must be used consistently throughout entire permit (Mapping Requirements)

In the Mapping Requirements, Ecology introduces the term “Permanent stormwater facilities,” in order “to correct error in 2013 Permits [sic] that inadvertently narrowed the scope of mapping.” The proposed definition of the term is: “Permanent stormwater facilities are structures or devices designed or used to control stormwater flows, or remove pollutants from stormwater, or both.” Additional Guidance on page 6 (of the Mapping Guidance) states that the intention is to “return to language that was included in the 2007 Permits. It calls for the mapping of structural stormwater BMPs or devices owned and operated by the Permittee whether or not these facilities meet, or help to meet, the minimum requirements included in the Permits. This term refers to devices or structural stormwater BMPs constructed as retrofit projects, or prior to permit requirements.”

The term “permanent stormwater facilities” was, however, previously used in the Phase I Permit at Section S.5.C.5.4, and in Section S.5.C.4.4 of the Phase II Permit. However it was not defined in the Definitions and Acronyms Section of either Permits.

We support the use of new terminology to clarify that additional devices or facilities must mapped beyond those previously required. We also support use of new terminology to clarify that additional devices or facilities will now be regulated under the Operation and Maintenance Section of the Phase I Permit and inspection requirements of the Phase II Permit. However, we have two concerns.

First, use of the limiting word “permanent” in the new term “permanent stormwater facilities” does not help achieve the above goals. Ecology should remove the term “permanent” from this new term, and instead use the term “stormwater facilities.” The definition that this term will replace did not include any restriction based on the expected lifetime or duration the facilities. Why now impose a restriction that only “permanent” facilities be mapped? What constitutes “permanent”? Permittees may cease to map stormwater treatment and flow control/BMPs facilities if they are not subjectively deemed “permanent” by the Permittee. The term is therefore problematic.

Second, current uses of the term “permanent stormwater facilities” in the Permits and their Appendices must be reviewed and revised to ensure consistent usage and definition with the above, particularly since this “new” term – permanent stormwater facilities – is already in use in the Permits. In no instance may revisions result in backsliding in the Permits.

We are also concerned with a related revision in the Mapping Guidance. Ecology proposes to revise the “Common Elements” of the Mapping Guidance to remove “Stormwater treatment and flow control BMPs/facilities owned or operated by the Permittee” and replace this term with “Permanent stormwater facilities owned and operated by the Permittee.” We strongly suggest substituting “stormwater facilities owned **or** operated by the Permittee,” as the use of “and” instead of “or” inappropriately narrows the scope of this definition.

c. Mapping requirements should be expanded

PSA supports expanding mapping requirements for all Phase I Permittees, not just Counties, to require the mapping of all areas within the Permittees’ jurisdiction that were not previously mapped, whether rural or however otherwise classified by density or population. Areas should not be excluded from mapping requirements based on density or population.

We generally support expanded mapping requirements for Phase I’s and Phase II’s. There have been mapping requirements in the Permits since 1995 and yet Permittees have still not fully mapped their MS4’s.

d. Proposed language regarding expanded mapping requirements

Draft Section S.5.C.2.b.ii states that: “No later than four years from the effective date of this permit, Counties shall map tributary conveyances, as described in S.5.C.2.a.v., for areas not mapped under the previous permit cycle.” However, S.5.C.2.a.v. was not revised to match this expanded requirement. The original text of S.5.C.2.a.v. requires mapping of “Tributary conveyances to all known outfalls and discharge points with a 24-inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems. For Counties, this requirement applies to urban/higher density rural sub-basins.” This language must be revised for clarification.

Ecology should clarify Section S.5.C.2.b.ii to read “No later than **three** years from the effective date of this permit, Counties shall map **all** tributary conveyances, as described in S.5.C.2.a.v., for **all** areas not previously mapped.” Three years is more than adequate time. Further, Ecology must

revise S.5.C.2.a.v to match the intention expressed in the Fact Sheet to require mapping of rural areas.

S.5.C.2.a.v should be revised to read: “Tributary conveyances to all known outfalls and discharge points ~~with a 24-inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems.~~ For Counties, this requirement applies to ~~urban/higher density rural sub-basins~~ all areas within the County regardless of density or population.” The proposed revisions reflect that all pipes should be mapped, not just those 24” in diameter or greater. The 24” size restriction appears arbitrary and is not warranted as water quality can still be impacted by tributaries to outfalls or discharge points under 24” in diameter. The proposed revisions also reflect that all rural areas not previously mapped must now be mapped. This more clearly reflects the goal of expanding mapping requirements to all areas with the County, regardless of density or population, and aligns with the goals of the Clean Water Act and our States Water Quality Standards.

e. The same Mapping requirements should apply to Phase I’s and II’s

We support moving the mapping section from the IDDE section of the Phase II Permit to a stand-alone section to mirror the Phase I Permit. Ecology should also take this opportunity to require expanded and mirrored mapping requirements, in the same ordering and with the same numbering, for Phase I’s and II’s.

By way of example, connections to tributary conveyances under Section S.5.C.2.a.iii and viii should be mirrored in the Phase I and Phase II Permits. Under S.5.C.2.a.iii, Phase I’s must map “all connections to tributary conveyances...and all associated emergency overflows,” but Phase II’s do not. Phase II’s should also have this requirement.

