

# **Industrial Stormwater General Permit**

## **Addendum to Fact Sheet: Appendix C - Response to Public Comments**

**October 21, 2009**

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## LIST OF COMMENTORS

Alaska Airlines/Horizon Air  
Albert, Leon and others  
Anchor QEA, LLC  
Associated Hygienic Products, LLC  
Association of Washington Business  
Bell Lumber and Pole Company  
Block, Jeremy  
BNSF Railway  
Boeing Company, The  
Boise Building Solutions Manufacturing, LLC  
BP West Coast Products, LLC  
Brincefield, Elvin  
Brownle, Tom and others  
Buse Timber & Sales  
Buse Timber & Sales  
Cambria Corporation  
Cappaert, Cynthia  
City of Bellingham  
City of Everett  
City of Longview  
Clancy, Jon and Cheryl  
Clough, Wally  
Columbia Riverkeeper  
Columbia Vista  
Compass Aerospace Northwest  
Copper Development Association  
Covey, Tim  
Crop Production Services  
Darigold, Inc.  
Dawson Consulting, LLC  
Dickmeyer, Roy  
Dion, Donna  
Drake, William  
Echo Bay Minerals  
Emerald Services, Inc.  
Environmental Compliance Tools, LLC  
Fabricated Products, Inc.  
Fazekas, Bill

## **List of Commentors Continued:**

Fleming, Barry  
Fry, Travis  
Gandalf Consulting Ltd.  
Gary Merlino Construction Co. Inc.  
General Recycling of Washington, LLC  
Green Garden Food Products, Inc.  
Greenwalt, Stacie  
Hecla Limited  
Hector, Jeff  
Hock, Lee  
Houston, William R.  
Howden, Sean  
Independent Business Association  
Interfor Pacific  
J.R. Simplot Company  
Jensen Shipyard  
Johnson, David T.  
Johnson, Robert N.  
Jorgensen Forge  
Kennedy/Jenks Consultants  
Kennedy/Jenks Consultants  
King County  
King County  
Klitzke, John M.  
Lakes Auto Wrecking, Midland Auto Wrecking  
Landau Associates, Inc.  
MacMillan-Piper, Inc.  
Manufacturing Industrial Council  
McCart, Chris  
Miller Nash  
Miller Shingle Company, Inc.  
Milne Fruit Products, Inc.  
Murphy  
NAI Puget Sound Properties  
National Oceanic and Atmospheric Administration  
Niebuhr, Carl  
Nisqually Environmental Sampling and Consulting  
Northland Services, Inc.  
Northwest Food Processors Association

## **List of Commentors Continued:**

Northwest Pulp & Paper Association  
Nykreim, Mike  
Ocean Beauty Seafoods, LLC  
Olympic Panel Products  
Pacific Topsoils, Inc.  
People for Puget Sound  
Phelps, Don  
Pierce County Recycling, Composting and Disposal, LLC  
Port of Bellingham  
Port of Seattle  
Port of Vancouver  
Precision Iron Works, Inc.  
Puget Sound Energy  
Puget Soundkeeper Alliance, Columbia Riverkeeper, and Spokane Riverkeeper  
Rice, Richard D.  
Schnitzer Steel Industries  
Smith, Gary  
Smith, Kendal  
Teck American Incorporated  
Thong, Darlene  
TMI Forest Products, Inc.  
Trident Seafood Corporation  
Unimin Corporation  
Union Pacific Railroad Company  
Vanderburgh, Ken and others  
WaferTech, LLC  
Washington Public Ports Association  
Washington State Department of Natural Resources  
Washington State Department of Transportation  
Waste Management of Washington, Inc.  
West, Arthur  
Weyerhaeuser  
White, David

## Summary of Significant Changes to the Draft Industrial Stormwater General Permit

Ecology reviewed and considered all comments submitted on the Draft Industrial Stormwater General Permit. Ecology has made significant changes to the draft permit, which are included in the final Industrial Stormwater General Permit, issued October 21, 2009.

The most significant changes are summarized below. The legal and technical basis for changes related to each public comment is included, as appropriate. Where language has been added, the new permit language is underlined. Deleted language is denoted with a “strikethrough” line, e.g., ~~stormwater~~.

Individual comments and responses are provided in the attached spreadsheet.

### **S1.A. Facilities Required to Seek Coverage Under This General Permit**

*Several commentors requested clarification on the permit requirements for facilities in the transportation sector (SIC codes 40XX, 41XX, 42XX, 43XX, 44XX, 45XX, and 5171). Ecology reviewed the applicable federal regulations, EPA’s Multi-Sector General Permit, discussed the issue with EPA (Region 10 and Headquarters). Changes have been made to Table 1 to improve clarity. One of these changes is to include “material handling facilities” in the criteria for permit coverage at transportation facilities [40 CFR 122.26(b)(14)]. Once a transportation facility obtains permit coverage, the specific areas and stormwater discharges authorized by the permit become site specific. Ecology disagrees with one commentor’s suggestion that maintenance activity conducted away from the maintenance shop is not covered under the permit. The intent of the ISWGP is to cover all vehicle maintenance activities at industrial facilities, not just those performed at the physical location of the shop. Since this section of the permit is to specify which type of facilities require permit coverage, Ecology has decided to take the approach in EPA’s MSGP and not include the “only those portions of the facility that are involved in vehicle maintenance...” statement requested by several commentors. Ecology also added definitions of “vehicle maintenance” and “material handling” based on EPA’s Final Phase I Stormwater Rule.*

#### **Revise S1.A.1 Table 1; Add “material handling facilities”:**

Transportation facilities which have <i>vehicle maintenance</i> shops, <u>material handling facilities</u> , equipment cleaning operations, or airport deicing operations:	
• Railroad Transportation	40xx
• Local and Suburban Transit and Interurban Highway Passenger Transportation	41xx
• Motor Freight Transportation (except SIC 4221–25)	42xx
• United States Postal Service	43xx
• Water Transportation	44xx
• Air Transportation	45xx
• Petroleum Bulk Stations and Terminals	5171

**Revise Appendix B Definitions; Add Material Handling, and Vehicle Maintenance:**

Material Handling means storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.

Vehicle Maintenance means the rehabilitation, mechanical repairing, painting, fueling, and/or lubricating of a motor-driven conveyance that transports people or freight, such as an automobile, truck, train, or airplane.

**S1.C. Facilities Not Required to Obtain Coverage**

*A commentor requested that S1.C include clarification that facilities that discharge all stormwater to ground (e.g., stormwater infiltration) are not required to obtain permit coverage. Ecology agrees that this change is consistent with the Phase I and II stormwater rules, and has added appropriate language to S1.C.3:*

**Revise S1.C.3:**

Industrial facilities that discharge stormwater only to groundwater (e.g., on-site infiltration) with no discharge to surface waters of the state under any condition.

