

Industrial Stormwater General Permit Modification

Addendum to Fact Sheet: Appendix E

Response to Public Comments on the Draft Permit Modification

May 16, 2012

Ecology received 68 public comments on the draft Industrial Stormwater General Permit (ISGP) modification that was released for public comment on February 1, 2012. These comments were submitted by 20 interested parties, prior to the close of the public comment period on March 16, 2012. Copies of all comment letters, emails, and oral testimony were posted on Ecology's Industrial Stormwater General Permit website:

<http://www.ecy.wa.gov/programs/wq/stormwater/industrial/index.html>

Ecology has assembled excerpts from comments into this document, and organized them by topic and/or permit condition. Ecology has provided a written response to each comment, and indicated where changes were made based on public comments. Underlined language is used to indicate new language compared to the original 2010 ISGP.

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General Comments

Association of Washington Business

1.

AWB and member companies who own and operate facilities permitted under the ISGP have spent considerable time and energy working with Ecology on the current ISGP. The current round of revisions highlights the ongoing need for a permit that is both stable and understandable. While AWB appreciates the immediate need for some of the modifications in the draft, our members have expressed a concern that ongoing litigation will continue to create more uncertainty and additional changes to the ISGP may be required in the future. Any modifications made to the ISGP should be changes that are not likely to be revised again within the next few months pending the outcome of current litigation.

Additionally, AWB and its member companies continue to express concerns about the ongoing costs of complying with environmental regulations, including the ISGP. While those who own and operate facilities permitted under the ISGP are committed to staying in compliance with their permit obligations, the costs of compliance are significant. Ecology must consider modifications that provide a reasonable and certain pathway for compliance. Permit modifications that reference the use of BMPs without specifically defining critical terms are likely to create additional costs and another round of permit revisions or litigation (see Section II for specific examples). Ultimately, Ecology should use this opportunity to modify the ISGP to provide greater clarity on the use of adaptive management (as directed by the Pollution Control Hearings Board) to the regulated community, which serves Ecology's objective to protect water quality and the regulated community's objective to confidently comply with the obligations of the ISGP.

Response: Ecology agrees that the ongoing litigation will continue to create uncertainty, but Ecology has decided to fully address the PCHB ruling now, rather than to wait for the litigation to be resolved.

BNSF

2.

Additional Matters Ecology Should Address at this Time

Other than formal amendments to the permit, Ecology lacks a clear, consistent and reliable means of communicating its policy decisions to the regulated community. It issued a "Frequently Asked Questions" (FAQs) document in mid-March 2011 and, when challenged, it issued a qualification to the FAQ that left the regulated community uncertain as to its continued application. Ecology has previously stated that permittees may call or email Ecology for guidance, but that guidance can be inconsistent. One notable example applicable to transportation facilities is the effect of stand-alone mobile fueling on the obligation to seek permit coverage. In a November 2009 email exchange (see Attachment 1), prior to issuing the current ISGP, Ross Dunning of Kennedy Jenks Consultants asked Ecology two specific questions on this point: "If a facility does not require permit coverage because the[y] don't have a vehicle maintenance shop ... then fueling that is performed onsite does NOT trigger the requirement to apply for permit coverage" and "So it would seem that a transportation facility that performs vehicle maintenance (including fueling) but does not have a vehicle maintenance

shop is not required to apply for permit coverage. Can you confirm?" Ecology emailed back confirming the accuracy of these statements. After it finalized the ISGP effective January 1, 2010, Ecology completely changed its position on these points. The FAQs now state that anywhere a maintenance or fueling activity takes place constitutes a "shop," and therefore mobile fueling from a vendor's truck triggers the obligation to secure coverage.

Ecology should take this opportunity to clearly state its policy decisions via permit amendments rather than continue its *ad hoc* and sometimes inconsistent practice of issuing informal guidance. Therefore, Ecology should further amend the ISGP and address the following issues: [See other BNSF comments]

Response: Ecology has clarified the secondary triggers for transportation facilities include vehicle maintenance activity, rather than vehicle maintenance shops. This is consistent with Ecology's original intent. The word "shops" has been deleted, and it has been replaced with "activity". Ecology is also finalizing the proposal to delete "material handling facilities", because it was incorrectly included in the 2009 permit.