Under S.5.C.2.a.viii, Phase I’s are required to map all existing, known connections to tributary conveyances of more than 8” diameter. First, all connections to tributary conveyances should be mapped, rather than only those 8” in diameter or greater – this size restriction is not warranted and seems arbitrary, as water quality can still be impacted by connections to tributaries under 8” in diameter. Second, Section S.5.C.2 also only currently requires Counties to map known connections to tributary conveyances “within urban/higher density rural sub-basins mapped under the previously permit.” To match the expanded mapping requirements for tributary conveyances to known outfalls and discharge points in the new Draft, which now requires Phase I Permittees to map rural areas not previously mapped, it makes sense to expand mapping of connections to tributary conveyances under S.5.C.2.a.viii to rural areas as well. Mapping information for both features in the expanded rural areas can be achieved more efficiently if performed at the same time. Third, Phase II’s should also have the requirements we suggest in section S.5.C.2.a.viii.

PSA agrees with Ecology’s decision to add Sections S.5.C.0.a.iv and vi to the Phase II Permit, to require that Phase II Permittees now map the “Geographic areas served by the Permittee’s MS4 that do not discharge stormwater to surface waters,” and “Connections between the MS4 owned or operated by the Permittee and other municipalities or public entities,” respectively. This is an improvement and dovetails with the Phase I Permit.

2. S.5.C.2 Draft Mapping Guidance (Phase I and II)

a. Purposes section should be expanded (Mapping Guidance)

Section II on page 2 of the Draft Guidance should be revised to add that the mapping requirements also serve the purpose of supporting implementation of the permit requirements for monitoring and assessment.

b. Terms and definitions should be expanded and clarified (Mapping Guidance)

Locations that inadvertently infiltrate should be included in the definition of “Discharge Point” and mapped. Excluding locations that inadvertently infiltrate may give rise to disputes regarding the engineering, purpose or intention of a location or infrastructure, and lead to the exclusion of DP’s that should otherwise be mapped to better track the flow of stormwater and Permit compliance by the Permittee.

The definition of “known outfall” refers to a stormwater discharge to a surface receiving water only and does not include discharges to receiving ground water (Guidance, p.6). While the Clean Water Act regulates discharges to surface water, Washington’s Water Pollution Control Act prohibits discharges to groundwater. (See RCW §90.48.080). To better serve the purposes of the Clean Water Act while meeting State Water Quality standards and working to achieve the goals of both the CWA and State Water Pollution Control Act, discharges to groundwater should be monitored and tracked along with discharges to surface water.

The definition of “tributary conveyance” should be expanded and consistently used throughout both Permits to mean: “pipes, ditches, catch basins, and inlets owned or operated **or used** by the permittee and designed or used for collecting and conveying stormwater.”

c. Requirements in the Mapping Guidance and Permit should be expanded and clarified

Underground Injection Wells are not required to be mapped, even where they handle stormwater (Guidance, p. 8). They are recommended features to be mapped. Mapping should be required.

Page 7 of the Guidance indicates that Ecology will still use the term “Stormwater Treatment and Flow Control BMPs/Facilities” in the Mapping sections of the Permit, and defines same. The Guidance indicates that “the proposed mapping language now relies on the proposed term “permanent stormwater facilities” to capture Stormwater Treatment and Flow control facilities/ BMPs...” This is confusing because some stormwater treatment and flow control facilities and BMPs are not “permanent,” but rather, they are implicitly or explicitly temporary. For example: bioretention, vegetated roofs, etc., may not be “permanent,” and “temporary erosion and sediment control BMPS” must also be mapped under the umbrella term “permanent stormwater facilities.” PSA suggests that this confusing discrepancy can be corrected by using the new term “Stormwater Facilities” rather than "Permanent Stormwater Facilities,” as previously suggested.

Critical habitats and waterbodies with listed salmon species are not required, but recommended, to be mapped. (Guidance, p. 9). It would be beneficial to require these features to be mapped, along with listed 303(d) waterbodies, to the extent that Permittees may wish to target specific areas or watersheds to prioritize, for retrofits or for the purpose of complying with other Permit requirements.

Figure 1 on page 10 of the Draft Guidance is described as containing features which “ought” to be mapped. The features depicted “must” be mapped pursuant to Permit requirements.

On Page 11 of the Guidance, Ecology indicates that the drainage ditch does not need to be mapped as a Discharge Point. Why does the ditch not have to be mapped as a conveyance?

3. S.5.C.5 Controlling Runoff from New Development, Redevelopment, and Construction Sites – (a) site and subdivision scale requirements (Phase I and II)

Ecology must take this opportunity to expand Permit requirements under S.5.C.5.a, and other requirements referenced therein (Permit Appendix 1 and the MANUAL), to ensure compliance with Clean Water Act. Below we identify Permit provisions that should be revised.

a. Extensions of permit deadlines due to litigation or administrative appeals should be limited (S.5.C.5.a, site and subdivision scale requirements)

Condition S5.C.5.a.iii purports to allow permittees to gain an extension of time to meet the site and subdivision scale minimum performance measures by written request citing circumstances beyond the permittee’s control, “such as litigation or administrative appeals.” Allowing an extension modifies the terms of the permit and should not be done in an informal process such as is outlined here. If extensions will be allowed, this section and any other permit sections purporting to authorize extensions due to “litigation or administrative appeals” should be modified to clarify that only litigation or administrative appeals of the requesting Permittee’s local manual and ordinances required by this section are grounds for a request for an extension.

b. Permittee’s must reduce pollution accumulation in MS4’s through better operations and maintenance procedures

We reiterate our comments from our letter dated October 7th, 2016. All municipal permittees should be required to conduct routine pipe/line cleaning and require more timely removal of polluted sediments from stormwater facilities.

