



WASHINGTON CONSERVATION ACTION

Protecting People & Nature as One

November 10, 2023

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Amy Waterman (Phase I Municipal Stormwater Permit Writer)
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Dear Ms. Stockwell and Ms. Waterman:

Thank you for the opportunity to provide input on the Phase I and Western Washington and Eastern Washington Phase II Municipal Stormwater Permit reissuance. Washington Conservation Action Education Fund (WCA) is a 501(c)(3) organization founded in 1967 as Washington Environmental Council. Our mission is to develop, advocate for, and defend policies that ensure environmental progress and justice by centering and amplifying the voices of the most impacted communities. We are committed to clean water protection for all Washington State waters.

WCA has a deep history of pushing for measurable progress to prevent and manage stormwater pollution to achieve watershed recovery and reduce downstream impacts to communities. Each permit cycle must make progress towards eliminating pollution that impacts water, people, and aquatic life.

For this permit cycle we would like to see exceptional progress towards the goal of clean water for all, particularly through incorporating environmental justice, upholding Tribal treaty rights, accelerating the pace of retrofits through the Stormwater Management for Existing Development (SMED) program, and reducing toxic pollution.

1. Environmental Justice

In our March 2023 letter, we were encouraged that Ecology requested input on integrating benefits to overburdened communities and Tribal waters and resources into the Phase I, Western WA and Eastern WA Phase II Municipal Stormwater General Permits. We provided



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input that aligns with the Healthy Environment for All Act (HEAL Act) and the equity goals outlined in Ecology's 2023 – 2025 Strategic Plan. However, strong, actionable environmental justice elements are notably absent from the permits.

Despite the passage of HEAL Act, there are no requirements for municipalities to prioritize stormwater investments that benefit overburdened communities. Permittees are required to include overburdened communities in their public involvement and participation (Phase I: S5.C.4 and S5.C.11, WWA Phase II: S5.C.2 and S5.C.3, EWA Phase II: S5.B.1 and S5.B.2), Phase I permittees can apply a point factor for any work in an overburdened community, and Western WA Phase II municipalities have a reporting requirement for work in overburdened communities (Phase I and Phase II Western WA: Appendix 12). However, directed investments are not required.

While some permittees state that it is too difficult to incorporate environmental justice, others are actively finding ways to accomplish this and are doing so voluntarily. The path to reducing environmental health disparities caused by stormwater begins by setting initial requirements for all permittees, analyzing the outcomes, and refining them in successive permit cycles. We urge Ecology to incorporate the following changes into this permit cycle.

Incorporating the five Environmental Justice Principles:

In our March 2023 letter, we asked Ecology to require municipalities to integrate the Washington State Environmental Task Force's five Environmental Justice Principles into their decision-making process for stormwater investments. The Environmental Justice Task Force Final Report provides context for these principles.¹

Environmental Justice Principles:

1. *Achieve the highest attainable environmental quality and health outcomes for all people.*
2. *Adopt a racial justice lens.*
3. *Engage community meaningfully.*
4. *Be transparent.*
5. *Be accountable.*

Permittees should use these principles in determining where they work both in the SMED program (specific recommendations in the following section) and through their Stormwater

¹ <https://healthequity.wa.gov/councils-work/environmental-justice-task-force>



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Management Action Plan (SMAP) (S.5.C.6.d). In their SMAP, permittees should identify how they considered and incorporated these principles in selecting their priority sub-basin.

Another way to incorporate these principles is through the Stormwater Planning program (S.5.C.6), which directs permittees to convene an interdisciplinary team to inform and assist the development, progress, and influence of the program. The permit could require that a seat on this interdisciplinary team represents or is a part of an overburdened community that the municipality serves.

It is important that Ecology provide direction for incorporating environmental justice. Many municipalities are interested in or already incorporating environmental justice into their stormwater planning, as evidenced by voluntary participation in Municipal Environmental Justice Workgroups² and their Annual Reports. Providing requirements for planning and reporting gives those who have not yet adopted an environmental justice lens clear steps to do so.