**S1.D.5. Facilities Excluded from Coverage**

*Several commentors expressed concern that municipally owned vehicle maintenance shops would require coverage under the draft ISWGP. However, municipally owned vehicle maintenance and storage facilities are classified as SIC 16xx (which is not in S1.A. Table 1) and therefore are not categorically required to obtain permit coverage. If a municipality operates a facility that is listed in S1.A. Table 1, permit coverage under the Industrial Stormwater General Permit is required. To improve clarity and reduce confusion, S1.D.5 has been revised:*

**Revise S1.D.5:**

Any facility authorized to discharge stormwater associated with industrial activity under an existing NPDES individual or other *general permit*. ~~This exclusion does not apply to stormwater discharged under the authority of a Phase I or Phase I municipal stormwater permit, except the Washington State Department of Transportation (WSDOT) municipal stormwater permit, which authorizes the discharge of stormwater associated with industrial activity from WSDOT vehicle maintenance facilities.~~

**S1.F. Conditional "No Exposure" Exemption**

*A commentor requested that S1.F include clarification regarding the processing of requests for Condition "No Exposure" (CNE) Exemptions. Particular concerns included facilities placement in "on-hold" status under the old permit indefinitely. Ecology has revised S1.F.1.a so that CNE requests are either approved or denied within 90 days, which allows Ecology time to schedule and conduct an inspection to verify that the site-specific conditions for a CNE exemption have been met.*

**Revise S1.F.1.a:**

- ~~a. Upon receipt of a complete and accurate No Exposure Certification Form, the No Exposure exemption is automatically granted in 60 days, unless the applicant is informed in writing within 60 days that the request is denied or that additional information is required.~~
- a. A Permittee is automatically granted a No Exposure exemption 90 days from Ecology's receipt of a complete and accurate No Exposure Certification Form, unless Ecology informs the applicant in writing or electronically within 90 days that it has denied or approved the request.

**S2.C Permit Coverage or Permit Modification Timeline**

*A commentor requested that S2.C. be modified to provide a confirmation by the Department that a complete application was received by the Department. Ecology has decided against writing Ecology's response into the general permit, but has revised S2.C.1 to provide additional clarity:*

If the applicant does not receive notification from Ecology, permit coverage or modification of coverage automatically commences on whichever of the following dates occurs last:

- a. The 31<sup>st</sup> day following receipt by Ecology of a completed *application* for coverage or modification of coverage form.
- b. The 31<sup>st</sup> day following the end of a 30-day public comment period.
- c. The effective date of the *general permit*.

**S2.C Permit Coverage or Permit Modification Timeline**

*A commentor requested that S2.C. be modified to provide a timeline for Ecology notification is additional information is required for an application. Ecology has revised S2.C.3 to provide additional clarity:*

- 1. When Ecology needs additional time:
  - a. Ecology will notify the applicant in writing within 30 days and identify the issues that the applicant must resolve before a decision can be reached.
  - b. Ecology will submit the final decision to the applicant in writing. If Ecology approves the *application* for coverage/modification, coverage begins the 31<sup>st</sup> day following approval, or the date the approval letter is issued, whichever is later.

**S3.B.4 Best Management Practices (BMPs)**

*Many commentors requested that Condition S3 be modified to list exceptions or alternatives for several of the mandatory BMPs listed in S3.B.4 (e.g., vacuum sweeping, lids on dumpsters, catch*

basin maintenance, roofs over material storage areas, spill prevention, erosion and sediment control BMPs, etc.).

*In an effort to reduce complexity and the length of the permit, Ecology decided against listing out all the various site conditions, industrial activities, or reasons that would justify an exception or alternative to mandatory BMPs. The permit includes language that allows permittees to document the basis for omitting individual mandatory BMPs, if site conditions render the BMP unnecessary, infeasible, or the Permittee provides alternative and equally effective BMP. To claim such an exception, the Permittee must clearly justify the exception or alternative BMP in the SWPPP.*

*Other commentors objected to the July 1, 2010 timeline to update the SWPPP and install the new BMPs on-site, and expressed concern that no SWPPP/BMP requirements would be in effect for the 1<sup>st</sup> 6months of the permit (January 1 – July 1, 2009).*

*To clarify the timeline for permittees to update SWPPPs to include the new mandatory BMPs in S3.B.4 and provide permittees some flexibility with the exact suite of BMPs that are appropriate and necessary for a wide range of facilities and site conditions, Ecology has revised S3.B.4.b:*

- ~~b. No later than July 1, 2010, the Permittee shall include each of the following BMPs in the SWPPP and ensure that they are implemented unless site conditions render the BMP unnecessary or not possible, and the exception is clearly justified in the SWPPP.~~
- b. No later than July 1, 2010, the Permittee shall include each of the following mandatory BMPs in the SWPPP and implement the BMPs. The Permittee may omit individual BMPs if site conditions render the BMP unnecessary, infeasible, or the Permittee provides alternative and equally effective BMPs; if the Permittee clearly justifies each BMP omission in the SWPPP. Prior to July 1, 2010, the Permittee shall implement the BMP requirements of the previous Industrial Stormwater General Permit, or Condition S3.B.4 of this permit.

*Commentors requested that the permittee only be responsible for identifying and control onsite sources of dust. Ecology agrees that it would be unreasonable for permittees to identify and control sources of dust that originate from beyond the facility boundary, and has revised S3.B.4.b.i.2.b):*

- ~~b) All sources of dust shall be identified and prevented from accumulating on hard surfaces at the facility.~~
- b) Identify and control all on-site sources of dust to minimize stormwater contamination from the deposition of dust on areas exposed to precipitation.

*The draft permit proposed a requirement to minimize the contamination of stormwater from open dumpsters: “All dumpsters shall be fitted with a lid that shall remain closed when not in use”.*

Commentors requested that the permit address this somewhat differently, changing “with a lid” to “with a lid or placed under cover” since open dumpsters are sometimes placed under cover such as within a shed. or inside buildings. Ecology agrees that indoor dumpsters do not need to be closed, and Condition S3.B.4.b.i.3.c: has been revised:

d): All dumpsters shall be kept under cover or, fitted with a lid that shall remain closed when not in use.

### **S3.B.4.b.iv Stormwater Peak Runoff Rate and Volume Control BMPs**

Several commentors requested clarification on the permit requirements for Stormwater Peak Runoff Rate and Volume Control BMPs, also known as flow control BMPs. To eliminate some confusing language found in the previous permit, and included in the proposed draft, Ecology has revised S4.B.4.b.iv and added definitions for new development and redevelopment to Appendix 2 - Definitions.

#### **Revise S4.B.4.b.iv:**

- ~~1) For stormwater runoff from new facilities and facilities that have significant process change, the Permittee shall evaluate whether flow control is necessary to satisfy the state's AKART requirements, and comply with state water quality standards.~~
- ~~2) At a minimum, the SWPPP shall include a narrative that describes how the Permittee determined whether flow control BMPs are/are not required.~~
- ~~3) The SWPPP shall include appropriate flow control BMPs from Ecology's SWMM for Western Washington, the SWMM for Eastern Washington, or equivalent manuals.~~
- ~~4) Permittees choosing not to use approved SWMMs or other Ecology approved technical guidance documents to meet this requirement shall include the technical basis for their chosen BMPs as described in the introductory paragraphs of Condition S3 and required in Condition S3.B.3.d.~~

Facilities with new development or redevelopment shall evaluate whether flow control BMPs are necessary to satisfy the state's AKART requirements, and prevent violations of water quality standards. If flow control BMPs are required, they shall be selected according to S3.A.3.