Revision to S1.A.1 Table 1:

Transportation facilities which have *vehicle maintenance shops activity*, ~~material handling facilities~~, equipment cleaning operations, or airport deicing operations:

- Railroad Transportation
- Local and Suburban Transit and Interurban Highway Passenger Transportation
- Motor Freight Transportation (except SIC 4221–25)
- United States Postal Service
- Water Transportation
- Air Transportation
- Petroleum Bulk Stations and Terminals

Washington Refuse and Recycling Association

3.

Lastly, we appreciated the opportunity to hear directly from you at the Vancouver Workshop. Your thorough explanation and your overall approach to working with facility owners was both enlightening and encouraging.

Response: Thank you – Ecology appreciates your attendance and questions at the workshop.

Bob Yoder, Redmond Neighborhood Blog

4.

<http://redmondcity.blogspot.com/2012/01/opinion-citizen-potests-city-approval.html>

Dear WDOE: Please click on this link to my report on industrial storm water run-off at All Wood Recycling (AWR) of SE Redmond, WA. This storm water and sewer pollution has been ongoing and the City is undergoing a retroactive permitting process to correct actions taken by AWR. This industrial site stormwater pollution was first reported by me in 2006. WDOE and other regulatory agencies visited the site, but nothing has been done until now - and actions are only now being attempted. What is wrong with our regulatory process?

AWR has proposed in their SEPA checklist only one vault and one stormwater pond. The site encompasses both sides of Evans Creek, a class I stream with wild, endangered Chinook salmon runs (?).

THIS INDUSTRIAL SITE SITS OVER A CITY AQUIFER - SIX FEET UNDER IN SOME PLACES.

I can't make the town meeting. But, please review this link to my blog story.

Response: City of Redmond and Ecology staff recognizes this site has potential for ground water pollution. Ecology, EPA, Redmond and King County Health staff worked with regulating the facility activities in 2008-09. Corrections focused on restricting the type of material processed on site and better pollution prevention practices. Since this facility does not discharge stormwater to surface waters, it is not covered under Ecology's Industrial Stormwater General Permit. The facility is currently regulated under Ecology's Underground Injection Control (UIC) rules, which are intended to protect groundwater quality. Ecology also required the facility to apply for and obtain a state waste discharge (individual) permit and develop an engineering plan to cease the injection well use. Site options for stormwater treatment are limited because they are in the shoreline management area up against a salmon-bearing stream. All Wood's consultant proposed connecting the worst of the runoff to the sewer as part of their permit application and engineering report in 2010. The City of Redmond required additional alternative evaluation before issuing permits for the proposed site improvements.

Economic Impact Analysis

Auto Recyclers of Washington

5.

WAC 173-226-120 requires an economic analysis of any proposed water-quality general permit to serve the following purposes. The analysis must provide:

- A brief description of the compliance requirements of the general permit.
- The estimated costs for complying with the permit, based upon existing data for facilities intended to be covered under the general permit.

A comparison, to the greatest extent possible, of the cost of compliance for small businesses with the cost of compliance for the largest ten percent of the facilities intended to be covered under the general permit.

- A summary of how the permit provides mitigation to reduce the effect on small businesses (if a disproportionate impact is expected), without compromising the mandated intent of the permit. A small business is defined as any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees.

As we point out below, several of the proposed revisions to the ISWSGP will have a significantly disproportionate impact on small businesses. The failure of the Department to issue the Economic Analysis as required by WAC 173-226-120 is a gross failure of this proposal and is reason enough for the Department to not adopt these proposed revisions and for the Department to engage in a stakeholder process to eliminate or minimize any disproportionate impacts on small businesses from these proposed revisions.

Response: Ecology completed an Economic Impact Analysis when the 2009 Industrial Stormwater Permit was issued, and it concluded “*the general permit has a disproportionate impact on small businesses.*” The analysis states that it is difficult to avoid disproportionate costs for smaller businesses, as small businesses will always be disproportionately impacted, relative to large businesses. For the permit modifications intended to address the PCHB ruling, Ecology is not able to offer mitigation without violating requirements of the state or federal water pollution control laws.

Auto Recyclers of Washington

6.

Before adopting the provision identified above, the WA Department of Ecology must provide appropriate mechanisms and assistance to mitigate the small business economic impacts of these proposed permit revisions in accordance with RCW 34.05.

Response: See response to comment # 5 above.

Condition S1. Permit Coverage

BNSF

7.

