

Bonnie Blessing to Dept of Ecology April 23, 2025

Thank you for the opportunity to comment on the 2025 Construction Stormwater General Permit¹.

I tried to read through the 40CFR131.12 to see if the CSWGP is consistent with it.

Comment 1. Pertinent to

S3, S1.E.1, S.2. S3. Compliance with standards

Permit condition S1.E.1 and S2. My request; Can the State do Tier 2 reviews?

This condition (S1.E.1) says post-construction is not covered by this permit. And the same condition says that an alternative coverage may be required if Ecology determines a CSWGP does not adequately water quality. But when does Ecology ‘determine’ such a thing if Ecology does not ‘review’ discharges to Tier 2 waters.

This statement asks Ecology to review SEPA and SWPPS:

S3 is confusing because Ecology ‘presumes’ that WQ standards are protected in receiving waters without taking a ‘look’? And especially appalling and scary for us is how is it that Ecology doesn’t review SEPA or SWPPS above waters that are of high quality?

Those waters can have more salmon and are getting rare.

Those waters are often in the Phase 2 communities and can also be near roads that are already stressed from existing runoff. So, taking a look seems like a good idea.

Then if someone wants to build, an old SEPA may not catch those problems that Ecology staff could have seen.

Can Ecology please start reviewing SEPA checklists or take another look especially if receiving waters are high quality!

The Fact sheet says that

Tier 2 review will not be done (see page 12-13 of the Fact Sheet

for the 2026 future permit², Ecology says that the PCHB gives deference to Ecology’s interpretation of WAC 173-201A-320(6) when PCHB allegedly said in PCHB 09-135 to 141 (attached as the Copper lawsuit thing). Specifically:

¹ <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Construction-stormwater-permit#review>

² page 12 to 13 of <https://fortress.wa.gov/ecy/ezshare/wq/permits/CSWGP-2026-FactSheet.pdf>

We also give deference to Ecology's interpretation of WAC 173-201A-320(6) and how it should be applied in the context of general permits. It is reasonable and valid for Ecology to conclude that this rule allows the adaptive management scheme of the permit, combined with regular updates of the SWMM which capture new and emerging technologies, to stand as the method to comply with antidegradation requirements in the general permit context."

Ecology's interpretation is not super logical because the circumstances are different now than they were back in 2011 when that case was discussed:

Question on Ecology's interpretation of PCHB 09-135-141

Can Ecology please explain how Ecology came to the interpretation that Tier 2 review does not need to be done because of this cited case:

a. Because although the Board did say (on page 64 of PCHB 09-135) that in that particular case, Ecology did properly comply with proper Tier 2 and that the Board gives deference to Ecology's interpretation of WAC 173-201A-320(6), this case does not support Ecology's decision to not do Tier 2 review because the situation and circumstances now differ from the situation of that case in 2011:

i. at that time, the Board cites RCW 90.48.555 which at that time was still on the books which says compliance is by doing stuff in the Manual and Ecology at that time said feasibility under those waiver provisions will not include economic

ii. Permittee complies with water quality standards when the Permittee is fully complying with all the BMPs in the Technical Manual of Ecology (p 69) because of RCW 90.48.555.

But that RCW is no longer 'on the books so the circumstances are different

b. And,

the Board (page 62) said that the

adaptive process will include a way to obtain information to ensure full compliance with this chapter and that, at that time there was lack of adaptive management as required by RCW 90.48.555(8),

But the adaptive process is not followed at all now. Or my understanding is that the 'adaptive process' means to not do site-specific review and not The adaptive process seems to be not reviewing SEPA or SWPPP of projects that discharge at all above high quality waters.

And Ecology will not review SEPA or the Stormwater Pollution Prevention Plan. This is insane because mistakes made then snowball through the process.

2) Fix the lack of review:. To improve compliance, a new requirement for Ecology to review SWPPPs and SEPA prior to the coverage of a CSWGP. For instance, (Ecology does not see the SEPA or the SWPPP (discussed on page 15 of Bellingham v. Ecology/PCHB No. 11-164, 5)

Ecology does not review site-specific actions because it adopted the WAC 173-201A-320(6)(a) but was that logical because of the 09-135/141 at this time because the circumstances have changed?

Comment 2:

Permit Condition 2.A.1.c. and 2.

Ecology says two opposing things. First, the permit itself says that Ecology reviews public comments on page 10 of the permit draft³ by first seeing if the discharges would cause a change in receiving water quality and if so whether the project is necessary and in the OPI according to Tier 2 review. This is required by federal antidegradation standards. Ecology even wrote guidance for Tier 2 water quality⁴ that say that increases in impervious lower water quality. Such increases happen now above high quality waters so can Ecology do Tier 2 or can Ecology just shut down all development?

To meet federal standards (Condition S3), doesn't OPI have to be considered. For site-specific places which are not even known now. Can Ecology use surveys from comprehensive plans to inform whether the public is truly interested in additional shopping and paving above our homes, septic tanks and wetlands.

In Tumwater, environmental quality was twice as important as shopping and housing options⁵ by the survey results in the comp plan. Can Ecology consider using the comp plan surveys, actual surveys to inform public interest?

It is so not in the public interest to pay more in fees to make up for additional changes to flow and volume from additional warehouses or housing.

³ <https://fortress.wa.gov/ecy/ezshare/wq/permits/CSWGP-2026-DraftPermit.pdf>

⁴ <https://apps.ecology.wa.gov/publications/documents/1110073.pdf>. (I have a hardcopy as well).

⁵ page 41 of <https://www.ci.tumwater.wa.us/home/showpublisheddocument/12050/636185237795770000>

Comment 3) Avoid creating ecological traps where listed species can reach them/

Comment 4) Avoid adding increases in flow 99% of the time to high quality waters.

Comment 5) Avoid adding changes to increases in volume of 20% where things discharge to high quality receiving waters because that can change wetland water quality.

Comment 6) Consider the effects of rain on snow because that can increase both volume and runoff and affect downstream roads and infrastructure and car habitat.

Comment 7) Please protect Oregon spotted frog habitat. This is an existing use as wildlife and wildlife habitat. Doing so also protects salmon and road infrastructure.