#### **Revise Appendix B Definitions; add New Development, and Redevelopment:**

New Development means land disturbing activities, including Class IV -general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

Redevelopment means on a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

### **S3.B.4.b.iv Erosion and Sediment Control BMPs**

Commentors requested that the language regarding erosion and turbidity was overly broad and could be interpreted to mean any erosion or turbidity was a violation. Other comments noted that the permit formatted meant that all sites were subject to erosion and sediment control BMPs, without the providing permittees the ability to modify the SWPPP according to S4.B.4.b.<sup>1</sup> Ecology has revised the language to clarify the intent:

#### **Revise S4.B.4.b.iv:**

~~Erosion and Sediment Control BMPs~~

~~The SWPPP shall describe the BMPs necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.) and prevent off-site turbidity and sedimentation.~~

#### Erosion and Sediment Control BMPs

The SWPPP shall describe the BMPs necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.) and prevent off-site sedimentation and violations of water quality standards.

### **S3.B.5 Stormwater Sampling Plan**

*Commentors expressed concern about the complexity of the sampling plan requirements. Specific concerns about the requirements when there are multiple discharge points to discuss “the method used to determine differences in exposure to pollutants, pollutants likely to be in each discharge, and the relative comparison of probably pollutant concentrations”. Ecology agrees this language is confusing, and has adapted the relatively straightforward approach used in EPA’s MSGP. Conditions S3.B.5 and S4.B.2.c have been revised:*

#### **Revise Condition S3.B.5:**

##### 5. Sampling Plan

The SWPPP shall include a sampling plan. The plan shall:

- a. Identify points of discharge to surface water, storm sewers, or discrete ground water infiltration locations, such as dry wells or *detention* ponds.
- ~~b. Include a discussion of representative sampling, and how the Permittee determined which points of discharge will be monitored when the facility has more than one point of discharge.~~
- b. Include documentation of why each discharge point is not sampled per S4.B.2.c (if applicable):
  - i. Location of which discharge points the Permittee does not sample because the pollutant concentrations are substantially identical to a discharge point being sampled.

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<sup>1</sup> The Permittee may omit individual BMPs if site conditions render the BMP unnecessary, infeasible, or the Permittee provides alternative and equally effective BMPs; if the Permittee clearly justifies each BMP omission in the SWPPP.

- ii. General industrial activities conducted in the drainage area of each discharge point.
- iii. Best Management Practices conducted in the drainage area of each outfall.
- iv. Exposed materials located in the drainage area of each discharge point that are likely to be significant contributors of pollutants to stormwater discharges.
- v. Impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g., asphalt, crushed rock, grass, etc.).
- vi. Reasons why the Permittee expects the discharge points to discharge substantially identical effluents.

**Revise Condition S4.B.2.c:**

2. Sample Location(s)

- ~~e. The Permittee shall sample each distinct point of discharge off site and shall analyze each sample separately; except where pollutant types, at one or more distinct point of discharge off site, do not vary (based on industrial activities and site conditions), the Permittee may sample only the discharge point with the highest concentration of pollutants.~~
- c. The Permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a “substantially identical outfall” per S3.B.5.b. The Permittee is required to monitor only one of the “substantially identical outfalls” if two or more outfalls discharge substantially identical effluents (based on similar industrial activities and site conditions).

**S4.B.1 Sampling Timing and Frequency**

*Commentors requested that the sampling requirements include sampling of the first fall storm event, consistent with Puget Soundkeeper Alliance et al. v. Washington State, Department of Ecology, PCHB Nos. 02-163 and 02-164 (August 4, 2003). Ecology agrees with the suggestion and first flush sampling has been incorporated into S4.B.1.b. Commentors also requested that routine stormwater sampling be required during each storm events “first flush”, i.e., early in each stormwater discharge event. Other commentors expressed support for the draft permits’ less complex sampling criteria, citing ease of sampling and reduced confusion and permit compliance problems. Based on a review of relevant comments Ecology has included language to require sampling within the first 12 hours of discharge, with provisions for sampling after the first 12 hours if it is was not possible to sample within 12 hours. This revision is based, in part, on recommendations made by Envirovision and Herrera in “Evaluation of Washington’s Industrial Stormwater General Permit” (November 2006):*

***Qualifying Monitoring Conditions***

*Current Permit:*

The current permit requires at least a 24-hour dry period before the targeted storm event, and that the storm event size is at least 0.1” of rain in 24 hours or reaches an intensity equal to 0.1” in 24 hours. It also stipulates that samples be collected within the first hour of discharge, although the permittee does not need to sample outside of regular business hours or in unsafe conditions. The current permit does allow for the use of “best efforts” to achieve storm event collection criteria and allows permittees to submit results even if one or more of the sampling criteria are not met.

*Recommended Change:*

1. Retain the 24-hour dry period requirement.
2. Remove the storm event size target.
3. Extend the sample collection period from 1 hour to within the first 12 hours of discharge. (underlined for emphasis)

*Rationale:*

The storm event size requirement (0.1” min) is inconsequential; any storm that results in discharge from the site should be appropriate for sampling. The emphasis on monitoring during the first hour of a storm event stems from evidence from other parts of the nation that there is a “first-flush” at the beginning of a storm event when pollutant concentrations are highest. While this may be the case when there is a long antecedent dry period before a storm event and/or there is a distinct storm front at the onset of the storm, it generally has not been found to be a consistent runoff characteristic in Western Washington. It can also be very difficult to meet the current criterion; it essentially means that all storms that begin outside regular working hours will not qualify and that an almost immediate response is needed for a storm event. Even if this criterion could consistently be met, it would not necessarily reflect the period of highest pollutant concentrations. Many site characteristics (site size, configuration, impervious surface, available stormwater detention, etc.) greatly affect the speed with which stormwater reaches the discharge point. This, in combination with the various storm event attributes (storm size, rain intensity, changes in intensity during the storm, duration of the storm, etc.) further confounds any prediction of the period when pollutant concentrations are likely to peak.

Although the qualifying storm event conditions in the existing permit are somewhat typical for stormwater monitoring, they also can hinder the collection of samples. As previously described, the majority of the explanations for why samples were not collected during a given quarter were due to non-qualifying storm events. One of the largest deterrents to collecting a sample, when there is a qualifying storm event, is trying to capture the first hour of discharge. This eliminates all storms that begin during non-work hours and also reduces flexibility around sample collection. The existing approach sets limits to sampling that are difficult to achieve in the hopes of capturing a worst case condition. It also provides permittees with an easy explanation for not obtaining the required samples. The recommended change will give permittees more flexibility and should result in more complete data sets. The data collected will represent the general discharge condition as opposed to worst case.

*Issues:*

This approach removes any perception of trying to monitor worst case conditions and places the emphasis on maximizing the number of samples collected to more fully characterize the discharge. However, as detailed above, it is unlikely that worst case conditions were actually being monitored due to the many confounding factors that influence pollutant concentrations in stormwater runoff. Instead, these qualifying conditions were likely to be limiting the number of events monitored and therefore decreasing the amount of site characterization data available.

**Revise Condition S4.B.1:**

- b. Permittees shall sample the stormwater discharge from the first fall storm event each year. “First fall storm event” means the first time after October 1<sup>st</sup> of each year that precipitation occurs and results in a stormwater discharge from a facility.
- c. Permittees shall collect samples within the first 12 hours of stormwater discharge events. If it is not possible to collect a sample within the first 12 hours of a stormwater discharge event, the Permittee must collect the sample as soon as practicable after the first 12 hours, and keep documentation with the sampling records (Condition S4.B.3) explaining why they could not collect samples within the first 12 hours.

