

Snohomish County Comments
Ecology's Draft 2019 SWMMWW (July 2018 version)

#	Document	Section, Page and/or Paragraph	Ecology Proposed or Modified Language	Comment	Snohomish County Recommendation or Proposed Language, if any
1	SWMMWW		Entire document Phase I Permit Appendix 10, Part 2	<p>If Snohomish County understands Ecology's Phase I Permit Appendix 10, Part 2 correctly, the only portions of the draft 2019 SWMMWW that Snohomish County must replicate/update in its own enforceable documents (codes, ordinances, director's rules, public rules or manuals) by the July 1, 2021 deadline in S5.C.5 are those portions of the draft 2019 SWMMWW listed in Appendix 10, Part 2. Only five portions of Volume III of the draft 2019 SWMMWW are listed in Appendix 10, Part 2. Thus, while Ecology has modified in many other ways the draft 2019 SWMMWW, Ecology has concluded that those modifications are not relevant to Phase I Permit compliance and are not required to be adopted into a Permittee's enforceable documents. Can Ecology confirm this?</p> <p>Ecology needs to be explicit about what it is requiring. It seems unusual for a regulator to go through the effort of modifying a document like the SWMMWW and yet not require the regulated Permittees to comply with or enact those changes. There is likely to be significant misunderstandings as to what is or is not required of Permittees and absolute clarity from Ecology on this point is critical to all stakeholders.</p>	RECOMMENDATION: Provide consistent, repeated clarification in the Permit, relevant appendices, and the SWMMWW of Ecology's requirements related to Permittee updates of their enforceable documents under S5.C.5 and any other reference to the SWMMWW in the Permit or appendices.
2	SWMMWW		Entire document	The version of the SWMMWW in effect on the date of Permit issuance will constitute the relevant set of conditions, as appropriate, of that Permit. What is Ecology's plan to maintain version control with the online SWMMWW? Is Ecology intending to modify the SWMMWW during the Permit term? If so, will Ecology make available the version-controlled SWMMWW in existence at the time of Permit issuance? Ecology should clearly identify and preserve the relevant version of the SWMMWW so all stakeholders are aware of relevant requirements. Ecology should use appropriate processes to modify the SWMMWW if modifications are made during the Permit term.	
3	SWMMWW	Executive Summary, p. 7	"The following changes will be required to be implemented by Phase I and Western Washington Phase II Municipal Stormwater Permittees in their stormwater program."	This statement, and the text to which it refers, is confusing, unnecessary, and in the wrong document. Statements about what the Permit does or does not require should be in the Permit, not the SWMMWW. In addition, the inclusion of reference here to changes to MRs 2, 5, and 7 in the SWMMWW creates ambiguity. Appendix 10, Part 2 does not list the SWMMWW as the source document for the required MR changes – Appendix 1 is the source of the required changes. Reference here in the SWMMWW to changes to MRs 2, 5, and 7 implies that the changes in the SWMMWW are what Permittees must adopt into their regulations, but that is not what Appendix 10, Part 2 requires. <i>Compare</i> Appendix 10, Part 2, Table 10.1 regarding Element 4e with MR2 discussion in the SWMMWW (pp. 105-125).	RECOMMENDATION: Revise or delete to remove ambiguity.
4	SWMMWW	Vol. I, ch.2 Sec. I-2.14 p.83	"The most common type of UIC well in Washington is a Class V injection well. A Class V well is usually a shallow disposal well such as a drywell, drainfield, infiltration trench with perforated pipe, storm chamber systems with the intent to	The intent of perforated pipes beneath bioretention systems is typically for removing excess water that is unable to infiltrate and send it to surface water. This does not meet the definition of a subsurface fluid distribution system. Furthermore, the 2008 EPA memorandum regarding clarification of Class V wells referenced in the SWMMWW, "Linda Boornazian and Steve Heare, "Clarification on which stormwater infiltration practices/technologies have the potential	RECOMMENDATION: Remove reference to bioretention systems as Class V UIC wells.

