

2024 TMDL Overlapping Regulations Ad Hoc Group

White paper attached includes comments prepared by the Overlapping Regulations 2024 Ad Hoc Group.

WHITE PAPER

2024 NPDES Stormwater General Permit Reissuance Ad Hoc Committee – Overlapping Regulations

Background

Catalyzed by the 2018 Ad Hoc Process, the Washington State Department of Ecology requested an Ad Hoc Process for the 2024 Permit Reissuance. The Ad Hoc Process is meant to provide Ecology with a series of white papers that provide suggestions on Permit changes.

The Overlapping Regulations Ad Hoc Committee was made up of the following committee members:

| Name | Jurisdiction/Affiliation |
|--------------------|---|
| Lori Blair | Boeing |
| Dana Zlateff | City of Everett |
| Scott McQuary | City of Redmond |
| Stephanie Sullivan | City of Sammamish |
| Royce Young | City of DuPont |
| Andrew Wargo | Skagit County Planning and Development Services |
| Jenna Friebel | Skagit Drainage and Irrigation District Consortium |
| Jeremy P. Graham | City of Olympia |
| Kenneth Burkart | City of Tacoma Environmental Services Department |
| Jane Dewell | Port of Seattle |
| Tarah Erickson | Boeing |
| Heather Griffin | City of Everett |
| Elsa Pond | WSDOT |
| Bill Leif | Snohomish County Conservation and Natural Resources |
| Cory Olson | Snohomish County Conservation and Natural Resources |
| Timmie Maturan-Lee | Washington Military Department |
| Garrett Starks | WSDOT |
| Michelle Perdue | Kitsap County |

The Ad Hoc Committee participated in a series of 5 meetings with follow-up email communication to develop this White Paper. The Ad Hoc Committee came to a consensus to focus on the following Issues/Concerns/Suggestion.

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Issue 1: Ecology coordination with other Agency Staff, Regulators, and Agencies

The Municipal Stormwater Permit requires permittees to navigate directly with multiple Department of Ecology programs including TMDL (Water Cleanup Plan) staff, Spills/ERTS staff, Construction inspection staff, Water Quality Program staff, and MTCA staff, etc. It seems many of these programs aren't directly aware of the rules and laws that govern outside of their own programs and disciplines.

In addition, Permittees get different answers to issues and concerns depending on which State Agency or Ecology Program is involved. The answer or reasoning received by one Permittee may be in conflict with another state regulation or Permit requirement.

Suggestion to address Issue 1:

- Ecology coordinate among other agencies and department staff to discuss state and federal regulations and how they relate and or conflict with each other.
- Ecology develop an interdisciplinary team that would include permit writers, managers, TMDL, spills/ERTS, construction, MTCA and water quality program staff. Consider hosting a meeting with stakeholders to develop a list of gaps and issues that Ecology and Permittees could begin discussing and addressing.
- Ecology provide guidance on overlapping regulations and how they relate to the Municipal Stormwater Permit.

Issue 2: UIC Rule and the Permit

Issue 2.1 UIC rule

The Phase II Municipal Stormwater Permit (Permit) lacks clarity on interface between UIC program and Permit.

An email was received from the Department of Ecology Water Quality Program (Mary Shaleen Hansen) in June 2021, that informed Permittees:

If the Permittee uses UIC wells to manage your stormwater, then they must be included in either your Stormwater Management Program (SWMP), required by a Phase I or Phase II Municipal Stormwater Permit), or you must use one of the following approaches or a combination of approaches:

- *A separate SWMP created for your UIC wells; or*
- *A stormwater site plan for the area served by each municipal UIC well,*

as described in our 2019 Stormwater Management Manual for Western Washington, Volume 1-4.4, at [2019SWMMWW - Meeting the Non-Endangerment Standard \(wa.gov\)](#) or the 2019 Stormwater Management Manual for Eastern Washington, [Chapter 5.6.4](#).

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There is no mention of UICs in the Permit, and as a result, responsibility of Permittee is unclear. Ecology has provided trainings and may have a specific intention related to UIC and Permit, but if it's not clear in the Permit and the Permittee is left to interpret the intent, many problems can result.

Suggestion to address Issue 2.1:

- Ecology provide clarity related to UIC Rule the Permittee responsibility within the Permit on how these overlap.
- Ecology specifically state how the Permit interacts with other regulatory programs.
- Ecology incorporate elements of Doug Howie PowerPoint presentation related to distinction between MS4 Permit and UIC into guidance for Permittees.

Issue 2.2 UIC related to developers

The requirements and sequencing of approvals are unclear for developers installing a UIC as part of a development project regarding Ecology's UIC program and a City's review under the Permit Minimum Requirements.

Suggestion to address Issue 2.2

- Ecology provide guidance on overlapping requirements and sequencing of approvals for developers using UIC's to comply, wholly or partially, with Permit Minimum Requirements.

Issue 3: MS4 Mapping and Documentation

The definition of receiving water in the Permit is '...naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, or groundwater, to which an MS4 discharges.'

In some cases, there are Secondary Permittee's such as a Drainage District, where their MS4 is also considered a receiving water and therefore the boundary of the Permit is unclear.

Suggestion to address Issue 3:

- Ecology clarify how the Permittees address mapping MS4 and receiving water in the above situation. If Ecology elects to convene an Interdisciplinary Team (see issue 1 above), this topic is recommended to be included.
- Ecology clarify point of Permit compliance when receiving water is also a permittee's MS4, especially in relation to S4.F.
- Ecology provide specific mapping guidance as an Appendix to the Permit.