**S4.B.2 Sample Location**

*Commentors expressed concern with language regarding sampling after stormwater passes through BMPs: “The Permittee shall take all samples after the stormwater passes through on-site BMPs, as close to the point of discharge off-site that can be achieved safely”. This was intended to ensure that permittees sampled in a location that represented “post-treatment” stormwater, i.e., downgradient of settling BMPs, oil/water separators, filtration, etc. However, in response to concerns about the language being too prescriptive and not flexible for permittees in certain discharge scenarios, Ecology has chosen to address this issue through guidance, rather than permit language.*

**Revise Condition S4.B.2:**

- e. ~~The Permittee shall take all samples after the stormwater passes through on-site BMPs, as close to the point of discharge off-site that can be achieved safely.~~

**S4.B.6 Consistent Attainment**

*Numerous commentors expressed concern about Ecology’s proposed “consistent attainment” language. Specifically, commentors objected to the need to re-demonstrate consistent attainment for parameters that were already suspended, or nearly suspended, during the previous permit cycle. Other commentors questioned the applicability of “consistent attainment” to discharges subject to numeric effluent limitations (e.g., 303(d)-related limits). Other commentors requested clarification about how “consistent attainment” is affected by quarters in which there is no sample collected, or no discharge. Others requested clarification of how consistent attainment is affected when facilities take multiple samples and average their results. Ecology has decided to allow a reduction in sampling due to consistent attainment if four consecutive quarterly samples collected after the*

*effective date of the permit are at or below the benchmark (or within acceptable range for pH). This means that some facilities that achieved, or were close to achieving, consistent attainment will need to start over when the final permit is issued; sampling values achieved under the old permit will not count towards consistent attainment under the new final permit. Ecology believes this is appropriate considering the dynamic nature of industrial activity, personnel, and other factors that can affect stormwater quality at a facility. Ecology also considered the new sampling requirements, including lower benchmarks for copper and other sector-specific benchmarks. Ecology deleted the language regarding consistent attainment of parameters subject to numeric effluent limitations (e.g. 303(d)-related effluent limits); consistent attainment is only available for benchmark sampling, except “visible oil sheen”. Ecology clarified that if a permittee takes multiple samples during a quarter, the results are averaged and compared to the benchmark to determine if the benchmark was “attained” that quarter. Ecology also clarified that permittees can’t suspend visual inspections for “visible oil sheen” based on consistent attainment. To address these issues, S4.B.6 has been revised:*

**Revise Condition S4.B.6:**

- ~~6. After the effective date of this permit, the Permittee may suspend sampling for one or more parameters based on consistent attainment of *benchmark* values when:~~
- ~~a. Eight consecutive quarterly samples in which the reported value for the listed parameter, other than pH, is equal to or less than the benchmark value.~~
  - ~~b. For pH, the eight consecutive quarterly samples shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (marine).~~
  - ~~c. For discharges to 303(d) listed water bodies, eight consecutive quarterly samples fail to detect the presence of the listed parameter.~~
6. The Permittee may suspend sampling for one or more parameters (other than “visible oil sheen”) based on consistent attainment of *benchmark* values when:
- a. Four consecutive quarterly samples, collected after the effective date of this permit, demonstrate a reported value equal to or less than the *benchmark* value; or for pH, within the range of 5.0 – 9.0.
  - b. For purposes of tallying “consecutive quarterly samples”:
    - i. Do not include any quarters in which the Permittee did not collect a sample, but should have (e.g., discharge(s) occurred during normal working hours, and during safe conditions; but no sample was collected during the entire quarter). If this occurs, the tally of consecutive quarterly samples is reset to zero.
    - ii. Do not include any quarters in which the Permittee did not collect a sample because there was no *discharge* during the quarter (or the discharges during the quarter occurred outside normal working hours or during unsafe conditions). These quarters are not included in the calculation of four consecutive quarters, but do not cause the tally to be reset; i.e., they are skipped over.
  - c. Permittees monitoring more than once per quarter shall average all of the monitoring results for each parameter (except pH and “visible oil sheen”) and compare the average value to the *benchmark* value.

## **S5. Benchmark Definition**

*A commentor requested that the benchmark definition from Section S4.D.2. of the current permit be retained: “Benchmark values are not water quality standards and are not permit limits. They are indicator values.” Ecology has added that statement to the definition of Benchmark in Appendix 2:*

### **Revise Appendix 2:**

*Benchmark means a pollutant concentration used as a permit threshold, below which a pollutant is considered unlikely to cause a water quality violation, and above which it may. When pollutant concentrations exceed benchmarks, corrective action requirements take effect.*

*Benchmark values are not water quality standards and are not numeric effluent limitations; they are indicator values.*

## **S5.A Benchmarks and Sampling Requirements**

***Copper.** Several commentors objected to Ecology’s proposal to assign copper sampling and benchmarks only to specific industrial sectors, rather to all facilities under the permit. Other commentors supported Ecology’s proposal to limit copper sampling to specific industrial sectors. Numerous commentors are opposed to Ecology’s proposed copper benchmark values, which are significantly lower than the benchmark and action level in the previous permit. Commentors also cited concerns about the economy, and the practical achievability of the benchmarks without expensive treatment systems. Ecology received comments opposing the water quality-based methodology used to derive the benchmark values, i.e., Monte Carlo Simulation. Some of these comments requested that the benchmark be set at a level that facilities could consistently achieve with existing BMPs, based on DMR data submitted under the previous permit cycle. Other commentors believe that benchmarks should be site-specific, based on site and receiving water conditions. Several commentors are opposed to Ecology’s assessment that discharges at or below the benchmark concentration had a 90% probability of meeting in-stream water quality criteria with a dilution factor of 5. Commentors stated that consideration of dilution in setting the benchmark is inconsistent with applicable regulations, based on recent PCHB rulings on mixing zones in general permits.*

*Ecology gave carefully consideration to all comments about copper, and has decided to set the copper benchmark value at 14 ug/L (western WA) and 32 ug/L (eastern WA), based on the legal and technical basis set forth in the fact sheet and Herrera risk analysis [Water Quality Risk Evaluation for Proposed Benchmarks/Action Levels in the Industrial Stormwater General Permit]. Ecology has decided to add total copper as a core sampling requirement for all facilities under the permit regardless of SIC code or industrial activity. This change was based on ubiquitous nature of copper in stormwater discharges associated with industrial activity, and the known toxicity of copper on endangered salmon and trout species found in receiving waters throughout Washington State. Condition S5.A has been revised accordingly.*

***Zinc.** Several commentors objected to Ecology’s proposal to replace the previous permits’ zinc benchmark (117 ug/L) and action level (372 ug/L), with new benchmark values: 200 ug/L (western WA) and 255 ug/L, based on a water quality-based risk assessment. The previous*

permit required permittees to perform a Level 1 corrective action response based on exceedance of the (117 ug/L) benchmark, and Level 2 and 3 responses on multiple exceedances of the (372 ug/L) action level. With the draft permit eliminating the 2-tier benchmark/action level trigger in favor of a single benchmark trigger, many commentors objected to Ecology “lowering” the benchmark (adaptive management trigger), while objected to “raising” the benchmark. The objections were the same as, or similar to, the concerns raised about copper (i.e., economic impact, too stringent, not stringent enough, dilution factors, toxicity, etc.).