Baseline requirements for environmental justice:

In our March 2023 letter, we were supportive of Ecology's goal to incentivize SMED projects in overburdened communities but disagree that a point factor alone would benefit overburdened communities. The point factor makes SMED projects in overburdened communities optional and allows permittees to treat half the water if done in an overburdened community. That is counter to achieving parity in environmental improvements and could be interpreted as these communities being half as important.

Instead, a minimum point requirement should be implemented. We recommend modeling this after the federal government's Justice40 Initiative, which established a goal that 40% of certain investments should benefit disadvantaged communities that are marginalized, underserved, and overburdened by pollution.³ Applying the same goal to the SMED program would ensure municipalities are investing in new stormwater controls in overburdened communities and making progress towards reducing environmental health disparities. We would like to see 40% of overall SMED program points for Phase I permittees earned through projects that benefit overburdened communities.

² <https://www.wastormwatercenter.org/permit-assistance/municipal/municipal-environmental-justice/>

³ <https://www.whitehouse.gov/environmentaljustice/justice40/>



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Additionally, we would like to see Phase I and Phase II permittees include the percentage of capital investments in overburdened communities in their Annual Reports. The Washington State Department of Health's Environmental Health Disparity Map provides a tool for identifying overburdened communities.⁴ Permittees simply need the latitude and longitude of a project to determine whether it is in an overburdened community. Since benefits do not follow strict geographic boundaries, permittees can also make the case that an investment could benefit multiple downstream communities as appropriate.

The Environmental Justice Task force recommends using the overall EHD Map rank 9 and 10 to identify highly impacted communities (scale ranges from 1, least impacted, to 10, most impacted).⁵ There is a linear relationship between EHD and life expectancy. At a rank of 6, life expectancy drops below the state average of 80.5 years. We recommend permittees report their percentage of capital investments in overburdened communities, using this information to identify their most impacted communities.

2. Tribal Sovereignty

Tribal Treaty-reserved resources:

Stormwater carries persistent chemicals like PCBs, dioxins, and mercury, into our streams and waterways.⁶ These chemicals accumulate in fish tissue and harm the health of humans who eat fish. Tribal communities consume more fish and shellfish than the non-Tribal communities, increasing the health risks experienced from this exposure pathway.

Concentrations of PCBs and PBDEs found in the tissue of juvenile Chinook migrating to Puget Sound from the Snohomish, Green-Duwamish, and Hylebos/Puyallup river systems are high enough to cause adverse effects in fish, including reduction in growth and disease resistance and altered hormone and protein levels.⁷ Additionally, 6PPD-quinone (6PPD-q) enters streams through stormwater, killing coho salmon and harming Chinook and

⁴ <https://fortress.wa.gov/doh/wtnibl/WTNIBL/>

⁵ 1

⁶ <https://apps.ecology.wa.gov/publications/publications/1209058.pdf>

⁷ <https://wdfw.wa.gov/sites/default/files/publications/01796/wdfw01796.pdf>



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steelhead.⁸ These inputs of toxic chemicals impair salmon survival, degrade water quality, and harm human health.

In August 2023, EarthJustice on behalf of the Yurok Tribe, the Port Gamble S’Klallam Tribe, and the Puyallup Tribe of Indians petitioned the U.S. Environmental Protection Agency (EPA) to establish regulations prohibiting the manufacturing, processing, use, and distribution of tires containing 6PPD under the Toxic Substances Control Act. 6PPD-q, the byproduct of 6PPD, is the second most toxic chemical to aquatic species.⁹ EPA recently agreed to address the petition.¹⁰

The petition states that 6PPD in tires poses an unreasonable risk to the environment and that Tribal cultures and economies of the West Coast have dramatically declined, in part due to 6PPD-q’s presence in our environment. The petition sites that the Port Gamble S’Klallam Tribe views, “the use of 6PPD in tires as a violation of the Tribe’s treaty rights, as well as EPA and Washington State’s failure to adequately deal with stormwater runoff.”¹¹

We request that the permit recognize the impact that polluted stormwater has on Tribal treaty-reserved resources, particularly salmon and shellfish, and the state’s obligation to sustainably co-manage these resources with Tribal governments.