We further urge Ecology to require that permittees remove contaminated sediments from catch basins within one month of triggering maintenance standards, and from other facilities within six months of triggering standards. We also strongly recommend that Ecology add clarity to requirements around illicit discharges and reporting by requiring minimum annual screening requirements that support continual screening over the permit term.

c. 100% of new development, redevelopment and construction site inspections should be scheduled and required (Appendix 1)

Under S.5.C.5.a.v.(5), “Compliance during this permit term shall be determined by achieving at least 80% of scheduled inspections.” This should be revised to require scheduling, and achieving, 100% of inspections.

d. More Minimum Requirements should be required as a baseline (Appendix 1)

The Permit currently requires all new development, redevelopment, and construction sites to meet minimum requirement #2 – regardless of the size of the project. This baseline should be expanded. All new development, redevelopment and construction sites should also be required to comply with minimum requirements 3, 4, 5 and 8.

Ecology should reduce the square footage of site development that triggers minimum requirements.

Minimum requirement 1 should include a requirement to use LID “to the maximum extent technically feasible” rather than simply “feasible.”

The Permits need to dramatically increase the kinds of projects subject to meeting the performance standards in Minimum Requirement 5. Some LID practices should apply to all development projects regardless of size. Further, as we stated in comments on the Permits in 2012, we strongly disagree with including the statement that only the first feasible BMP is required. 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 adopt some kind of enforceable or accountable metric to the mandatory lists that directs that BMPS be chosen and implemented to eliminate as much runoff from the site as technically feasible. Phosphorus treatment should be mandatory.

e. Exceptions and Variances should be limited, reviewable and appealable (Appendix 1)

Exceptions/ Variances should not apply to LID requirements, which are governed by infeasibility criteria. Ecology should impose a mitigation requirement for any exception or variance from a condition to ensure that the environment does not suffer, and to act as a disincentive to over-generous reliance on these provisions. It is also crucial that all exceptions and variances be reported in the Annual Reports so that the public can determine if any permittee is abusing this process and to ensure that additional permit conditions are imposed in the future if so.

There should be a public variance appeal process with specific procedures for review and comment. The public should also be granted the authority to appeal a variance if the review process is inadequate. In addition, there should be a trigger that mandates Ecology review of a Permittee’s repeated use of variances, allowing for penalties in the event of excessive or inappropriate use. The trigger should define the minimum number of variances issued by a Permittee that triggers Ecology review of the projects receiving variances and their associated

site conditions. For example, the trigger might be defined from the number of stormwater projects by a Permittee annually, if 10% of that number are granted variances in one year, a review would be required.

4. Stormwater Management Manual Western Washington (Manual)

Ecology should not merely focus on “enhancing the usability of the Manual.” Ecology must take this opportunity to update the Manual to require the use of AKART including any new or modified BMPS. The Manual is only updated every 5 years, yet technology changes constantly. The current 5 year review process presents an enormous opportunity to update the AKART and BMP requirements in the Permit. The Permit must reflect changes in known and available technology. Failure to do so at this time may result in confusion or, at worst, reliance upon outdated BMPs that may expose Permittees to violations of the Clean Water Act.

Below are some areas where the Manual can be improved, as well as comments on the proposed revisions to the Manual Volume II and BMPs that are currently available for review on Ecology’s website.

a. Infeasibility criteria should be narrowly tailored to what is actually scientifically infeasible

The BMP infeasibility criteria in the Manual should be revisited and narrowed now and with each subsequent Permit cycle. They are currently overly broad when they should be narrowly tailored to what is actually scientifically infeasible, and should be applied locally wherever possible. If we allow developers to make LID infeasible on each site due to overly broad criteria, the entire regulation becomes a voluntary effort. There should be clear requirements to ensure LID does not become “infeasible” by development practices or project design.

First, we recommend a statement in this section that there are no circumstances under which retention of native vegetation and reduction of impervious area are infeasible.

Second, if there are any adverse environmental impacts arising from any of the criteria, the Permit should require mitigation.

Third, we have many concerns which were previously raised during the past permit cycle which still apply to the current Manual. We repeat those concerns by incorporation of those comments, found on pages 13-14 of the comment letter attached hereto as Exhibit A.

b. Concerns with changes to the Manual regarding Construction SWPPPs

Ecology proposes to revise Section II-3.1, “What is a Construction SWPPP” to remove the statement that a SWPPP is required. Why is this being removed? A SWPPP is required for both Phase I’s and Phase II’s for all new development, redevelopment and construction per Appendices 1 of the Phase I and II Permits. This should be specified, and could be done by reference to former section II-2.2.

Ecology proposes to revise Section III-2.1 to remove the requirement that the Construction SWPPP “must be located on the construction site or within reasonable access to the site for construction and inspection personnel” by inserting the word “narrative” – the full SWPPP should be required to be on site. It should also be sent to Ecology electronically and made available for public review.

Ecology has added language to II-3.1.1 to specify that “On construction sites that discharge to surface water, the primary concern in the preparation of the Construction SWPPP is compliance with Washington State Water Quality Standards. On construction sites that infiltrate all stormwater runoff, the primary concern in the preparation of the Construction SWPPP is the protection of the infiltration facilities from fine sediments during the construction phase and protection of ground water from other pollutants.” We suggest striking the following sentence: ~~“Several of the other elements are very important at these sites as well, such as marking the clearing limits, establishing the construction access, and managing the project.”~~ All elements of the SWPPP are important to these sites and all requirements are mandatory. By expressing a hierarchy of importance for all SWPPPs despite local conditions, Permittees may prioritize some elements other elements that may result in greater impacts to water quality based on local conditions.