Ecology gave carefully consideration to all comments about zinc, and has decided to retain the previous permits’ benchmark of 117 ug/L, as it is lower and more stringent than the proposed benchmarks of 200 ug/L (western WA) and 255 ug/L. In a previous appeal of the Industrial Stormwater General Permit, the Pollution Control Hearings Board concluded that the 117 ug/L zinc benchmark was “reasonably close to the water quality criteria in many, but not all cases” and “adequate for purposes of the Permit”<sup>2</sup>. Ecology agrees. Condition S5.A has been revised to reflect a zinc benchmark of 117 ug/L, which applies to all facilities statewide.

**pH.** Several commentors objected to Ecology’s proposal to replace the previous permits’ pH benchmark (6.0-9.0 su) and action level (outside 5.0-10.0 su), with a pH benchmark value of 6.0-9.0 su. Many commentors objected to the lower end of the proposed pH benchmark range (6.0), citing the commonly low pH of rainfall in Washington State (between 5.0 and 6.0 su). Ecology believes that it would be inappropriate for permittees to be performing corrective actions to address pH excursions that were due to acidic rainfall (between 5.0 – 6.0 su), considering the very low probability of stormwater discharges to cause violations of water quality standard for pH. Ecology has decided to set the pH benchmark range at 5.0 – 9.0 su.

**Oil and Grease/ Visible Oil Sheen.** Several commentors objected to Ecology’s proposal to replace the previous permits’ oil and grease benchmark (15 mg/L; EPA 1664) with an observation of sampling/discharge point for “visible oil sheen”. Many commentors objected to this change. Common concerns included the relative loss of objectivity with a visual observation (compared to lab analysis), concerns about “natural” oil sheen from decaying organic matter, and concerns about every drip or oil sheen in a parking lot being a trigger for adaptive management. Other commentors suggested that if a visible sheen was observed, it should be followed-up with oil and grease or Total Petroleum Hydrocarbon analysis. Ecology considered all comments submitted on oil and grease monitoring, and reviewed Envirovision and Herrera’s 2006 recommendation<sup>3</sup> to use visual observations rather than oil and grease analysis:

“... only 7 percent of the samples for oil and grease exceeded the benchmark. Furthermore, oil and grease concentrations in the majority of samples were below applicable detection limits. The reason there are few excursions of the oil and grease benchmark is more likely related to how and when the samples are collected, rather than providing evidence of well controlled site conditions. Oil and grease problems are more appropriately addressed by visual assessments; by the time the laboratory results are available, the event causing the problem will likely have ended.”

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<sup>2</sup> PCHB 02-162 Consolidated with PCHB 02-163 & PCHB 02-164 Findings of Fact, Conclusions of Law and Order

<sup>3</sup> Evaluation of Washington’s Industrial Stormwater General Permit (Envirovision and Herrera 2006)

*Ecology has decided to retain the visible oil sheen benchmark as it is a clear and rapid indicator of petroleum contamination of stormwater and distinguishable from oil sheen due to from decaying organic matter. Ecology is clarifying that visible oil sheen benchmark applies at the stormwater sampling location(s), prior to discharge from the site. An occurrence of visible sheen in a location other than a stormwater sampling/discharge point is not considered a benchmark exceedance.*

**Revise S5.A. Table 2:**

**Table 2: Benchmarks and Sampling Requirements Applicable to All Facilities**

<b>Parameter</b>	<b>Units</b>	<b>Benchmark Value</b>	<b>Analytical Method</b>	<b>Laboratory Quantitation Level <sup>a</sup></b>	<b>Minimum Sampling Frequency <sup>b</sup></b>
Turbidity	NTU	25	EPA 180.1 Meter	0.5	1/quarter
pH	Standard Units	<del>Between 6.0 and 9.0</del> <u>Between 5.0 and 9.0</u>	Meter/Paper <sup>c</sup>	±0.5	1/quarter
Oil Sheen	Yes/No	No Visible Oil Sheen	N/A	N/A	1/quarter
<u>Copper, Total</u>	<u>µg/L</u>	<u>Western WA: 14</u> <u>Eastern WA: 32</u>	<u>EPA 200.8</u>	<u>2.0</u>	<u>1/quarter</u>
Zinc, Total	µg/L	<del>Western WA: 200</del> <del>Eastern WA: 255</del> 117	EPA 200.8	2.5	1/quarter

**S5.B Additional Sampling Requirements for Specific Industrial Groups**

*Ecology received several comments about the sector-specific sampling and benchmark requirements contained in Table 3. The following is a summary of significant changes to Table 3:*

Category 1 Chemical and Allied Products (28xx), Food and Kindred Products (20xx): *No change*

Category 2 Primary Metals(33xx), Metals Mining (10xx), Automobile Salvage and Scrap Recycling (5015 and 5093), Metals Fabricating (34xx): *Copper deleted, since it now a core sampling requirement for all facilities.*

Category 3 Hazardous Waste TSDs and Dangerous Waste Recyclers: *No change*

Category 4 Air Transportation (45xx): *No change*

Category 5 Timber Product Industry (24xx), Paper and Allied Products (26xx): *Based on several comments and a review of the EPA MSGP, Ecology has decided to apply a COD and TSS benchmark (COD = 120.0 mg/L; TSS = 100 mg/L) while deleting the BOD5 benchmark. The rationale for the benchmarks are contained in the MSGP fact sheet and are hereby incorporated by reference.*

## **S6.A Additional Sampling Requirements and Effluent Limits for Discharges to Certain 303(d)-listed Waters**

*Ecology received several comments about the applicability and derivation of effluent limits for discharges to 303(d)-listed waterbodies. The following is a summary of significant changes to Table 5. Sampling and Effluent Limits Applicable to Discharges to 303(d)-listed Waters:*

**Fecal Coliform Bacteria:** *Based on comments received, the final permit was revised to require all facilities discharging to 303(d)-listed waterbodies (Category 5) subject to fecal coliform effluent limitation, rather than only applying limit to certain SIC codes. Effluent limit for fecal coliform was revised from 100 (freshwater)/43 (marine) # colonies/100 ml to the applicable water recreation bacteria criteria (WAC 173-201A) that pertains to the receiving waterbody (site-specific).*

**Mercury:** *Based on a comment received, Table 5 was revised to include the mercury limits, which are not hardness dependant. The mercury effluent limits added to Table 5 are 2.1 ug/L (freshwater) and 1.8 ug/L (marine), based upon the acute criteria in WAC 173-201A, with a translator value of 0.85, applied end-of-pipe.*

**pH:** *Based on comments received, Table 5 was revised to correct error and make consistent with the Fact Sheet. The following footnote for pH was added to Table 5: The effluent limit for a Permittee who discharges to a fresh water body 303(d)-listed for pH is: Between 6.0 and 8.5, if the 303(d)-listing is for high pH only; Between 6.5 and 9.0, if the 303(d)-listing is for low pH only; and Between 6.5 and 8.5 if the 303(d)-listing is for both low and high pH. For marine waters: 7.0 - 8.5.*

## **S7. Inspections**

*Ecology received numerous comments opposing the draft permit requirement for routine facility inspections to be conducted by a Certified Industrial Stormwater Manager (CISM). Many comments included questions and concerns about the specific details of the yet-to-be developed CISM training program.*