Consultation with Tribes:

In our February 2022 and March 2023 letters, we requested that Ecology consult Tribes about how to incorporate Treaty-reserved resources and Tribal priorities into the permits. We emphasized the importance of reducing stormwater impacts to Tribes and resources used or potentially used by Tribes. Treaty-reserved rights, such as a 50-percent share of the harvestable run of fish in a Tribes’ Usual and Accustomed Areas (UAAs), must be upheld through management practices that ensure culturally and ecologically significant species of fish are healthy, abundant, and safe for consumption.

Understanding that public mapping resources do not reflect UAAs, we strongly encouraged Ecology to consult Tribes to understand if and how this information can be appropriately

⁸ <https://earthjustice.org/wp-content/uploads/2023/08/tsca-section-21-petition-to-epa-re-6ppd-in-tires.pdf>

⁹ 8

¹⁰ https://www.epa.gov/system/files/documents/2023-11/pet-001845_tsca-21_petition_6ppd_decision_letter_esigned2023.11.2.pdf

¹¹ 8



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communicated to municipalities to guide stormwater investments to benefit Tribes. However, the permits do not provide direction on Tribal consultation or mention Tribal-reserved treaty rights. The Stormwater Management Action Planning Guidance lists “actively seeking input from natural resource agencies and tribes” as a step in identifying priority watersheds, but gives no direction for how to seek input from Tribes. We request clarification on the process Ecology used to gather and incorporate information received from Tribes in the permits and guidance.

3. Stormwater Management for Existing Development (Phase I)

Municipalities must be required to retrofit existing development at the scale required to reduce the impacts of stormwater runoff on water quality, endangered species, human health, and infrastructure. Green stormwater infrastructure (GSI) provides stormwater management and co-benefits for communities, such as reducing heat-island effects, improving air quality, increasing access to greenspace, and improving mental and physical health.¹²

Accelerating the adoption of GSI is especially important for reducing environmental health disparities in overburdened communities that often experience cumulative impacts from exposure to multiple sources of pollution. We would like to see substantial improvements to the SMED program that accelerate the pace of retrofits for Phase I and Western WA Phase II permittees in the 2024 – 2029 permit cycle.

Total SMED Points (S5.C.7.d):

We appreciate Ecology’s willingness to increase the required SMED Program Points from what was proposed in the preliminary draft permit but remain disappointed by the proposed value. Most permittees will exceed the proposed point requirement, some by a large margin. Each permit iteration needs to accelerate progress.

In their 2022 Annual Reports, several permittees (ex. City of Seattle and City of Tacoma) reported thousands of SMED points, greatly exceeding the 300 points required by the 2019 – 2024 permit and the points proposed for the next permit iteration. Other permittees (ex.

¹² <https://www.sciencedirect.com/science/article/pii/S1618866721003277>



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Clark County and Snohomish County) reported SMED points in excess of both the current and next permit iteration. A higher point requirement is needed to improve over the current permit and incentivize permittees to complete additional stormwater retrofit projects.

We recognize the role that awarding points for street sweeping played in many permittees' calculations and agree with the new limits proposed. That is why in the previous 5-year permit, we flagged the risk that over use of street sweeping would allow permittees to circumvent progress on structural controls for developed areas. However, we also recognize that permittees were likely not tabulating and reporting points for all their SMED eligible projects because they were able to far surpass the requirements with street sweeping alone. We request that Ecology increase the required points to at least 1,500.

Phase I permittees have demonstrated their ability to construct regional-scale stormwater retrofits that provide biofiltration and community benefit, even in urban areas:

- Swale on Yale (Seattle, WA): 435-acre basin providing treatment and flow/flood control, as well as a bridge and seating area, interpretive signs, and over 20,000 plants installed in the four swales.¹³
- Point Defiance Regional Stormwater Facility (Tacoma, WA): 754-acre basin providing treatment and flow/flood control in a watershed located entirely within the Tacoma Smelter Plume.¹⁴

Minimum requirements for retrofits (S5.C.7.d.iii.):

We agree with the new requirement for permittees to achieve a minimum number of SMED Program Points through project types #1 – 5 (S5.C.7a.i.(a)-(e)), stormwater facility retrofits and substantial stormwater maintenance projects. We would like to see this requirement increased to at least 450 points.