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			infiltrate, bioretention systems intending to infiltrate and with perforated pipe installed below the treatment soil, or French drain.”	to be regulated as "Class V" wells by the Underground Injection Control Program", memorandum, June 2008.”, states that rain gardens and bioretention areas are generally not considered UIC wells.	
5	SWMMWW	Vol. I, ch.4, p. 159-188 Sec. I-4.2, p. 160	<p>“Since the NPDES Permit does not fulfill all the requirements of the UIC program, the following must be added to the jurisdiction’s Stormwater Management Program (SWMP) and implemented:</p> <ul style="list-style-type: none"> • All UIC wells, including existing and new wells, must be registered. • New UIC wells must be constructed according to the specifications in this section. • Existing UIC wells must be assessed in accordance with the UIC program requirements provided on Ecology’s UIC web page at the following address: https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Underground-injection-control-program • Existing UIC wells that are determined to be a high threat to ground water must be retrofitted by meeting the rules for new UIC wells.” 	<p>This statement is inappropriate, unlawful, unreasonable, and must be removed.</p> <p>First, Ecology cannot by stealth impose new SWMP requirements in the SWMMWW, and, in particular, a section of the SWMMWW that Ecology has apparently decided, as set forth in Appendix 10, Part 2, a Permittee need not address in its regulations. The Permit is the document that defines the required content of the SWMP; Ecology cannot dictate additional requirements for the SWMP by stating them in the SWMMWW.</p> <p>Second, S2.A.1 states “Discharges to ground waters of the state through facilities regulated under the Underground Injection Control (UIC) program, chapter 173-218 WAC, are not authorized under this permit.” The bulleted statements in the SWMMWW are requirements of the UIC program, and Special Condition S2.A.1 draws a line between the UIC program and the NPDES permit. This quoted draft language from the 2019 SWMMWW conflicts with Special Condition S2.A.1.</p> <p>Third, Ecology appears to be attempting to modify the UIC rule, chapter 173-218 WAC, through the SWMMWW, which is inappropriate and unlawful.</p> <p>The County objects to any attempt by Ecology to try to modify the Permit by including additional requirements in the SWMMWW, to place in the SWMMWW regulatory language inconsistent with the Permit discussion of UIC, or to attempt to modify the UIC rule, chapter 173-218 WAC, through the SWMMWW.</p>	
6	SWMMWW	Vol. III, ch.2 Sec. III-2.2 pp.499-500; 550	<p>[on page 499] III-2.2 Continuous Simulation Models <i>Ecology Approved Continuous Simulation Models</i> As of July 13, 2018, Ecology has reviewed and approved the following continuous simulation model software programs for use with the 2019-2024 Municipal Stormwater Permits:</p> <ul style="list-style-type: none"> • WWHM 2012 version 4.2.14 (published 3/2/2018) <p>The software manufacturer may provide separate versions or updates that Ecology has not reviewed. The manufacturer is</p>	<p>Appendix 10, Part 2, requires Phase I Permittees to include Section III-2.2 in their updated stormwater regulations due for adoption by July 1, 2021. The text on pages 499-500 appears to say that a Permit condition set forth in this SWMMWW may be changed on some future date by a third party, with no oversight from Ecology, and that Permittees must implement the changed condition. This is a violation of the processes and authorities set forth in chapter 173-226 WAC because Ecology appears to be delegating its authority to establish Permit conditions to a third party without any Ecology oversight and these SWMMWW statements appear to suggest Ecology will deem future versions of the WWHM as modifying the Permit without utilizing the appropriate Permit modification processes. Further, this approach is inconsistent with prior Pollution Control Hearings Board decisions, which specifically addressed Ecology’s attempts to incorporate by reference into the Permit or SWMMWW future versions of documents or standards unavailable at the time of issuance. <i>See Pierce County v. Ecology</i>, PCHB No. 12-093c, Order on Summary Judgment (Oct. 8, 2013) at 27-28.</p>	RECOMMENDATION: Ecology should establish a software version with a specific date as the Permit condition, and delete any other language referring to future versions and their use.