*Based on public comments received and other considerations, Ecology has deleted the requirement for inspections to be conducted by a Certified Industrial Stormwater Manager (CISM), Certified Professional in Stormwater Quality (CPSWQ), or Professional Engineer. The final permit requires inspections to be conducted by "qualified personnel". The following definition (adapted from EPA MSGP) was added to Appendix 2: Qualified personnel means those who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and evaluate the effectiveness of best management practices required by this permit.*

*Following permit issuance, Ecology plans to work with stakeholders on developing a "CESCL-like" training program for industrial permittees, as training and education has been identified as*

*possible solution to reduce compliance problems related to SWPPPs, BMPs, sampling, inspections and reporting.*

## **S8. Corrective Actions**

*Ecology received numerous comments opposing the draft permits' corrective action requirements. Commentors cited concerns with the way permittees that triggered a Level 2 or 3 response under the previous permit were identified or "labeled" in the permit, requiring implementation of a Level 2 Corrective Action when the final permit become effective. Some commentors expressed concern that such a "cross-walk" from the old permit to new, was demotivating because it fails to recognize the significant investment and progress some facilities made in their Level 2 or 3 responses under the old permit. Many commentors suggested ways to de-list or lower a facilities' Corrective Action status based on DMR data, consistent attainment, petitions, or other site specific considerations. Ecology found many of these suggestions overly complex or otherwise not implementable within the context of a general permit. Many commentors asserted that Ecology's adaptive management approach effectively means the benchmark values "numeric effluent limits" rather than adaptive management indicators. Many commentors stated that they Corrective Action requirements are overly prescriptive and unworkable in terms of cost and timing, especially for treatment BMPs to remove dissolved metals from stormwater. A common concern raised was the triggering of corrective actions based on any parameter benchmark being exceeded – as opposed to the same parameter being exceeded more than once – as this significantly increases the likelihood of corrective actions being taken, and does not allow for adequate source control investigations or other actions based on a particular pollutant.*

*Many commentors expressed the concern that the proposed Corrective Action requirements were not stringent enough, citing concerns that the triggers for adaptive management were lax, allowed too much time to implement additional BMPs, and was a violation of the anti-backsliding provisions of the Clean Water Act. Some concerns were based on the interpretation that the permit excused permittees from implementing Level 3 Treatment BMPs that were triggered under the previous permit. Significant concern was expressed about the reduction in paperwork requirements for Level 1, 2 and 3 corrective actions, compared to the previous permit, stating that it severely diminishes public oversight of permit compliance.*

*Many commentors opposed the Level 4 requirements as vague, uncertain, and some claimed the approach was illegal. The provisions for Level 2 and 3 time extensions and waivers were also the subject of many comments and questions.*

*Ecology has considered all comments related to Corrective Actions has made significant changes to Condition S8.*

*Ecology has determined that it is not necessary to include a cross-walk from the old permit to the new. Ecology decided to delete the list of facilities that triggered corrective actions under the previous permit, and has chosen to address the issue more simply in a revised S8.A:*

**In addition to the Corrective Action Requirements of S8.B-D, Permittees shall implement any applicable Level 1, 2 or 3 Responses required by the previous Industrial Stormwater**

General Permit(s). Permittees shall continue to operate and/or maintain any source control or treatment BMPs related to Level 1, 2 or 3 Responses implemented prior to the effective date of this permit.

*Ecology has revised the Level 1, 2 and 3 Corrective Action requirements. Level 2 and 3 corrective actions are pollutant parameter-specific, i.e., are triggered by multiple exceedances of the same benchmark parameter. The revised S8 Corrective Actions are an “enforceable adaptive management mechanism” consistent with RCW 90.48.555(8)(a). The final permit makes it clear that a facilities’ status at Level 1, 2, 3 is not permanent. Rather, Level 1, 2 or 3 corrective actions may be triggered and completed multiple times during the permit cycle depending site conditions, industrial activity, efficacy and consistency of corrective actions taken, and other factors.*

- *Level 1 corrective action is required each time a benchmark is exceeded, with a corrective action deadline set at the DMR due date.*
- *The final permit requires permittees to submit Annual Reports which will contain documentation of Level 1, 2 and/or 3 corrective actions, if applicable. This approach is used by EPA and other states. Ecology believes this is more trackable compared to the Level 2 and 3 Source Control Reports required under the previous permit. Ecology plans to provide education and outreach to ensure permittees are aware of Annual Report requirements and deadlines.*
- *Level 2 corrective action is required a facility exceeds a benchmark value (for a single parameter) for any two quarters during a calendar year. The deadline is Sept 30<sup>th</sup> the following year.*
- *Level 3 corrective action is required a facility exceeds a benchmark value (for a single parameter) for any three quarters during a calendar year. The deadline is Sept 30<sup>th</sup> the following year.*
- *Language has been added to ensure that benchmark exceedances that occur while a facility is completing a Level 2 or 3 corrective action will not trigger an additional Level 2 or 3 corrective action the following year.*
- *The timelines and process for requesting waivers or time extensions have been revised to facilitate Ecology review and still allow enough time if the request is denied.*
- *Table 6 (Corrective Action Deadlines) has been deleted, since the deadlines in the final permit are straightforward.*
- *Level 4 has been deleted. Ecology retains the authority to issue orders, revoke permit coverage, require individual permits, and take other administrative actions proposed in Level 4, on a case-by-case basis.*

#### **Draft Permit:**

##### **Level One Corrective Actions—Operational Source Control BMPs**

~~Facilities not listed in Appendix 6 (at Level 2), that exceed any benchmark value [in tables (2-6)] during a single monitoring period (quarter) after January 1, 2010, shall complete a Level 1 Corrective Action in accordance with S8.A.1-4:~~

~~Review the SWPPP and ensure that it is in full compliance with Permit Condition S3, and contains the correct BMPs from the applicable Stormwater Management Manual.~~

Make appropriate revisions to the SWPPP to include additional *Operational Source Control BMPs* with the goal of achieving all benchmark values in future discharges.

Complete a Level 1 SWPPP Certification Form (Appendix 3) and attach to SWPPP.

**Level One Deadline:** Fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual immediately, but no later than the deadline specified in Table 6.

**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.  
\* = **Operational source control** BMPs for Western Washington that may apply are on Ecology's web site at: <http://www.ecy.wa.gov/biblio/0510032.html>  
\* = **Operational source control** BMPs for Eastern Washington that may apply are on Ecology's web site at: <http://www.ecy.wa.gov/biblio/0410076.html>

### Final Permit:

#### Level One Corrective Actions – Operational Source Control BMPs

Permittees that exceed any applicable *benchmark* value(s) in Table 2 or Table 3, shall complete a Level 1 Corrective Action for each parameter exceeded in accordance with the following:

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3, and contains the correct BMPs from the applicable *Stormwater Management Manual*.
2. Make appropriate revisions to the SWPPP to include additional *Operational Source Control BMPs* with the goal of achieving the applicable *benchmark* value(s) in future discharges. The Permittee shall sign and certify the revised SWPPP in accordance with S3.A.6.
3. Summarize the Level 1 Corrective Actions in the Annual Report (Condition S9.B)
4. **Level One Deadline:** The Permittee shall fully implement the revised SWPPP according to Permit Condition S3 and the applicable *Stormwater Management Manual* as soon as possible, but no later than the DMR due date for the quarter the *benchmark* was exceeded.