Why is the language “Consider and research the following site specific factors to understand the site specific construction stormwater pollution prevention needs” proposed for removal from Section II-3.1.3?

Soundkeeper is concerned that Ecology has proposed drastic revisions to the content required for SWPPPs, including removal of entire sections outlining how a SWPPP is to be prepared under II-3.1. What is the rationale and justification (if any) for the removal of these sections?

c. Concerns with changes to the Manual regarding Construction BMPs

Ecology proposes to remove the definition of “significant concrete work” from BMP C151. If this definition is to be removed or modified, it must not result in backsliding and therefore must be defined as an area smaller than that previously defined.

Ecology proposes to revise BMP C209 to indicate that outlet protection is no longer required. Why? How does this mean the CWA’s anti-backsliding requirements? Further, Ecology deleted information about creating fish habitat. Why was this removed?

Ecology proposes to revise BMP C240 and C241 to remove the requirement that “prior to leaving a construction site, stormwater runoff must pass through a sediment pond” or trap or other appropriate sediment removal best management practice. Why is this requirement being eliminated? How does this mean the CWA’s anti-backsliding requirements?

PSA has questions regarding some of the proposed changes to BMPs. These necessitate technical review by an engineer or stormwater expert prior to commenting. These include but are not limited to BMPS C105, C121, C123, C126, C200, C201, C250, and C252. Soundkeeper will review and comment upon these proposed revisions as soon as practicable.

d. This round of Permits should move away from a “list” approach for BMPs and move towards a site planning approach

The 2019 Permits and Manual should do more to step away from adding BMPS to a list, and move towards a site planning approach. As stated previously above in this letter, we strongly disagree with including the statement that only the first feasible BMP is required. 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 adopt some kind of enforceable or accountable metric to the mandatory lists that directs that BMPS be chosen and implemented to eliminate as much runoff from the site as technically feasible

Furthermore, site planning is a more holistic and sensible approach to incorporating LID BMPs. For example: utilizing the best soils so that the soils provide maximum infiltration, and retaining trees so that they can do their jobs and uptake the maximum amount of water as well as stabilize a site, is both a logical and cost effective approach to construction. Site planning ends up being less expensive than constructing structures that aim to mimic these same processes. We recommend that Ecology prepare a Guidance regarding taking a site planning approach.

e. Suggested changes to technical requirements in Manual

SWPPPs should be prepared by trained CESCL’s. It takes training and experience to properly select sediment and erosion control BMPs for use on a project.

In Section III-3.1.1, infiltration trenches should not be permitted to be installed in a utility easement area. Any excavation work performed by an underground utility has the potential to disturb and clog an infiltration trench and reduce its storage and infiltration capacity. In turn, future maintenance or repair work on the trench could place workers at risk of electrocution.

Section III-3.3.4 and III-3.4.2 should be revised to require infiltration testing to take place between December 1st and April 1st, during the seasonal wet months during high groundwater elevation. Otherwise, if testing is performed during the dryer, summer months, projects may not meet the required seasonal high groundwater elevation separation and the stormwater infiltration system may fail to properly perform, causing water quality degradation.

Section III-3.3.9 should be revised to require operation verification testing, rather than strongly recommending same.

BMPT7.30 should be revised to require that the flow entrance to bioretention cells be located at the opposite end from the outlet. This will maximize stormwater treatment.

f. Manual and Appendix 1 Equivalent must be reviewed and approved by Ecology

Permittees must adopt the 2019 Manual or equivalent - Phase I Permittees by Dec 31 2020, Phase II Permittees by August 31 2021. Ecology states that it does not anticipate requiring or providing an equivalency review of Permittee’s SW manuals. PSA takes issue with Ecology’s

failure to require compliance with the Permits. This conflicts with S.5.C.5.a.iii of the Permit, which states that “Ecology review and approval of the local manual and ordinances is required.”

Condition S5.C.5.a.i., and other sections throughout the Permit, purport to allow permittees to include in ordinances or other enforceable documents the minimum requirements, thresholds, and definitions in Appendix 1, or others “determined by Ecology to be equivalent to Appendix 1” for new development, redevelopment, and construction sites. A similar provision is found in Condition S5.C.5.a.ii regarding Manual equivalents. These provisions do not specify any procedure requiring public participation for Ecology to determine whether alternative minimum requirements, thresholds, and definitions are “equivalent to Appendix 1” or to the Manual.

NPDES permits should not incorporate minimum performance measures that do not yet exist. Additionally, this provision would allow Ecology to effectively modify permit conditions without the proper process by determining that certain measures are “equivalent” to those in Appendix 1 or the Manual, and thereby authorizing them for use under this permit. How does Ecology determine equivalency? If Ecology makes such a determination, will it then issue a permit modification? If not, why not? Has or is Ecology adopting the codes and resources identified in Appendix 10 as examples of Manual Equivalents that new Permittees can or should use as a model for compliance in the event they do not adopt the Manual? Is there Guidance forthcoming on this matter?

Without providing firm Guidance that the public can review and weigh in on regarding equivalents to Appendix 1 and the Manual, and without any review or accountability processes in place for the requirement that Permittees adopt Appendix 1, the Manual, or either of their “equivalents”, there is no guarantee that new Permittees will adopt any of these Permit requirements - equivalent or otherwise. This is unacceptable.