Transportation Facilities and Point-source Discharges from Regulated Activities

The permit is presently unclear whether a transportation facility triggers ISGP coverage if it does not have a point source discharge from the triggering activities identified by 40 C.F.R. § 122.26(b)(14)(viii): a vehicle maintenance shop, equipment cleaning, and airplane deicing. The 2010 ISGP defines "facility" in a circular manner as "any NPDES 'point source' (including land or appurtenances thereto) that is subject to regulation under the NPDES program." ISGP, at p. 53 (emphasis added). From this definition, it is unclear whether storm water discharges from areas of a facility on which no industrial activity takes place require permit coverage if stormwater from areas of industrial activity do not discharge to surface waters. BNSF proposes that Ecology revise Condition S 1.A as follows:

1. Facilities engaged in any industrial activities in Table 1 shall apply for coverage if *stormwater* from the *facility discharges* to a surface water body, or to a *storm sewer* system that *discharges* to a surface water body.

(Where federal regulations only require coverage if certain "industrial activities" trigger coverage, e.g., 40 C.F.R. § 122.26(b)(14)(viii), a facility is only required to apply for coverage if there is a point source discharge from an area of triggering industrial activities.) The *Standard Industrial Classification (SIC)* groups generally, but not always, associated with these activities are listed in Table 1.

Ecology should also revise the portion of Table 1 that is directly affected by this change: Transportation facilities which have a point source discharge of stormwater associated with vehicle maintenance shops, material handling facilities, equipment cleaning operations, or airport deicing operations:

- Railroad Transportation 40xx

- Local and Suburban Transit and Interurban Highway Passenger Transportation 41 xx
- 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

Response: EPA has defined “stormwater associated with industrial activity” as a point source subject to regulation under the NPDES program. Ecology considers it unnecessary to add “point source discharge” to the secondary triggers for transportation facilities.

Ecology has clarified the secondary triggers for transportation facilities include vehicle maintenance activity, rather than vehicle maintenance shops. This is consistent with Ecology’s original intent. The word “shops” has been deleted, and it has been replaced with “activity”. Ecology is also finalizing the proposal to delete “material handling facilities”, because it was incorrectly included in the 2009 permit.

Revision to S1.A.1 Table 1:

Transportation facilities which have *vehicle maintenance* ~~shops~~ activity, ~~material handling facilities~~, equipment cleaning operations, or airport deicing operations:

- Railroad Transportation
- Local and Suburban Transit and Interurban Highway Passenger Transportation
- Motor Freight Transportation (except SIC 4221–25)
- United States Postal Service
- Water Transportation
- Air Transportation
- Petroleum Bulk Stations and Terminals

BNSF

8.

Owner and Operator

Missing entirely are definitions of "owner" and "operator," which are relevant for permitting purposes because federal regulations impose permitting responsibility on the operator of a facility rather than the owner. 40 C.P.R. § 122.21(b). Previous iterations of the ISGP (e.g., the 2002 ISGP) contained definitions to help facilities determine which entities needed coverage. The ISGP also does not answer whether it is possible for different entities to hold ISGP coverage in discrete areas of a large facility. BNSF suggests that Ecology insert, prior to the existing Condition S1.A, the following section (with the existing S1.A becoming S1.B and so forth):

S1. PERMIT COVERAGE

A. Who Is the Permittee?

The Permittee must have day-to-day operational control to assure compliance and the power or capacity to make timely discovery of discharges and direct the activities of persons who control the mechanisms causing the pollution.

The owner is the Permittee if they are also the operator of the industrial facility. If the owner and the operator (or tenant) of an industrial facility are not the same, the operator is typically the Permittee and the owner may choose to be a co-Permittee.

B. Facilities Required to Seek Coverage Under This General Permit

C. Facilities Not Required to Obtain Coverage

Response: Ecology has decided against making the change suggested. Under section 301(a) of the Clean Water Act, 33 USC section 1311(a), "the discharge of any pollutant by any person shall be unlawful" unless the discharge is authorized by an NPDES permit. This prohibition suggests that both the owner and the operator need to be permitted since both are "persons" who will be discharging pollutants. However, under 40 CFR section 122.21(b), when a facility is owned by one person but operated by another, it is the operator's duty to obtain a permit. Ecology considers the permitting requirements to be fulfilled if the operator has sole permit coverage at a facility. Nothing in the permit precludes multiple entities from holding permit coverage at a facility. If that is necessary, each entity should submit a separate notice of intent (NOI) to apply for permit coverage.

City of Longview

9.

Under the Conditional No Exposure exemption in S1.F, the words "or material" in the second sentence should be removed or further clarified, such as suggested below:

If there is a change at the *facility* that results in the exposure of industrial activities and associated materials to *stormwater*, the *facility* is required to immediately apply for and obtain a permit.