### Draft Permit:

#### Level Two Corrective Actions – Structural Source Control BMPs

The following facilities shall complete a Level 2 Corrective Action in accordance with Condition S8.B.1-4:

— Facilities not listed in Appendix 6 that exceed any benchmark value [in tables (2-6)] during any 4 separate quarterly monitoring periods after January 1, 2010; and

— Facilities listed in Appendix 6 (Level 2).

— 1. Review the SWPPP and ensure that it is in full compliance with Permit Condition S3, and contains the correct BMPs from the applicable Stormwater Management Manual.

— 2. Make appropriate revisions to the SWPPP to include additional *Structural Source Control BMPs* with the goal of achieving all benchmark values in future discharges.

— 3. Complete a Level 2 SWPPP Certification Form (Appendix 3) and attach to SWPPP.

—4. **Level 2 Deadline:** Fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual immediately, but no later than the deadline specified in Table 6.

- a. If installation of necessary *Structural Source Control BMPs* is not feasible within applicable *Corrective Action Deadline*; Ecology may approve additional time, by approving a *Modification of Permit Coverage*.
- b. If installation of *Structural Source Control BMPs* is not feasible or not necessary to prevent discharges that may cause or contribute to a violation of a water quality standard, Ecology may waive the requirement for *Structural Source Control BMPs* by approving a *Modification of Permit Coverage*.
- c. To request a time extension or waiver, a permittee shall submit an *Application for Coverage* form to Ecology in accordance with Condition S2.B, at least 90 days prior to the applicable *Corrective Action Deadline*, requesting “Modification of Coverage”. Within 60 days of receipt of a complete *Modification of Coverage* request, Ecology will approve or deny the request.

**Structural Source Control BMPs** means physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater. Examples of Structural Source Control BMPs include, but are not limited to:

- Enclosing and/or covering the pollutant sources (e.g., within a building or other enclosure, a roof over storage and/or working areas, temporary tarps, etc.
- Physically separating the pollutant source to prevent run-on of uncontaminated stormwater (e.g., preventing clean stormwater from getting contaminated).
- Devices that direct contaminated stormwater to appropriate treatment BMPs (e.g., discharge to sanitary sewer if allowed by local sewer authority).

**Structural Source Control BMPs** for Western Washington that may apply are on Ecology’s web site at: <http://www.ecy.wa.gov/biblio/0510032.html>.

**Structural Source Control BMPs** for Eastern Washington that may apply are on Ecology’s web site at: <http://www.ecy.wa.gov/biblio/0410076.html>.

## Final Permit:

### C. **Level Two Corrective Actions – Structural Source Control BMPs**

Permittees that exceed an applicable *benchmark* value (for a single parameter) for any two quarters during a calendar year shall complete a Level 2 Corrective Action in accordance with the following<sup>4</sup>:

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3.
2. Make appropriate revisions to the SWPPP to include additional *Structural Source Control BMPs* with the goal of achieving the applicable *benchmark* value(s) in future discharges. The Permittee shall sign and certify the revised SWPPP in accordance with S3.A.6.
3. Summarize the Level 2 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B).

<sup>4</sup> Facilities that continue to exceed benchmarks after a Level 2 Corrective Action is triggered, but prior to the Level 2 Deadline, are not required to complete another Level 2 or 3 Corrective Action the following year for the same parameter. However, a Level 1 Corrective Action is required each time a benchmark is exceeded.

4. **Level 2 Deadline:** The Permittee shall fully implement the revised SWPPP according to Permit Condition S3 and the applicable *Stormwater Management Manual* as soon as possible, but no later than September 30<sup>th</sup> the following year.
  - a. If installation of necessary *Structural Source Control BMPs* is not feasible by September 30<sup>th</sup> the following year, *Ecology* may approve additional time, by approving a *Modification of Permit Coverage*.
  - b. If installation of *Structural Source Control BMPs* is not feasible or not necessary to prevent discharges that may cause or contribute to a violation of a water quality standard, *Ecology* may waive the requirement for additional *Structural Source Control BMPs* by approving a *Modification of Permit Coverage*.
  - c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a *Modification of Coverage* form to *Ecology* in accordance with Condition S2.B, by June 1<sup>st</sup> prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete *Modification of Coverage* request.

#### **Draft Permit:**

#### **Level Three Corrective Actions—Treatment BMPs**

The following facilities shall complete a Level 3 Corrective Action in accordance with Condition S8.C.1-4:

Facilities not listed in Appendix 6 that exceed any benchmark value [in tables (2-6)] during any 8 separate quarterly monitoring periods after January 1, 2010; and

Facilities listed in Appendix 6 (Level 2) that exceed any benchmark value [in tables (2-6)] during any 4 separate quarterly monitoring periods after January 1, 2010; and

Review the SWPPP and ensure that it is in full compliance with Permit Condition S3, and contains the correct BMPs from the applicable Stormwater Management Manual.

Make appropriate revisions to the SWPPP to include additional *Treatment BMPs* with the goal of achieving all benchmark values in future discharges.

Complete a Level 3 SWPPP Certification Form (Appendix 3) and attach to SWPPP. The portion of the SWPPP that addresses stormwater treatment structures or processes shall be designed and stamped by a professional Engineer, with certification that the SWPPP is consistent with Condition S3.A. Submit the revised SWPPP to Ecology by the Level 3 Deadline.

**Level 3 Deadline:** Fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual immediately, but no later than the deadline specified in Table 6:

a. If installation of necessary *Treatment BMPs* is not feasible within applicable *Corrective Action Deadline*; Ecology may approve additional time by approving a *Modification of Permit Coverage*.

b. If installation of *Treatment BMPs* is not feasible or not necessary to prevent discharges that may cause or contribute to violation of a water quality standard, Ecology may waive the requirement for *Treatment BMPs* by approving a *Modification of Permit Coverage*.

c. To request a time extension or waiver, a permittee shall submit an Application for Coverage form to Ecology in accordance with Condition S2.B, at least 90 days prior to the applicable

Corrective Action Deadline, requesting “Modification of Coverage”. Within 60 days of receipt of a complete *Modification of Coverage* request, Ecology will approve or deny the request.

**Treatment BMPs** are defined in Appendix 2. Treatment BMPs include, but are not limited to detention ponds, oil/water separators, biofiltration, sand filtration, constructed wetlands, etc.

Treatment **BMPs** for Western Washington that may apply are on Ecology’s web site at: <http://www.ecy.wa.gov/biblio/0510033.html>

Treatment **BMPs** for Eastern Washington that may apply are on Ecology’s web site at: <http://www.ecy.wa.gov/biblio/0410076.html>

## Final Permit:

### **D. Level Three Corrective Actions – Treatment BMPs**

Permittees that exceed an applicable *benchmark* value (for a single parameter) for any three quarters during a calendar year shall complete a Level 3 Corrective Action in accordance with the following<sup>5</sup>:

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3.
2. Make appropriate revisions to the SWPPP to include additional *Treatment BMPs* with the goal of achieving the applicable *benchmark* value(s) in future discharges.
  - a. The Permittee shall sign and certify the revised SWPPP in accordance with S3.A.6.
  - b. A licensed professional engineer, geologist, hydrogeologist, or Certified Professional in Storm Water Quality (CPSWQ) shall design and stamp the portion of the SWPPP that addresses *stormwater* treatment structures or processes.
    - i. Ecology may waive the requirement for a licensed or certified professional upon request of the Permittee and demonstration that the Permittee or treatment device vendor can properly design and install the treatment device.
    - ii. Ecology will not waive the Level 3 requirement for a licensed or certified professional more than one time during the permit cycle.
3. Summarize the Level 3 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B).
4. **Level 3 Deadline:** The Permittee shall fully implement the revised SWPPP according to Permit Condition S3 and the applicable *Stormwater Management Manual* as soon as possible, but no later than September 30<sup>th</sup> the following year.
  - a. If installation of necessary *Treatment BMPs* is not feasible by the Level 3 Deadline; Ecology may approve additional time by approving a *Modification of Permit Coverage*.
  - b. If installation of *Treatment BMPs* is not feasible or not necessary to prevent discharges that may cause or contribute to violation of a water quality standard,

<sup>5</sup> Facilities that continue to exceed benchmarks after a Level 3 Corrective Action is triggered, but prior to the Level 3 Deadline, are not required to complete another Level 2 or 3 Corrective Action the following year for the same parameter. However, a Level 1 Corrective Action is required each time a benchmark is exceeded.