In the draft permit, 200 of 750 Program Points, or 27%, must be achieved through project types #1 – 5. In the preliminary draft permit, it was proposed that 150 of 500 Program Points, or 30%, were to be achieved through project types #1 – 5. At a minimum, 30% of

¹³ <https://www.seattle.gov/util/restoreourwaters/docs/swale%20on%20yale.pdf>

¹⁴

https://www.cityoftacoma.org/government/city_departments/environmentalservices/surface_water/green_stormwater_infrastructure_gsi/_gsi_projects/point_defiance_regional_stormwater_treatment_facil



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Program Points should be achieved through project types #1 – 5, as was proposed in the preliminary draft permit. This could be met by implementing a minimum requirement of 1,500 total Program Points, 450 of which are met through project types #1 – 5.

Completion and design stage point allocation (S5.C.7.d.iv.):

In our March 2023 letter, we asked Ecology to decrease the points required for design stage projects and increase the points required for completion or maintenance stage projects. As stated in the fact sheet, annual reporting by permittees shows that Program Points reported fall largely within the completion or maintenance stage.

Awarding points for design-stage projects was an interim solution for the 2019 – 2024 permit. Now that this concept has been in one permit cycle, Ecology should only award design-stage points for innovative projects constituting no more than 10% of the overall required points. This will incentivize timely completion of stormwater projects and align with many municipalities' current reporting breakdown.

High Pollutant Generation Transportation Areas (HPGTAs) (Phase I Appendix 12):

In our March 2023 letter, we agreed with the proposal to define and incentivize stormwater investments in High Pollutant Generating Areas (HPGA), now renamed High Pollutant Generating Transportation Areas (HPGTA). We appreciate the addition of “transportation” to this term which further clarifies that highly trafficked roads and centers of industrial activity or dense development are the primary target. However, we disagree with removing “areas that drain to Superfund-designated receiving waters” from the definition and request that this language be added again.

We recommend including Model Toxics Control Act (MTCA) sites in the definition with areas draining to Superfund-designated receiving waters. MTCA sites are disproportionately located in communities of color and lower-income communities.¹⁵ WCA has engaged closely in the ongoing MTCA rulemaking and has made numerous recommendations to address environmental justice and crosswalk the program with stormwater controls. We recommend that Ecology's Water Quality Program consult with Ecology's Toxic Cleanup Program on mutually beneficial language regarding MTCA sites in the stormwater permits.

¹⁵ <https://frontandcentered.org/mtca-report/>



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Furthermore, we request “discharges to surface receiving waters that support salmonids, including water bodies where pre-spawn mortality of coho and other salmon has been identified,” is added to the definition to directly address the prevalence and consequence of 6PPD-q in runoff from HPGTAs.

Project type #10 (Phase I S5.C.7.a.ii.(d) and Phase I and Western WA Phase II Appendix 12):

Project type #10, permanent removal of impervious surfaces, allows permittees to receive one SMED Program Point, or project type factor of 1.0 for Phase II, for removal of one square foot of impervious surfaces. A single, standard parking space (8.5' wide, 16' long) is 136 square feet, meaning a permittee could remove the pavement of just parking space and earn 18% of the proposed Program Points required. Municipalities have a demonstrated ability to work at scale for this type of retrofit. For example, the City of Tacoma's Oakland Neighborhood Permeable Pavement Project will replace 20 city blocks (made of 28' wide streets) with pervious pavement that will fully infiltrate an 18-acre neighborhood.

From our recent conversation, we understand that the draft permit may contain a typographical error, and that Ecology may have intended for it to read 1.0 times acre of impervious surface removed, rather than 1.0 times square foot of impervious surface removed. However, Appendix 12 of the 2019 – 2024 permit also reads 1.0 times square foot of impervious surface removed. We request that Ecology makes the needed correction before issuing the final permit so that permittees are not able to claim an outsized number of Program Points.

Stormwater Management for Existing Development (Phase Western WA II)

We appreciate that elements of the Phase I SMED program will be extended to Phase II Western WA permittees in the 2024 – 2029 permit. Several Phase II municipalities have populations exceeding the 100,000-threshold used in 1990 to determine which municipalities were covered by the Phase I permit. Growing municipalities come with an increased need for retrofits.

