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Submitted via WA Dept of Ecology Public Comment Form

Protecting and Preserving Puget Sound

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Re: WA Municipal Stormwater General Permits: Preliminary Drafts for Informal Comment

Greetings Ms. Stockwell,

Thank you for accepting these comments, submitted on behalf of Puget Soundkeeper.

We appreciate your preference for using the comment template, however we were unable to use it because not all of our comment categories appeared as drop-down menu options. For future comment processes, we suggest please including an "other issue" option.

I. 6PPD-Quinone Impacts on Endangered Species Act (ESA) Listed Species

A recent study has confirmed that 6PPD-Q causes harm and death to Endangered Species Act (ESA) listed Chinook and steelhead (French et al. 2022). When exposed to stormwater runoff from a State Route 520 onramp, the ESA listed fish demonstrated intermediate cumulative mortality rates. This study showed that like coho, Chinook and steelhead experiencing 6PPD-Q caused distress develop symptoms including surface swimming and gaping and loss of equilibrium before dying. And, these impacts are irreversible (symptomatic fish do not recover after being placed in clean water). This evidence of harms, from stormwater – specifically road runoff – to ESA listed species is groundbreaking and it simply must inform permit requirements.

Specifically, permittees should be required to assess the impacts of their stormwater discharges on federally listed endangered and threatened species and designated critical habitat. Permittees should also be required to meet prescribed US Fish & Wildlife Services ESA eligibility provisions. For example, where listed species are present, permit coverage should only be available after the permittee consults with federal agencies to ensure that their discharges and planned stormwater management practices will have "no affect" or will be "not likely to adversely affect" listed species.

Several EPA-issued MS4 permits contain these provisions and should be referenced in crafting a similar provision here.[1]

Permittees should also be fully informed of their independent ESA obligation to ensure that their discharges do not result in prohibited "take" of listed species. Where listed species are present, this will require substantial adjustments to Stormwater Management Programs which should be required to occur immediately to avoid ESA violations and should be closely guided by the Department of Ecology.

II. Street Sweeping

It is refreshing to see the proposal to develop more aggressive and strategic street sweeping programs. We support this. However, our support is measured, and we have some concerns.

Street sweeping requirements have been in these permits for many years. Permittees should be and are already doing street sweeping. So why do they need an additional 3 years to improve these programs? This is particularly true for permittees that already have robust street sweeping programs, already have street sweeping equipment, and already have included street sweeping in stormwater management plans. In those cities and counties, this permit should require immediate changes in stormwater management plans to prioritize sending street sweeping equipment to high traffic areas and urban watersheds impacted by urban runoff mortality syndrome (specifically, to meet Clean Water Act and ESA requirements, salmon streams should all be prioritized for tire wear particle removal by street sweeping).

Cities and counties who are lagging in this area may need some time to catch up – but 3 years is too long. That said, whether a permittee needs more time to develop new street sweeping programs is an enforcement question. It is not an appropriate reason to provide long lead-times within the general permit itself as the narrow issue at hand *(some* permittees' needs for time to purchase or deploy sweeping equipment) is not a water quality consideration and does not represent AKART.

Does Ecology believe that street sweeping will result in permittees meeting water quality standards? Street sweeping undeniably captures contaminants. But it is not capable of capturing 100% of the 6PPD-Q. There is now widespread agreement on how extraordinarily toxic 6PPD-Q is even at very low levels. The most recent study confirmed that significant mortality (95%) occurs in coho even when road runoff is diluted by 95% in clean water. (French et al. 2022) Doesn't that indicate that street sweeping won't completely prevent coho mortality? Doesn't that indicate that street sweeping (albeit bringing great benefits to water quality) won't entirely prevent harm to ESA listed Chinook and steelhead?

Also, importantly, street sweeping is not a structural source control BMP. It is a maintenance procedure; it is good housekeeping. Thus, it is, by definition, an operational source control BMP. Soundkeeper requests that this definition be incorporated into this permit. To avoid confusion, Ecology should adopt definitions used in other permits such as its Industrial Stormwater General Permit:

[1] See Massachusetts Small MS4 General Permit (epa.gov), Appendix C, 2016.

Operational Source Control BMPs means schedule of activities, prohibition of practices, maintenance procedures, employee training, good housekeeping, and other managerial practices to prevent or reduce the pollution of waters of the State. Not included are BMPs that require construction of pollution control devices.

Structural Source Control BMPs means physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater.

ISGP Appendix 2 Definitions (2020)

Soundkeeper does not dispute that the street sweeping vehicle itself may be classified as a structural source control asset (as a mechanical device). However, unlike fixed, stationary structural BMPs, its entire value exists in its movable nature. Decisions on when and where to use the sweeper to maximize its impact, schedules for deployment, training on proper use, and executing the basic housekeeping function for which sweepers are designed are, together, what accomplish pollutant reduction. A fixed, structural stormwater treatment like a tree pit or rain garden cannot be moved to an adjacent block, cannot treat entire towns, cannot be deployed in different areas depending on need or salmon migration patterns. Street sweeping trucks, on the other hand, can. Therefore, while the devices may be considered structural by some permittees, street sweeping programs are operational. Please clarify this in the revised permit.

III. Tree Retention

We are glad to see a proposal to take a step toward recognizing the value of tree canopy. As you note, it is a basic LID principle and should therefore already be prioritized by all permittees. Including tree canopy retention on a landscape scale as another tool makes good sense.

The requirement to survey tree canopy is basic and should absolutely be in place. For any permittee that has not already done so, this will be an important step to compel without delay. They need to catch up. However, this provision will not result in any improvement for municipalities that already have a tree canopy survey. The Clean Water Act designed the NPDES permitting system to accomplish a ratchetting down of pollution over time accomplished through increasingly more protective permits reissued at five-year intervals. In short, each new permit should require more of each permittee (for this point, see also, the street sweeping requirement discussion, above).

We propose that permittees be required to characterize their tree canopies with environmental justice and stormwater (treatment and flow control) in mind. As part of the more detailed characterization, permittees should be required to identify the types of trees - the species, the approximate size/ age, and the placement (in a park, or part of a green stormwater infrastructure installation). This is all information that permittees should know as a foundational part of planning their stormwater management. Further, more generally, knowing where trees are and whether they are part of flood protection or green infrastructure is essential groundwork that every municipality will need to do as they plan for a resilient future. Like all stormwater control

features – from green infrastructure installations, outfalls, drainage areas, catch basins, and more – trees are infrastructure and should be mapped and characterized.

IV. Discharges to Impaired Waters

Soundkeeper is deeply concerned about the absence of specific permit requirements for impaired waters that don't yet have TMDLs. As written, these discharges need only meet the minimum permit requirements – in other words, the same level of pollution control as discharges into waters that aren't impaired. That is indefensible.

Discharges from MS4s to impaired waterways must be required to eliminate discharges of pollutants for which that waterway is impaired that exceed applicable water quality standards. Remedies should be required immediately, or within 60 days. Where that is impracticable, Ecology should work with the permittee on a schedule of actions to achieve the remedy or elimination in the shortest time not impracticable.

Why haven't these requirements yet been incorporated? What is the agency's plan for requiring these discharges to meet water quality standards?

V. Regulatory Thresholds and Appendix 1

Soundkeeper supports this permit update and is concerned about the risk of misinterpretation. We propose that you simply replace the word "plus" in all 12 places it appears throughout this draft section with the words "and/or".

Thank you for considering these comments. We look forward to your responses.

Sincerely,

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