Ecology may waive the requirement for Treatment BMPs by approving a Modification of Permit Coverage.

- c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a Modification of Coverage form to Ecology in accordance with Condition S2.B, by June 1<sup>st</sup> prior to the Level 3 Deadline. Ecology will approve or deny the request within 60 days of receipt of a complete Modification of Coverage request.

## **S9.A Discharge Monitoring Reports**

*Ecology received several comments regarding the electronic Discharge Monitoring Report system (eDMR), which has been renamed WebDMRs. Changes have been made, making WebDMR an optional way to submit DMRs to Ecology, rather than a requirement:*

- ~~1. Beginning with the DMR due August 14, 2010, all DMRs shall be submitted using Ecology's electronic DMR system (eDMR). DMRs due February 14, 2010 and May 15, 2010 shall be submitted either using eDMR or mail to the following address:~~
2. DMRs shall be submitted using Ecology's WebDMR system or by mail to the following address:

## **S9.B Annual Reports**

*Ecology added a subsection to S9.B, to require Annual Reports. This change was necessary to address public comments, and resulting changes made to S8. Corrective Actions.*

1. The Permittee shall submit a complete and accurate Annual Report to the Department of Ecology no later than May 15<sup>th</sup> of each year (except 2010) using a form provided by or otherwise approved by Ecology.
2. The annual report shall include corrective action documentation as required in S8.B-D. If corrective action is not yet completed at the time of submission of this annual report, the Permittee must describe the status of any outstanding corrective action(s).
3. Permittees shall include the following information with each annual report. The Permittee shall:
  - a. Identify the condition triggering the need for corrective action review.
  - b. Describe the problem(s) and identify the dates they were discovered.
  - c. Summarize any Level 1, 2 or 3 corrective actions completed during the previous calendar year and include the dates it completed the corrective actions.
  - d. Describe the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, and identify the date it expects to complete corrective actions.
4. Permittees shall retain a copy of all annual reports onsite for Ecology review.

## **S9.C Noncompliance Notification**

*Ecology clarified and revised the requirement for Ecology notification of noncompliance, based on public comments and applicable regulations (40 CFR §122.41).*

In the event the Permittee is unable to comply with any of the terms and conditions of this permit that could result in the discharge of pollutants in a significant amount which may endanger human health or the environment, or any bypass or upset which causes an exceedance of any effluent limitation in the permit, the Permittee shall:

## **S9.F Public Access to SWPPP**

*In response to comments, Ecology clarified and revised the requirements for permittees to provide public access to Stormwater Pollution Prevention Plans (SWPPPs). Ecology's access to all plans and records required by the permit are consolidated in Condition S9.C.*

Draft S9.E:

### **E. Access to Plans and Records**

~~The Permittee(s) shall retain the SWPPP, and all other plans, documents and records required by this permit (hereby called "plans and records"), on site or within reasonable access to the site and make it immediately available upon request to Ecology or the local jurisdiction.~~

- ~~1. A copy of plans and records shall be provided to Ecology within 14 days of receipt of a written request for the SWPPP from Ecology.~~
- ~~2. Access to, or a copy of, plans and records shall be provided to the public when requested in writing. Upon receiving a written request from the public for plans and records, the Permittee shall either:
  - ~~a. Provide a copy of the plans and records to the requestor within 14 days of receipt of the written request; or~~
  - ~~b. Notify the requestor within 10 days of receipt of the written request of the location and times within normal business hours when the plans and records may be viewed, and provide access to the plans and records within 14 days of receipt of the written request.~~~~
- ~~3. The Permittee may provide a copy of the plans and records to Ecology or may arrange with the requestor for an alternative, mutually agreed upon location for viewing and/or copying of the plans and records. If access to the plans and records is provided at a location other than at an Ecology office, the Permittee will provide reasonable access to copying services for which a reasonable fee may be charged.~~

Final S9.F:

### **S9.F: Public Access to SWPPP**

The Permittee shall provide access to, or a copy of, the SWPPP to the public when requested in writing. Upon receiving a written request from the public for the SWPPP, the Permittee shall:

1. Provide a copy of the SWPPP to the requestor within 14 days of receipt of the written request; or
2. Notify the requestor within 10 days of receipt of the written request of the location and times within normal business hours when the requestor may view the SWPPP, and provide access to the SWPPP within 14 days of receipt of the written request; or

3. Provide a copy of the plans and records to Ecology, where the requestor may view the records, within 14 days of a request; or may arrange with the requestor for an alternative, mutually agreed upon location for viewing and/or copying of the plans and records. If access to the plans and records is provided at a location other than at an Ecology office, the Permittee will provide reasonable access to copying services for which it may charge a reasonable fee.

## **S10.C Compliance with Standards**

*Several commentors requested that the permit restate the “presumption of compliance” language from RCW 90.48.555. Ecology has revised S10 A and has also added the definition of “demonstrably equivalent” to Appendix 2 Definitions:*

### **Revise S10.B:**

Ecology will presume compliance with water quality standards, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the Permittee is:

1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions.
2. Fully implementing storm water best management practices contained in storm water technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in storm water technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

### **Revise Appendix 2 Definitions:**

*Demonstrably equivalent means that the technical basis for the selection of all storm water best management practices are documented within a storm water pollution prevention plan. The storm water pollution prevention plan must document:*

- (A) The method and reasons for choosing the storm water best management practices selected;*
- (B) The pollutant removal performance expected from the practices selected;*
- (C) The technical basis supporting the performance claims for the practices selected, including any available existing data concerning field performance of the practices selected;*
- (D) An assessment of how the selected practices will comply with state water quality standards;*  
*and*
- (E) An assessment of how the selected practices will satisfy both applicable federal technology-based treatment requirements and state requirements to use all known, available, and reasonable methods of prevention, control, and treatment.*

## **S13.A Conditions for a Notice of Termination**

*Several commentors requested that Condition S13 be revised to allow permit termination if a facility uses dry well, swales or other BMPs to contain all stormwater on-site. Such BMPs are well represented in Ecology’s Stormwater management manuals; use of BMPs to eliminate discharges to surface water should be included in allowed conditions for a Notice of*

*Termination. Ecology agrees that such a change is consistent with applicable regulations, and S13 has been revised accordingly:*

**Revise S13.A.3:**

All *stormwater* discharges associated with *industrial activity* are prevented because the *stormwater* is redirected to a *sanitary sewer*, or discharged to ground (e.g., infiltration, etc.).