5. S.5.C.6 and Appendix 11 Structural Stormwater Control Program (Phase I)

a. Retrofits should be mandatory for Phase I’s and II’s

We strongly support Ecology’s efforts to develop retrofit requirements for Phase I Permittees. This mandate should also apply to Phase II Permittees. Our already built-out infrastructure—developed without stormwater treatment—is our biggest challenge as we all work together to reduce the impact of stormwater in our local waterbodies. While we need to avoid repeating the mistakes of the past with new and redevelopment, we must also turn the tide on existing pollution generating surfaces.

While this aim can be partially supported by operational measures, such as pipe cleaning and increased street sweeping, we believe capital efforts must be prioritized. Specifically, capital efforts that preserve, re-establish, or mimic natural hydrological functions.

As framed, Ecology has developed a "retrofit incentive points" program that does not apply to Phase II Permittees and that is somewhat confusing as worded and framed.

b. The program must clearly articulate that it is mandatory

The program requirements should be called “requirements” and not “incentives.” Use of the term “incentive points” is confusing and misleading; it suggests that there will be a benefit or reward for Permittees achieving these “points” when in reality achieving 1300 points is required as a minimum performance standard. Furthermore, “retrofit” is not defined in the current or draft Permit. Retrofit must be clearly defined in order to determine if points should be “awarded” (or earned by Permittees) for certain types of projects.

c. The structure of the retrofit program is lacking

The planning process used to develop each Permittees’ retrofit requirement program should be at the watershed/basin level and require permittees to coordinate and collaborate with other entities under municipal stormwater NPDES permits that share the same watershed/basin. Additionally, planning and timelines should be based on prioritization, and prioritization criteria should include effects on listed water-dependent species.

d. Retrofit points should only be earned by retrofits

We appreciate the division of points into 1000 design stage and 300 completed projects during this first iteration of the retrofit requirement. We understand that future iterations of the Permit will include a higher point requirement for completed projects vs. design stage.

The types of projects that can be used to satisfy retrofit requirements are too broad and include types of projects that will not achieve the same water quality benefits as actual retrofits. Retrofit must be defined. How has Ecology defined “retrofit” when it determined the 10 types of projects that qualify for retrofit points?

Ecology proposes to revise the requirements of S.5.C.6.a.i to read:

“The program shall consider the following projects:

- (1) New flow control facilities, including LID BMPs.
- (2) New treatment (or treatment and flow control) facilities, including LID BMPs.
- (3) New LID BMPs
- (4) Retrofit of existing treatment and/or flow control facilities.
- (5) Property acquisition for water quality and/or flow control benefits (not associated with future facilities), including riparian habitat acquisition.
- (6) Maintenance with capital construction costs \geq \$25,000”

Furthermore, Permittees “may” consider 4 more types of projects. As drafted, the new “retrofit incentive points” requirement can be met by projects falling under any one of the 10 categories of projects listed under S.5.C.6.a.i and S.5.C.6.a.ii, which are also listed in the proposed Draft Appendix 11. To be clear, these are:

Project Type Numbers

1. New flow control facility

2. New runoff treatment facility (or treatment and flow control facility)
3. New LID BMPs
4. Retrofit of existing treatment and/or flow control facility
5. Property acquisition
6. Maintenance with capital construction costs \geq \$25,000
7. Restoration of riparian buffer
8. Restoration of forest cover
9. Floodplain reconnection projects
10. Other actions to address stormwater runoff into or from the MS4 not otherwise required in S5.C

While it is useful to require Permittees to consider these 10 types of projects, not all of these projects should be used to qualify the Permittee for retrofit points. Specifically, only numbers 1-5 should be used to qualify a Permittee for points. This can best be explained in a new section, S.5.C.6.a.iii, inserted after the current draft version of S.5.C.6.a.ii, which might read:

“The Permittees’ Retrofit Requirements program must include the following types of projects, which are the only project types that qualify Permittee for retrofit requirement points:

- (1) New flow control facilities, including LID BMPs.
- (2) New treatment (or treatment and flow control) facilities, including LID BMPs.
- (3) New LID BMPs
- (4) Retrofit of existing treatment and/or flow control facilities
- (5) Property acquisition”

Furthermore, we have concerns with the 10 project types as follows:

1. **New flow control facility:** Don’t have to meet “standard flow control requirement” but shall be designed to control stormwater flow from existing development – standard requirements must be met.
2. **New runoff treatment facility (or treatment and flow control facility):** Facilities in this category do not have to meet runoff treatment requirements but they shall be new facilities that provide a treatment benefit for existing development. Facilities should meet runoff treatment requirements.
3. **New LID BMPs:** We appreciate the clarification that the LID BMP project type will again be separated out from flow control facility after having combined them in 2013- 2018 permit.
4. **Retrofit of existing treatment and/or flow control facility:** Is expected to occur on previously constructed stormwater facilities that, if modified, would provide additional hydrologic or runoff treatment benefits. This should be rephrased to match parallel Permit requirements, namely: Permittees must be required to demonstrate that retrofits will providing additional hydrologic or runoff treatment benefits.
5. **Property acquisition:** there should be a duration requirement on buffers, easements, property acquisition, and other projects that may otherwise be temporary.