The Phase II retrofit requirement must be increased to adequately address the scale of stormwater pollution in Western Washington communities by implementing the following recommendations.



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Proposed Level of Effort (Appendix 12): We are encouraged that retrofits are required for Western WA Phase II permittees as a component of the next permit iteration, however the level of effort of 5 acres per 50,000 people is far below what is needed and what permittees can achieve. The draft permit requires most municipalities to treat 0.3 to 15 acres through stormwater retrofits. This proposed level of effort will not significantly improve on the previous permit requirements or materially reduce stormwater pollution.

In their Planning Stormwater Parks report, the Puget Sound Regional Council reports on seven stormwater parks in the Central Puget Sound Region that were developed by municipalities, five of which are Phase II permittees, in response to flooding, degraded water quality, and failing or inadequate infrastructure.¹⁶ These voluntary retrofits have the bonus of providing community benefit through expanded greenspace, new recreation opportunities, water access areas, and reducing the urban heat island effect.

- **Arlington Stormwater Wetland Park:** 280-acre basin, provides treatment and flow/flood control, as well as trails, water access, wildlife viewing.
- **Kitsap County Manchester Park:** 100-acre basin, provides treatment and flow/flood control as well as a community gathering space.
- **Shoreline Cromwell Park:** 109-acre basin, provides treatment and flow/flood control as well as trails and wildlife viewing.
- **Bellevue Lakemont Community Park:** 215-acre basin, provides treatment and flow/flood control as well as trails, and recreation areas.
- **Poulsbo Mountain Aire Stormwater Pond and Trails:** 39-acre basin, provides treatment and flow/flood control as well as trails.

The proposed level of effort for Phase II permittees requires stormwater management of only two acres for Arlington, 7.5 for Kitsap County, 5.9 for Shoreline, 15 for Bellevue, and 1.2 for Poulsbo. Outside of the demonstrated ability of Phase II permittees to exceed these requirements, the level will not make substantial progress towards achieving the regional water quality outcomes needed to restore and protect clean water. We recommend increasing the level of effort by at least two orders of magnitude.

Provisions for meeting requirements (Western WA Phase II Appendix 12):

¹⁶ <https://www.psrc.org/media/7331>



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We appreciate that opportunistic stormwater controls, modeled after the Phase I SMED program, are eligible to receive credit towards acres managed in the Phase II SMED program. Prioritizing retrofits and aligning the Phase II program with the Phase I program is important for a comprehensive approach to stormwater pollution reduction. We request that Ecology implement a minimum requirement for opportunistic stormwater investment types 1 (a – d) and 2 in the Phase II program, like the requirement for project types 1 – 5 in the Phase I program (S5.C.7.d.iii).

We appreciate that the Phase II SMED program leverages implementation of the projects identified through the Stormwater Management Action Plan (SMAP). However, use of this provision should prioritize structural Best Management Practices (BMPs) such as stormwater facility retrofits. If the SMAP indicated that structural BMPs were infeasible, or alternative stormwater management approaches were more beneficial, a limit should be imposed on the equivalent acres a permittee can earn through this provision and opportunistic stormwater control project types 1 (a) – (d) (Appendix 6) should be prioritized instead.

4. Tree canopy

We support Ecology's proposal to better address the ecosystem and stormwater management services of tree canopy in the permits. As stated in our December 2022 letter, tree canopy acts as a distributed stormwater retention mechanism that also provides multiple non-stormwater benefits that include public health, biodiversity, and carbon sequestration. Canopy cover provides significant stormwater benefits. It reduces erosion caused by falling rain and provides surface area for evaporation. Tree roots uptake water and promote infiltration and transpiration. These functions decrease runoff to nearby surface waters in a way that more closely aligns with the natural water cycle of a forested area.

Implementation plans:

We urge Ecology to set specific requirements for tree canopy implementation plans (S5.C.6.c.ii). These should include documentation of the staffing and programs that



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municipalities intend to utilize to meet their targets. An example shared in our December 2022 letter is the City of Tacoma, which has extensively mapped tree canopy cover and found that it has the least amount of tree canopy as a percentage of land cover for all communities assessed in the Puget Sound Region¹⁷ at 20%. Tacoma established a target of 30% canopy cover by 2030¹⁸ then subsequently terminated the position responsible for this within city government. Establishing a target with no mechanism to achieve that target is simply a paper exercise and not one that results in increased stormwater improvements within municipal boundaries.