Response: Ecology reviewed the "Conditional No Exposure" language in EPA's Phase II Stormwater rule, and verified that EPA uses the same terminology ("industrial activity and materials") as the ISGP. Specifically, page 68785 of Federal Register /Vol. 64, No. 235 /Wednesday, December 8, 1999 /Rules and Regulations, states "*EPA expects that most facility changes can be anticipated, therefore dischargers should apply for and obtain NPDES permit coverage in advance of changes that result in exposure to industrial activities or materials.*" Ecology has decided to not to remove or further clarify the language in Condition S1.F, to remain consistent with the Phase II Stormwater Rule.

United States Environmental Protection Agency – Region 10

10.

The U.S. Environmental Protection Agency Region 10 appreciates the opportunity to review and comment on the proposed modification to the WA ISGP. The purpose of the modification is to respond to the April 25, 2011 Pollution Control Hearings Board ruling. We hope you will consider the EPA's comment as you finalize this important permit.

As you may be aware, there has been some confusion in the past over the definition of *federal facility*. The Washington Department of Ecology has written storm water general permits that contain the same definition of *federal facility* that the EPA's permits contain. The EPA would like to bring to your attention the fact that the EPA intends to adjust the definition of *federal*

facility in its storm water general permits as they are reissued. To ensure consistency and clarity for the regulated community, the EPA encourages Ecology to adjust the *federal facility* language in Ecology's storm water general permits as well.

The EPA has revised the definition of *federal facility* in the recently reissued Construction Storm Water General Permit (CGP) and plans on making the same revision at the time the EPA's Multi Sector Storm Water General Permit (MSGP) is reissued. Specifically, the definition of *federal facility* has been replaced with the term, *federal operator* which has been defined as an entity that meets the definition of "Operator" in the permit and is any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government of the United States, or another entity, such as a private contractor, performing a construction activity for any such department, agency, or instrumentality. (See also, Page 5, Appendix A of the EPA CGP @ http://www.epa.gov/npdes/pubs/cgp2012_appendixa.pdf)

The purpose of this change is to clarify who needs to obtain coverage under a storm water general permit in a situation where the State does not have permitting authority for federal facilities. The revised definition makes clear that where the operator is a department, agency or instrumentality of the Federal government (a "federal entity") or another party engaging in a construction activity for any such federal entity, the operator is a *federal operator* that must obtain coverage under the EPA permit. For example:

- Where a federal entity is conducting a construction activity, whether on land owned or leased by the federal government or otherwise, and that federal entity meets the definition of an "operator," the federal entity is a *federal operator* and must obtain permit coverage under the EPA permit.
- Where a federal entity has hired a contractor to complete the day-to-day activity on a construction site, but retains control over the project (e.g., site design/specifications, construction, oversight) the federal entity is a *federal operator* and must obtain coverage under the EPA permit. The contractor should determine whether it meets the definition of "Operator" under this permit and, if it does, should obtain permit coverage.
- Where a federal entity has hired a contractor to complete the day-to-day activity on a construction site and does not retain control over the project, the contractor should determine whether it meets the definition of "Operator" under this permit and, if it does, should obtain state permit coverage. The federal entity in this case must determine whether it meets the definition of *federal operator* under the EPA permit and, if it does, should obtain permit coverage.
- Where a private party is independently conducting a construction activity on federal land or property (e.g., developing an oil and gas lease, grazing lease, or ski resort lease) the private party should determine whether it meets the definition of "operator" under the corresponding state construction general permit and, if it does, should obtain coverage under the state construction general permit.

The EPA encourages Ecology to modify the WA ISGP such that it will be consistent with the revised definitions of *federal facility* and *federal operator*. If you have any questions regarding this comment, please feel free to contact Margaret McCauley of my staff at (206) 553-1772.

Response: Ecology agrees with the suggestion, and will revise ISGP Condition S1.D.3 to be consistent with EPA's usage and definition of *federal operator*:

S1.D Facilities Excluded from Coverage

Ecology will not cover the following facilities or activities under this permit:

3. Industrial activities operated by any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government of the United States, or another entity, such as a private contractor, performing industrial activity for any such department, agency, or instrumentality.

Condition S2. Application For Coverage

Association of Washington Business

11.