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Issue 4: MS4 Point of Compliance and Geographic Area of Permit Coverage

The Permit is applicable to owners and operators of the MS4 and the geographic area of Permit coverage is listed in S1.A. A Permittees is only responsible for point source discharges from its MS4, however, in Permit language and Ecology staff interpretations and communications there have been conflicts. Some sections of the Permit clearly specify “discharge to MS4”, where other sections of the Permit lack this language.

In addition, clarification is needed in use of geographic area and MS4, as an example S5.A.1: *The Permittees SWMP shall be implemented throughout the geographic areas subject to this Permits as described in S1.A.* It is unclear if the SWMP is applied to the entire geographic area or the geographic area that is directly connected to the MS4. There may be areas of a jurisdiction that enters the receiving waters directly with no MS4 connection.

Suggestion to address Issue 4:

- Ecology clarify Permit requirements tied to MS4 discharge area, whether strictly MS4 or larger geographic area.
- Ecology ensure consistent interpretation among Permit Coordinators with Permittees across the region.

Issue 5: Source Control Permit Requirements

The Phase II Municipal Stormwater Permit, Industrial Stormwater General Permit, and Secondary Permittees have various obligations related to source control. It is not clear how and if responsibilities should be shared between overlapping areas and between Secondary Permittees.

Solution to address Issue 5:

- Ecology clarify how source control requirements are blended or enforced with industrial Permit holders; i.e., is there opportunity between the Permittees to achieve source control goals without duplicating efforts.
- Ecology clarify Permit obligations on industrial and construction sites in relation to source control BMP implementation and enforcement when those sites also have Industrial and Construction Stormwater general permits coverage.
- Ecology develop guidance on source control coordination, Ecology involvement, and enforcement regarding overlapping Permit coverage.

Issue 6: Various Permits and role of Phase II Municipal Stormwater Permit

Issue 6.1 Construction General Permit

Projects with a Construction Stormwater General Permit (CSGP) may be authorized under that permit to discharge elevated turbidity runoff to a municipal permit drainage system (MS4) where that same higher turbidity discharge could violate the turbidity state surface water

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quality standard (WAC 173-201A-210(1)(e)) a municipal permittee must comply with (S4.B). The CSGP turbidity compliance thresholds are delineated as; < 25 NTU = compliant, 25-250 NTU = take action to address problems and note in monthly report, > 250 NTU = take action & report to ECY within 24hrs. Take for example a construction site discharging 250 NTU runoff into an MS4 and reports it to Ecology 23 hours after discovery. During this time the turbid construction runoff could be causing a surface WQ violation downstream as it discharges from the municipal permittee's MS4 into the receiving water. This same scenario can also occur at less than 25 NTU if the receiving water background NTU level was low compared to the MS4 discharge NTUs. In this scenario the municipal permittee might not ever know about their municipal permit violation that could technically be considered a compliant discharge on the part of the construction permittee. Ideally, the CSGP permit would state that CSGP permittees must report high turbidity (and other) discharge concerns directly to the MS4 receiving the discharge. All municipal permittees are required to have a phone number (hotline) that is set up to receive reports related to illicit discharges. If there is language in the current permit that can clarify this permit compliance overlap then it would help to make it more prominent in future updates.

Solution to address Issue 6.1:

- Ecology clarify language in future CSGP to require notifying the MS4 Permittee when turbidity exceedance occurs.
- Ecology clarify the Municipal Permit responsibilities regarding connectivity between various Ecology issued permits.
- Ecology clarify if Permit section '*S5.C.5(c)(i)(I) Non-stormwater discharges authorized by another NPDES or state waste discharge permit*' applies to the CSGP.

Issue 6.2 Industrial Permit and Stormwater Treatment

The Industrial Stormwater General Permit holder may need to construct stormwater treatment facilities to meet their Permit requirements, but in some instances that treatment may not fulfill Municipal Stormwater Permit requirements.

Solution to address Issue 6.2:

- Ecology clarify in both the Industrial Stormwater General Permit and Municipal Stormwater Permit that one Permit does not necessarily fulfill compliance with the other Permit.
- Ecology clarify how discharges authorized by one NPDES or state waste discharge permit applies to the Industrial Stormwater General Permit.
- Ecology define what stormwater BMPs (flow control and water quality) meet Industrial Permit discharge needs and Permittee Minimum Requirements for redevelopment and/or development triggers. Recommend Ecology SWMMWW BMPS are defined that intend to meet both Industrial and MS4 Permit objectives where applicable.

Issue 7: MTCA and Permit Compliance

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There is inconsistency between Ecology MTCA and WQ groups regarding interpretation of guidance related to NPDES Permits. This includes confusion on how MTCA actions intersect with Phase II Municipal Permit obligations. Typically, local permits (which address stormwater Permit requirements) are procedurally exempt as part of MTCA process. Thus how are compliance related programmatic tracking and inspections, required by Phase II Municipal Permit, adhered to when this process is circumvented? No language in the Phase II Municipal Permit currently addresses MTCA.

It is also important to understand where MTCA-type projects end and re-development and development begins. The exemption to local permits under RCW 70.105D.090 only applies to remedial actions. However, there are often Agreed Orders that require stormwater facility and capping to meet remediation goals to not disturb the site in future, although these could be considered new or re-development projects.

Solution to address Issue 7:

- Ecology provide clarification on how MTCA applies to the Municipal Stormwater Permit.
- Ecology staff coordinate and develop guidance on how the Permit and MTCA related requirements interact.
- Ecology establish clear guidance on how the Municipal Stormwater Permit and MTCA substantive requirements are complied with, especially in cases where local permits are “exempt”.