6. **Maintenance with capital construction costs \geq \$25,000:** maintenance requirements should be dealt with under the operations and maintenance sections of the Permits. Permittees should not be allowed to perform maintenance they may have otherwise performed and use this maintenance as a means of satisfying retrofit requirements.
7. **Restoration of riparian buffer:** there should be a duration requirement on buffers, easements, property acquisition, and other types of projects that may otherwise be temporary. The requirement should be permanent. There should also be minimum buffer requirements – where are these spelled out?
8. **Restoration of forest cover:** there should be a duration requirement for restoration of forest cover to be permanent.
9. **Floodplain reconnection projects:** there should be a duration requirement for floodplain reconnection projects to be permanent.
10. **Other actions to address stormwater runoff into or from the MS4 not otherwise required in S5.C**
 - “Enhanced maintenance” and “high efficiency street sweeping and line cleaning” should not qualify for retrofit points. If enhanced maintenance would meet MEP, Permittees should already be required to perform enhanced maintenance. Moreover retrofit projects must have demonstrable water quality benefits.
 - Ecology proposes a formula to calculate incentive points for street sweeping: lane miles swept x (frequency of sweeping in events/year – 1 event). We do not support including street sweeping in the types of projects that will qualify for retrofit points.
 - Ecology asks if the Permit should include a qualifying project type for the permanent protection of working farmland. **We strongly object to such inclusion.** Farm land is exempt from NPDES permitting requirements but must meet Washington State’s non-point source program requirements. Further, Washington has a zero discharge standard in place for non-point sources pursuant to 90.48. Permittees should not benefit from reducing discharges that are currently prohibited by law to achieve a water quality benefit.
 - Ecology asks if the Permit should include a qualifying project type for the permanent removal of hard surfaces and conversion to vegetation. We approve of this concept and feel a .25 might be an appropriate point multiplier.

e. Ecology should have oversight and the authority to approve or disapprove retrofit projects

The description of the retrofit requirements program should identify how the program will ensure compliance with water quality standards.

As written Permittees select retrofit projects. In order for any project or action to be counted under the SSC Program, however, Ecology expects it to have a quantifiable and verifiable hydrologic or pollutant removal (or runoff treatment) benefit. Yet the Permittee is responsible for

documenting hydrologic and pollutant removal benefits and variables used in retrofit incentive calculations. Ecology must have the authority to, and must be required to, review and approve (or disapprove) retrofit projects on the basis of meeting these requirements, which must be clearly stated in the Permit. Retrofit requirements programs should also be subject to public review and input, as well as challenges or appeals.

f. Deadline for reporting should be within 3 years of Permit issuance

As we commented previously, all deadlines for deliverables and compliance should fall within 3 years of the Permits' effective date. The deadline for Appendix 11 reports for achieving retrofit requirement points should be 8/1/22. This will provide Ecology 2 years to review and incorporate feedback from these reports into the next Permit cycle. Projects completed after 8/1/22 should qualify towards future compliance of the point requirements if they in the design phase as of the 8/1/22 report. A project that is in process should not receive points until completion.

6. S.5.C.X Source Control Program for Existing Development (Phase II)

Soundkeeper previously commented that the Phase I and II Permits should contain the same standards for Permittees. The draft Phase II Source Control section represents a big step forward in that Phase II's are now required to perform an inventory and inspections of identified pollution sources. The Phase II permit should mirror the Phase I permit and require that the inventory be updated every 5 years.

However, as with our comments on the Phase I Permit, both the Phase I and Phase II source control requirements should include a mandate that all source control inventory listed businesses be inspected during a permit term, that is, 20% annually **and** 100% during permit term. Neither section has been revised to include this important provision that will ensure that all identified potential sources are inspected and the enforcement can take place if there are violations. Is Ecology authorizing Permittees to re-inspect the same 20% year after year?

Soundkeeper is generally supportive of the progressive enforcement policy articulated in section iv, but clarification is needed regarding how permittees are to address instances of refusal to allow inspections.

7. S.5.C.8 Illicit Discharge Detection and Elimination (IDDE) (Phase I and II)

Soundkeeper highly appreciates that Ecology has considered and incorporated some of our previous comments around the necessity of more guidance and training for IDDE field screening. We support the proposed revisions to the Phase I and II Permits requiring inclusion of data for all of the potential illicit discharges, including spills and illicit connections, found by or reported to the Permittee during the previous calendar year, in Permittees' annual reports. The new proposed language could, however, be clarified to explain that all potential *and confirmed* illicit discharges must be reported to Ecology. It may also be necessary to clearly define the term "potential illicit discharge."

The IDDE reporting form should include “receiving waterbody,” if known, and “water quality testing,” with option to input type of test performed in the form. It should also require a summary of known water quality and flow problems, if any, near the incident location or in the receiving waterbody(-ies).

However, per prior comments, we further urge Ecology to require municipalities to conduct more public outreach to inform citizens about illicit discharges and advertise reporting hotlines— not less - so that the general public can also assist with these efforts. This is discussed further in the next section.

8. S.5.C.10 Public Education and Outreach (Phase I and II)

a. We support movement towards combining the Permits

We appreciate that the draft Education and Outreach sections for the Phase I and II Permits are almost identical. We support combining the Phase 1 and Phase II Permits into one Permit as soon as practicable.

b. We support targeting audiences and subject areas for outreach and education based upon specific water quality benefit goals as well as EJ considerations

We support the revisions to Section S5.C.10.a and S.5.C.1.a, which will require Permittees to select target audiences and specific subject areas for education and outreach materials in order to address local water quality priorities. This less prescriptive approach makes sense and has the potential to be more effective to inform specific target audiences about the issues that will impact their water quality the most. To do so, the Permit should require that targets be based on achieving the maximum water quality benefits. Selection of audiences and subject areas should also require consideration of environmental justice and equity.