Previous western Washington permits required municipalities to update development codes to make low impact development (LID) the preferred and commonly used approach to development. Compliance has been mixed.¹⁹ Among other requirements, permittees were required to identify specific tree species for their communities (“Growing the Right Trees” in Nature’s Scorecard). Out of 83 permittees, 19 had not done so as of 2019. Canopy cover is one example of LID that needs more specific requirements to actualize the benefits of retaining and expanding tree cover. As part of these requirements, we recommend that permittees develop a tree retention policy for trees greater than 12 inches in diameter. Retaining mature trees is especially important in areas that do not meet canopy goals, and in absence of Ecology-specified tree canopy targets. We request that Ecology make these changes before finalizing the permits.

Aligning with Comprehensive Growth Management Plans:

Many Phase I and Phase II permittees in the Puget Sound region have already established tree canopy goals and all are updating their Comprehensive Growth Management Plans by June 30, 2025. We request Ecology require municipalities set their tree canopy goals by June 30, 2025, rather than December 31st 2028 (S5.C.6.c.ii) to ensure that tree canopy goals are integrated with growth management plans. We do not agree that this program should be delayed until 2028 and siloed from Comprehensive Growth Management Plans. We encourage Ecology to set the earlier deadline.

Addressing environmental justice:

¹⁷ <https://www.cityoftacoma.org/cms/one.aspx?pagelid=35885>

¹⁸ <https://www.cityoftacoma.org/cms/One.aspx?portalId=169&pageId=179775>

¹⁹ <https://naturescorecard.files.wordpress.com/2019/05/lid-nature-scorecard-for-web.pdf>



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As stated in our December 2022 letter, several studies have found that tree canopy cover is lower in communities of color. House Bill 1114 in the 2021 legislative session addressed the Urban Heat Island effect and encouraged utilities to develop tree planting programs that specifically “give special consideration to achieving environmental justice in goals and policies, avoid creating or worsening environmental health disparities, and make use of the Department of Health’s EHD map to help guide engagement and actions.”²⁰

The bill references “protect[ing] public health by removing harmful pollution from the air and prioritize in communities with environmental health disparities.” The same law outlines benefits to stormwater control as well, requiring that tree planting “protect water quality and public health by reducing and cooling stormwater runoff and keeping harmful pollutants from entering waterways, with special attention given to waterways vital for the preservation of threatened and endangered salmon.”

The Washington Health Disparities Map provides important context for the socioeconomic factors and environmental exposures that communities face. While census blocks do not match municipal boundaries, they can be clipped to those boundaries for analysis. We request that Ecology require permittees utilize this tool in developing their tree canopy goals.

5. Street sweeping (Phase I: S5.C.10; WWA Phase II: S5.C.9; EWA Phase II: S5.B.6)

We appreciate that a street sweeping requirement is proposed for the first time for Phase I and Phase II municipalities, and that only sweeping beyond the proposed frequency (four times per year for Phase I and three times per year for Phase II) will count as SMED Program Points for Phase I. This allows the SMED program to focus on retrofits while incorporating an important source control BMP into permit requirements for Phase II permittees.

Accelerate street sweeping program:

As stated in the factsheet, many municipalities already sweep the roads most used by vehicles as part of standard operating and maintenance. Many Phase I municipalities in particular have street sweeping programs in place and were counting sweeping towards

²⁰ <https://app.leg.wa.gov/billsummary?BillNumber=1114&Year=2021&Initiative=false>



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their SMED Program Points in the last permit cycle. The factsheet also states that street sweeping may have a high potential to be an effective source control BMP for tire wear particles, including 6PPD and 6PPD-q.

The implementation of this program should not be delayed until July 1, 2027, especially for permittees who already have a street sweeping program in place. We recommend accelerating the date for new program development and requiring municipalities who have a program in place to continue sweeping high priority areas while developing their updated program. As one of the only known source control BMPs with a high potential of preventing 6PPD-q from entering our waterways, we cannot delay implementation.