S2.B.1 Modification of Permit Coverage: The submittal dates for the Annual Report and any Modification of Permit Coverage requesting a Level 2 or 3 time extension should be coordinated. While April 1st is fine for the Corrective Action time extension, it is at this time that permittees are likely to confirm their status, announce decisions on Corrective Actions, and determine if a time extension should be requested. Ecology should consider advancing the Annual Report date from May 15th to April 1st.

Response: Ecology agrees that the annual report and modification of coverage deadlines should be coordinated. Ecology has considered public comments and the pros and cons associated with various deadlines and scheduling constraints, and has decided make the Modification of Coverage deadline (for Level 2/3 waiver or extension requests) consistent with the current Annual Report due date: May 15th. This is also the due date for the 1st quarter DMR, and there are administrative efficiencies gained by making these all due on the same date.

Condition S2.B.1 will be revised as follows:

Apply for modification of coverage at least 60 days before implementing a *significant process change*; or by May 15th ~~June 1st~~ prior to a Corrective Action deadline, if requesting a Level 2 or 3 time extension or waiver request per Condition S8.B-D.

Auto Recyclers of Washington

12.

Ecology proposes to shorten the deadline to request a Level 2 or 3 Corrective Action waiver or extension by two months. This proposal will impose disproportionate economic impacts on small businesses. It will impose unreasonable deadlines on small business permittees and jeopardize the very survival of their businesses and the jobs of their workers. This draft revision is incredibly ill-conceived as it appears that the Department believes that small business operators have nothing more to do but to manage their ISWGP. That clearly is not the case and for that reason alone, this proposed revised provision should not be adopted.

Response: Ecology has considered public comments and the pros and cons associated with various deadlines and scheduling constraints, and has decided make the Modification of Coverage deadline (for Level 2/3 waiver or extension requests) consistent with the current

Annual Report due date: May 15th. This is also the due date for the 1st quarter DMR, and there are administrative efficiencies gained by making these all due on the same date.

Association of Washington Business

13.

S2.C Permit Coverage Timeline: Ecology proposes to remove the applicability of automatic commencement of applications for modification of coverage, including applications for waivers and extensions under Condition S8. The permit should retain an automatic commencement process.

Response: Ecology disagrees with the suggestion, and has decided to make the permit consistent with WAC 173-226, which provides for the automatic approvals of new applications (NOIs), but not for modifications of coverage.

BNSF

14.

Proposed Changes to Condition S2.C

In its effort to eliminate confusion regarding the applicable timeline for consideration of a Level2/Level 3 modification (waiver or extension), Ecology has introduced other unintentional confusion into the timelines. The PCHB held that the more specific 60-day timeline for review set out in Condition S8 applied to Level 2/Level 3 modifications (extension/waiver) and not the general 30-day deadline set out in Condition S2. In consideration of this decision and the potential confusion, Ecology's proposed changes simply eliminate the word "modification" from Condition S2. This, however, leaves no deadline for Ecology's review of permit modifications other than Level 2/Level 3 waivers or extensions.

In order to avoid the inadvertent elimination of any kind of time line for the review of other permit modifications, Ecology should instead amend Condition S2 as follows:

A. Permit Coverage or Permit Modification Timeline

1. 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 31st day following receipt by *Ecology* of a completed *application* for coverage or modification of coverage form""; or
- b. The 31st day following the end of a 30-day public comment period""; or
- c. The effective date of the *general permit*""; or
- d. For modifications of coverage related to waivers of Level2 or Level3 corrective actions governed by Condition S8, the 61 st day following receipt by Ecology of a completed modification of coverage form.

2. *Ecology* may need additional time to review the *application*:

- a. If the *application* is incomplete.
- b. If it requires additional site-specific information.
- c. If the public requests a public hearing.
- d. If members of the public file comments.
- e. When more information is necessary to determine whether coverage under the *genera/permit* is appropriate.

3. 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/coverage, coverage begins the 31st day following approval, or the date the approval letter is issued, whichever is later.

Response: Ecology disagrees with the suggestion, and has decided to make the permit consistent with WAC 173-226, which provides for the automatic approvals of new applications (NOIs), but not for modifications of coverage.

Boeing

15.