Will there be any requirements or suggestions in the Permits regarding the incorporation of outreach and educational materials into primary or secondary grade school curricula?

c. We support more education and outreach around spotting and reporting illicit discharges, and oppose removal of this requirement

PSA is concerned that the requirement to inform the public about the impacts of illicit discharges and how to report them was removed from the outreach and education sections of the 2019 Permit drafts. The public needs to be aware of this issue and of how to report it, particularly if a municipality has identified and prioritized illicit discharges as a water quality concern. In discussions with Ecology, Ecology suggested that this requirement is duplicative because the same requirement is found in the IDDE section of the Permits. However, the IDDE and Source Control sections of the Permits do not include a requirement that the general public or sections of the general public be informed about illicit discharges and how to report them. The IDDE section does require “a publicly-listed and publicized hotline or other telephone number for public reporting of spills and other illicit discharges,” but this is insufficient. Soundkeeper does a lot of

work in this area and we feel it is essential for enforcement and compliance. This requirement should not be removed.

d. We support the effectiveness evaluation strategy outlined for the outreach and education program

We support the social marketing strategy outlined in the drafts at S5.C.10.b in Phase 1 and S5.C.1.b in Phase II. We believe a 6 month deadline for effectiveness evaluation is sufficient (if the Permits are reissued 8/1/19, this would fall on 2/1/20). The implementation deadline should be 6 months after the evaluation deadline (or by 8/1/20). The evaluation and report on the changes and their effectiveness should be due within 2 years from implementation (in 2022). Under this timeline, Ecology will have time to review the reports and incorporate results and feedback prior to the next Permit cycle.

e. We strongly support the new requirement to summarize and incorporate known water quality and flow problems in the Education/Outreach plan

We thank Ecology for considering our comments from our preliminary comment letter dated October 7th, 2016 around known water quality problems being incorporated into education and outreach efforts. We believe that future watershed planning and outreach/education work will be stronger if local governments are able to articulate their water quality and quantity problems and use this information to better prioritize their programmatic efforts. We appreciate Ecology's move to tailor the "Outreach/Education Plan" to each jurisdiction and would include strategies for each target audience for each problem (i.e. the plan for fulfilling permit education requirements, based on the known problems for the jurisdiction). This important element of planning is needed.¹

9. Revisions to Section S.5.8, Monitoring and Assessment

Soundkeeper supports a watershed based, comprehensive monitoring program. Obtaining good data on the impacts of stormwater discharges on receiving waters and sediments is necessary to ensure that discharges do not cause or contribute to violations of water quality standards. It is also necessary in order to determine whether water quality standards are being met through current management programs, or whether numeric effluent limitations should be established. Furthermore, monitoring data is critically important to understand the severity of the stormwater problem and have a better sense of what needs to be done to solve it. Finally, this sort of information would be extremely helpful in enforcement.

a. More monitoring sites should be required.

In 2006, Ecology required counties and cities to monitor only 3 outfalls and Ports to monitor 1. In 2012, the Phase I Permit required Permittees to monitor 12 locations and Ports 8 for status and

¹ New language at S.5.C.10(b): "Each Permittee shall implement or participate in an education and outreach program that uses a variety of methods to target the audiences and topics listed below. The program design must be based on local water quality and demographic information to identify high priority target audiences, subject areas, and/or BMPs."

trends monitoring, and 5 and 2 locations for effectiveness studies. The 2019 Permit drafts require counties and cities to monitor 5 locations and Ports to monitor 2 for status and trends monitoring as well as effectiveness studies: why the reduction of the number of locations required for status and trends monitoring from 2012- 2018 (now 2019)? When there are thousands of outfalls and significant variation within each land use category, what is the justification for requiring so few monitoring sites? The number of monitoring sites or locations required by the Permit should not decrease. Moreover, the number of required locations should be tailored to represent the diverse land uses, geography, amount of rainfall, and other variants from Permittee to Permittee that would help provide useful information.

b. Soundkeeper does not support reduced reporting requirements (S.5.8)

Section A of the Permit requires Permittees to submit a summary of findings from any stormwater monitoring or stormwater related studies in their annual report. The new Permit draft for Phase I no longer requires Permittees to provide descriptions of 4 types of reports - monitoring that triggers S.4.F, monitoring for IDDE activities per section S5.C.8, monitoring conducted for TMDLs listed in S.7 or Appendix 2, or independent monitoring conducted in accordance with requirements in S.8.B.2 or 3 or S8.C.3 or 4 – in their annual reports. The “Note to Reviewers” on page 1 states that “Ecology wants this S.8.A reporting to be meaningful.”

PSA supports increased transparency and accountability through more reporting requirements. We agree generally with Ecology’s rationale for not requiring summaries of reports already provided to Ecology pursuant to other sections of the Permit. These 4 types of reports contain important information and should be made available to the public by inclusion in entirety in Permittees’ annual reports.

Section S.8 should further be clarified to provide examples or describe the exact types of reports that must still be summarized under S.8.

c. Ability to pay into collective fund is essential

Ecology has asked for input regarding a proposal to eliminate Permittees ability to pay into a collective fund for Regional Stormwater Monitoring Programs. PSA believes that the regional stormwater monitoring component of the Permit is an essential component of the Permit. It provides the mechanism by which we can evaluate our overall progress towards meeting the Clean Water Act’s goals and requirements. We have long advocated for stronger Monitoring, Reporting, and Enforcement requirements. We believe Permittees should continue to have the option to pay into a collective fund for RSMP. While we support having different options for how monitoring and assessment may be performed by Permittees that opt out, opting in should remain an option. So long as the quality of data received by Ecology is sufficient, Permittees should continue to be able to choose amongst monitoring and assessment options. Moreover, the amount of annual payments should be adjusted to reflect the number of Permittees actually paying in and the needs of the program.