High priority areas (Phase I: S5.C.10; WWA Phase II: S5.C.9; EWA Phase II: S5.B.6):

We appreciate several updates to the high priority areas, including (e) Municipal roads that serve commercial or industrial land use areas, (d) Areas with significant tree canopy with seasonal leaf litter drop, and specific mention of areas with significant tire wear.

We recommend adding the following underlined text to the high priority areas:

- (a) High traffic roads, such as arterials and roads with Annual Average Daily Traffic (AADT) of 5,000 or greater.
- (b) Accessible curb and gutter streets - permittees may need to implement parking restrictions or other effective methods to optimize pollutant removal.
- (c) Areas with significant tire wear, e.g. roundabouts, high traffic intersections, municipal-operated parking lots.
- (d) Areas with significant tree canopy with seasonal leaf litter drop.
- (e) Municipal roads that serve commercial or industrial land use areas.
- (f) MS4 basins that discharge to surface receiving waters that support salmonids, including waterbodies where pre-spawn mortality has been identified.
- (g) All paved surfaces contributing to water bodies that are impaired by toxic chemicals, including rivers and streams discharging to 303(d)-listed marine waters.
- (h) All paved surfaces directly connected to streams or waterbodies with stormwater conveyance structures.



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Ecology should confer with the Washington Department of Transportation on acceptable equipment performance specifications for street sweepers and make recommendations to permittees. Not all street sweepers are designed for fine particles that are known to be associated with 6PPD-q contamination.

Timeline for street sweeping:

We appreciate that permittees can document reasoning for alternative sweeping timing and frequency based on local conditions, e.g., climate, and seasonal events, and estimated pollutant deposition quantities. We agree that street sweeping should be required at least once before the rainy season, however, the timeframe of July – September provides a window that may not coincide with the start of the rainy season.

For example, if permittees sweep in July and the first flush does not occur until late October, pollution will accumulate over several months after sweeping and prior to receiving significant rainfall. We recommend that Ecology provide clearer recommendations and resources for permittees about when sweeping should occur to achieve the greatest ecological benefit throughout the year, recognizing that it does not always align with a schedule based on historical data. As our climate and seasons continue to change, permittees should have up to date information on when and how to allocate these resources for the greatest benefit.

Street waste disposal (Appendix 6):

Option number 3 for street waste liquid disposal in Appendix 6 allows an operator to discharge clear decanted water removed from the street while sweeping during rain events into the storm drain collection system if the sweeper stays in place for a minimum of 15 minutes at the discharge location to allow solids to settle prior to decanting water from the storage tank.

This disposal method undermines the purpose of sweeping as a source control BMP for 6PPD-q by allowing wash water that may contain tire wear particles to be discharged directly into the storm drain of the area that was swept. Street sweeping is one of the only known source control BMPs with a high potential of preventing 6PPD-q from entering our waterways. Knowing this, municipalities cannot be permitted to discharge wash water directly into storm drains under any circumstances. We request that Ecology work with



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municipalities to devise alternate methods of disposing of wash water during rain events and remove this as a disposal option.

6. Stormwater management program

MS4 Mapping and documentation (Phase I: S5.C.2; WWA Phase II: S5.C.4; EWA Phase II: S5.B.3.a)

We agree that permittees should map and report outfall locations to Ecology through a standardized template. Additionally, we are supportive of the proposal for permittees to map and assess acreage of MS4 tributary basins to outfalls or discharge points that have stormwater treatment and flow control BMPs or facilities owned by the permittee. We appreciate the requirement for permittees to then submit a map and breakdown of acres managed or unmanaged by stormwater treatment and flow control BMPs with the Annual Report.

This requirement should be expanded to require municipalities to document the type of BMP at each location and the benefits provided (i.e., what pollutants are addressed, does it provide flow control only or flow control plus pollution prevention, etc.). This would aid our understanding of how effectively the permits are managing stormwater, information necessary to make improvements at each permit reissuance. This information should also be available to the public electronically along with Annual Reports and supporting documents.