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			responsible to ensure that they maintain the approved portions of the program within their model. [on page 550] Designers should periodically check Ecology's WWHM web site for the latest releases of WWHM, the WWHM user manual, and any supplemental instructions.	What Ecology is attempting to do here is unreasonable, impracticable and unlawful. What does the following statement mean: "The manufacturer is responsible to ensure that they maintain the approved portions of the program within their model"? What are the "approved portions"?	
7	SWMMWW	Vol.III, ch.2 Sec. III-2.4 p.526	"Runoff from both the bypass area and the Flow Control BMP converges within a quarter-mile downstream of the project site discharge point."	The term "discharge point" should be changed to "discharge location". The definition of discharge point appears to only apply to infiltration facilities per the glossary.	
8	SWMMWW	Appendix IV-B		There are inconsistencies between the parameter values in Volume IV-Appendix B and the newly adopted standards in the solid waste WAC 173-350 (WAC 173-350 is referenced in Appendix 6-Street Waste Disposal, page 2, of the draft Phase 1 Permit. Standards of the thresholds of solid waste need to be consistent, either use the standards in Appendix IV-B or WAC 173-350. In determining standards DOE is using MTCA Level A and then the Simplified Terrestrial Ecological Evaluation Procedure.	RECOMMENDATION: Standardize the parameters so they are consistent between the permit, manual and existing code WAC 173-350.
9	SWMMWW	Appendix IV-B Table IV-B.4 pp.737-38	TPH (Diesel)	The suggested clean-up value for diesel should use the MTCA Level A value of 2,000. It appears Ecology is mixing and matching cleanup levels from different regulations.	RECOMMENDATION: Use MTCA Level A value of 2,000 mg/kg.
10	SWMMWW	Vol. V, ch.1 Sec. V-1.1	Runoff Treatment BMPs	There look to be a number of examples in the draft 2019 SWMMWW where the word "facility" is replaced with "BMP". In Volume V-1.1 examples, Ecology has replaced the terms "facilities" and "treatment facilities" with 'Runoff Treatment BMPs'. This new phrase does not appear to be defined either in the draft 2019 SWMMWW or Phase I Permit. Additionally, the draft 2019 Phase I Permit uses (and defines) the term "Stormwater Treatment and Flow Control BMPs/Facilities". This change to the Manual's language is confusing, and inconsistent with language in the Phase I Permit. The draft 2019 Phase I Permit uses a different term that indicates facility and BMP are synonymous terms. The draft 2019 Phase I Permit defines the term "Stormwater Treatment and Flow Control BMPs/Facilities" as detention facilities, permanent treatment BMPs/facilities; and bioretention, vegetated roofs, and permeable pavements that help meet minimum requirement #6 (treatment), #7 (flow control), or both.	RECOMMENDATION: Use consistent terms in the SWMMWW and the Permit. Stormwater Treatment and Flow Control BMPs/Facilities is the most appropriate and should be used in place of Runoff Treatment BMPs. Replacing facility with BMP is not consistent and only leads to confusion. Use the defined term or phrase. Avoid undefined short-hand phrases. Use of those will lead to confusion and increased risks of liability.

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				There is concern that replacing the word “facility” with “BMP”, and use of the new “Runoff Treatment BMPs” term are adding confusion and could result in different, or additional, maintenance and inspection requirements.	
11	SWMMWW	Vol, V, ch.3, p. 802 BMP T5.30	“The dispersion area is not allowed in critical area buffers or on slopes steeper than 20%. Dispersion areas proposed on slopes steeper than 15% or within 50 feet of a geologically hazardous area (RCW 36.70A.030(5) must be approved by a geotechnical engineer or engineering geologist.”	It is not clear that Ecology intended this proposed modification, which appears inconsistent with other dispersion system design criteria found in the SWMMWW. For example, design criteria for BMP T5.10B Downspout Dispersion Systems in both the current and draft SWMMWW include the following statement: “A vegetated flowpath of at least 25 feet in length must be maintained between the outlet of the trench and any property line, structure, stream, wetland, or impervious surface. A vegetated flowpath of at least 50 feet in length must be maintained between the outlet of the trench and any slope steeper than 15%. <i>Sensitive area buffers may count towards flowpath lengths.</i> ” (Emphasis added). The County does not fully understand Ecology’s goal with this proposed modification but cautions that it could be read to significantly limit the use of LID BMPs, which the County assumes is not Ecology’s intention.	RECOMMENDATION: Retain the existing language as it is in the current SWMMWW.
12	SWMMWW	Vol. V, ch.11 p.1078 BMP T5.16		Garry oak (<i>Quercus garryana</i>) is native. It is currently marked non-native.	
13	SWMMWW	Glossary, p. 1245	“Threshold Discharge Area”	Definition and Figure refer to discharge locations as “discharge points”. The term discharge points is defined in the glossary and is related to infiltration only.	Revise the use of “discharge points” to “discharge locations”.