d. Amount of annual payments is insufficient

PSA highly supports the Regional Status and Trends Monitoring, and we are concerned that it is not fully funded by the cost allocations included in the draft Permit. In 2012, Soundkeeper and other stakeholders supported increasing annual payments to \$6 million per year/\$30 million in the permit cycle. The proposed annual Permittee contribution tables provided by Ecology in this Draft reflect a total of about \$2.6 million total over the Permit cycle for S.8 monitoring fees. This assumes that all Permittees opt in. This amount is insufficient, and should also be modified to reflect the number of Permittees actually paying in.

e. Proposed revisions to Appendix 9 appear positive, but require review

Ecology has asked for feedback on several general concepts under the box on page 3 of 8 of this draft section (Permit section S.8, Monitoring and Assessment). "Ecology is proposing to update Appendix 9 with changes including:

- Reduce antecedent dry period from 24 to 8 hours
- Update laboratory methods as appropriate
- More clearly define sediment sampling as in-system solids sampling via sediment trap
- Add total PCBs to the runoff characterization list (using 1668C)
- Add guidance for interpreting non-detects
- Add particle size distribution
- Add or remove other parameters"

However, Ecology has not provided specific draft Permit language upon which to comment.

We generally support the change to add total PCBs to the runoff characterization list (using 1668C). We also generally support the inclusion of guidance for interpreting non-detects and for adjusting parameters based on information from SAM studies.

However, in order to comment further or on the other items listed, we must review the specific proposed Permit and Appendix language. We look forward to reviewing the language with the issuance of the formal draft Permits this summer.

D. COMMENTS ON ADDITIONAL SECTIONS OF THE PERMIT NOT PROPOSED FOR REVISION AT THIS TIME

1. SWMPs (S.5)

a. The SWMP 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 permit evaluation of whether permittees are meeting this condition. This section should be revised to clarify that the SWMP

must ensure compliance with water quality standards and prevent water quality violations. Discharges must not cause or contribute to violations of water quality standards. Other permit terms with the vague phrase “protect water quality” include: S5.C.5.a.ii. and S6.A.2. In each case in the Phase I Permit, and in instances where this language appears in the Phase II permit, Ecology should replace that phrase with: “ensure discharges will not cause or contribute to violations of water quality standards.” This is required by RCW 90.48.520.

b. Residential car wash water should be prohibited in SWMPs

S5.C.8.b.ii.(2) requires the permittees to prohibit certain categories of non-stormwater discharges, except under certain conditions. Ecology should add residential car wash water to this list, and articulate appropriate conditions, such as washing cars on lawns or other permeable surfaces.

c. Operations and Maintenance (S.5.C.9)

The Permits should implement a minimum annual screening requirement. They should also require more frequent, routine pipe and line cleaning and require more timely removal of polluted sediments from stormwater facilities. The time limits within which maintenance is required after detection of an issue is too lax and should be ratcheted down. This is necessary to reduce pollution accumulation in MS4s.

1. Secondary Permittees (S.6)

a. 3 year deadline for MEP requirement

Section S.6.A.3 of the Phase I Permit allows Secondary Permittees to develop and implement their SWMP fully “no later than four and one-half years from initial permit coverage date.” As we commented in 2006, Section 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii), sets the standard that all permits for discharges from municipal storm sewers must meet. Under this standard, municipal stormwater permits must “require controls to reduce the discharge of pollutants to the maximum extent practicable.” Sections 402(p)(4)(A) and (B) require that permits provide for compliance with this MEP standard “as expeditiously as possible, but in no event later than 3 years after the date of issuance of such permit.” 33 U.S.C. § 1342(p)(4)(A), (B).

Ecology has determined that implementation of the stormwater management program required under this permit constitutes reduction of pollutants to the maximum extent practicable (MEP). The Clean Water Act therefore mandates that these SWMPs be fully implemented no later than 3 years after the effective date of the permit. There are instances, however, where the permit establishes timelines that are inconsistent with this mandate, and therefore violate the CWA – such as S.6.A.3 for Secondary Permittees. This language should be revised to require implementation of the SWMP no later than 3 years from the date of the Permit.

b. Discharges at Ports and Secondary Permittees should be limited

Condition S6.E.3.b.iii in the Phase I Permit states that “The Permittee shall address any category of discharges in i or ii above if the discharges are identified as significant source of pollutants to waters of the State.” This provision does not indicate how or by whom this determination should be made. Also, among these categories are “rising ground waters.” Rising ground waters may be contaminated with serious non-stormwater pollutants, including septic system pollutants and contaminants from other sources. This category should be changed to “uncontaminated rising ground waters.” Also, residential car wash water should be added to the list of categories of non-stormwater discharges prohibited.

c. More frequent and thorough inspection requirements for Ports and Secondary Permittees

Site inspections at Ports and all Secondary Permittees should, at a minimum, be required at least once within Permit term. Permittees should conduct field screening of at least 20% of the MS4 each year for the purpose of detecting illicit discharges and illicit connections and 100% over the Permit cycle. Ecology should require all known outfalls to be visually inspected within 12 months and periodically throughout the Permit term.

E. CONCLUSION

Thank you for this opportunity to provide preliminary input on the next iteration of Washington’s Stormwater Permits. By providing this preliminary input, Soundkeeper does not waive the right to raise additional comments or provide input outside of the scope of these comments once the completed drafts of the 2019 Permits are made available for formal review and comment. We look forward to the release of the draft Permits in the upcoming months, and further opportunities to engage with Ecology on this matter.

Sincerely,

Alyssa Barton
Puget Soundkeeper Alliance