7. 6PPD-quinone (6PPD-q)

Legislative direction:

In 2021, the Washington State Legislature passed a proviso appropriating \$532,000 of the model toxics control operating account to Ecology to work with the Department of Transportation, University of Washington Tacoma and Washington State University Puyallup to identify priority areas affected by 6PPD, develop BMPs for reducing toxicity,



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and develop a standard method for the laboratory measurement of 6PPD-q and related chemicals.²¹

The report submitted by Ecology to the legislature in November 2022 indicated that Manchester Environmental Laboratory (MEL) had completed method development for 6PPD-q in water samples but neither MEL nor University of Washington Tacoma had received accreditation. At that time, a method for sampling sediment had not been developed.²² In August 2023, when the draft municipal stormwater permits were made available, there were still no laboratories accredited for 6PPD-q sampling. As the factsheet states, the absence of laboratory accreditation has stalled regulatory processes.

In our recent discussion, we learned that MEL is the only laboratory that will be accredited in Washington. This will create a significant bottleneck and Ecology must work quickly to expand the network of accredited laboratories across the state. The ramifications of these delays are significant for Treaty rights, salmon populations, and frontline communities.

Including 6PPD-q in permit requirements:

6PPD-q should be named and explicitly associated with BMPs in the permits as soon as possible. Municipalities already receive information throughout the permits for other chemicals of concern, like PFAS and PCBs, including requirements for source control BMPs when either chemical is likely present. The permit should note that 6PPD-q is a chemical concern that is highly concentrated in road runoff and should be controlled with BMPs such as street sweeping and bioretention along roads.

Another option is to adapt the PFAS language (S2.B.3.a) that directs permittees to coordinate with firefighting agencies/departments that serve areas that drain to the MS4 to develop a PFAS management plan. Similar language could direct permittees to work with their transportation, roads, or public works departments to develop a plan that reduces 6PPD-q in the MS4 through source control BMPs such as street sweeping, reduction in roads or parking lots, and reduction in vehicle miles traveled and treatment BMPs such as bioretention along roads and prioritizing retrofits in HPGTAs.

²¹ <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5092-S.sl.pdf>

²²

https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=ECY%206PPD%20in%20Road%20Runoff%20Report_32dc8c92-b98a-4023-97f2-d6d2ec19b390.pdf



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8. Education and Outreach

Stormwater is the largest source of water pollution in urban areas of our state. The public should have an active role in shaping stormwater goals that affect their community and access to sufficient education and outreach opportunities to inform and catalyze their input.

Public involvement and participation (Phase I: S5.C.4; WWA Phase II: S5.C.3; EWA Phase II: S5.B.2):

We agree that permittees should make their SWMP and Annual Report available electronically by May 31 each year. We request that Ecology also require municipalities to make information such as outfall maps and SMED data accessible to the public. These provide needed context and supporting information for the public to understand the Annual Reports. Making these documents available by request only decreases public engagement and understanding of stormwater management.

We appreciate that permittees must identify opportunities for overburdened communities to participate in the decision-making process for development, implementation, and update of the SWMP and SMAP. However, we do not think the permit provides enough information about how to accomplish this. Outreach is not a one size fits all process or a box to check in the Annual Reports.

For equitable outreach, permittees should be required to incorporate language justice, a principle which uplifts the rights of people to communicate in their primary language, into planning. The draft permit does not require permittees to deliver materials, outreach, or education in any language other than English. Ecology should require permittees to work with the community to understand the language needs and provide interpreted materials when necessary.

We understand that developing and implementing education and outreach programs requires dedicated and qualified staff who have experience engaging with diverse audiences. Since not every municipality may have this full capacity, we recommend encouraging collaboration on regional outreach and education efforts. This can occur across municipalities, with conservation districts, and with community-based organizations



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who know the needs of their community members and how best to engage them. This can reduce the burden on smaller municipalities and ultimately lead to a more effective and comprehensive outreach strategy.

Thank you again for the opportunity to provide comments on the Phase I and Western Washington and Eastern Washington Phase II Municipal Stormwater Permit reissuance. If you have any questions about the above, please do not hesitate to contact us.

Sincerely,

Katie Byrnes

Toxics and Stormwater Policy Manager