Condition S2. Applications for Coverage or Modification of Coverage

Ecology proposes to modify Condition S2.C by removing the applicability of automatic commencement of applications for modification of coverage, including applications for waivers and extensions under Condition S8. The permit should retain an automatic commencement process in order to provide regulatory certainty that would otherwise be lost under the proposed modification. The availability of some process to modify permit corrective action deadlines to address site specific conditions is essential. The waiver and extension process will be illusory unless there is allowance for automatic commencement of permit modifications that authorize waivers and extension. In 2011 the department was unable to process the majority of waiver and extension requests. Without automatic commencement, many facilities that are entitled to waiver and extension would be forced to comply with inappropriate deadlines and they will have no recourse to avoid being in noncompliance with the permit. Retaining the automatic commencement provision also will allow for orderly permit implementation. In the event there is automatic commencement of a waiver and extension, Ecology would retain the authority to modify that result through administrative orders and do so in a way that allows facilities to remain in compliance with the permit. Boeing thus objects to the removal of the provision concerning the applicability of automatic commencement of applications for modification of coverage including applications for waivers and extensions under Condition S8. It is neither fair nor necessary to pull a provision providing certainty in this already excessively complex permit under these circumstances.

Ecology should add clarifying language that public notice does not have to be completed by the April 1st deadline for applications for waivers and extensions under Condition S8. The draft modification already imposes a significantly shorter deadline for Condition S8 applications and there is no reason for Ecology to delay considering the applications pending documentation that public notice has been completed.

Boeing recommends that Ecology retain the approval process in S8 by providing the permittee with more specific instructions and examples. The Department should embrace its duty to make at least a reasonable effort in education and outreach prior to removing a valuable tool for permittee compliance created by “confusion”, as noted in the Fact Sheet (page 10, para 2).

Boeing has the following questions regarding the proposed modifications to Condition S2:

Q1: Will applications be deemed automatically denied if Ecology does not approve the applications within 60 days of filing with the department?

Q2: At what point, if any, in the application process should a facility determine whether its application has been automatically denied?

Q3: How do the permittee deadlines change if the department requires clarification or holds public hearings that go beyond the permit deadlines to implement corrective action?

Response: Ecology disagrees with the suggestion, and has decided to make the permit consistent with WAC 173-226, which provides for the automatic approvals of new applications (NOIs), but not for modifications of coverage.

Response Q1: No, applications will not be automatically denied if Ecology does not approve the applications within 60 days. All applications will either be approve or denied in writing.

Response Q2: See Response Q1.

Response Q3: If Ecology requires clarification, or additional information, the issue will be resolved prior to the applicable Level 2/3 deadline. Public hearings are highly unlikely (Ecology has no record of a public hearing ever being conducted on a modification request), but in the event a public hearing is requested and Ecology agrees to hold one, Ecology will attempt get it held in advance of the applicable Level 2/3 deadline.

Ecology has considered public comments and the pros and cons associated with various deadlines and scheduling constraints, and has decided make the Modification of Coverage deadline (for Level 2/3 waiver or extension requests) consistent with the current Annual Report due date: May 15th. This is also the due date for the 1st quarter DMR, and there are administrative efficiencies gained by making these all due on the same date.

Port of Tacoma

16.

S2. Application for Coverage

B.1. Apply for modification of coverage at least 60 days before implementing a significant process change; or by ~~June~~ April 1st prior to a Corrective Action deadline, if requesting a Level 2 or 3 time extension or waiver request per Condition S8.B-D.

Comment:

This proposed change for the due date of the modification will inhibit the ability of the permittee to complete an appropriate analysis of potential source control Best Management Practices (BMPs). Ecology's *Modification of Permit Coverage Form* requires the Level 2/ Level 3 extensions requests provide a "technical basis for extension" and include "proposed timeline for completion and describe issues that affect completion date; for example, state/local permits, study, design, financing, professional services and contracting, etc."

Reducing the submission schedule does not allow enough time to provide all of the **technical** information that is needed for selecting BMPs that will solve the problem, provide source control and improve water quality.

The Port suggests that Ecology not change the application due date to ensure there is adequate time for facilities to investigate/analyze the problem, select appropriate source control BMPs and support the intent of this permit, which is to improve water quality stormwater discharges at industrial facilities.

Response: Ecology has considered public comments and the pros and cons associated with various deadlines and scheduling constraints, and has decided make the Modification of Coverage deadline (for Level 2/3 waiver or extension requests) consistent with the current Annual Report due date: May 15th. This is also the due date for the 1st quarter DMR, and there are administrative efficiencies gained by making these all due on the same date.

Ecology wants to clarify that a permittee requesting a Level 2/3 time extension is not required to submit complete information on the specific BMPs that will be implemented to address the corrective action; often the permittee hasn't selected the BMPs at this stage in the process. However, the permittee is likely aware of the project management issues that can affect the completion date. Therefore the permittee's "technical basis for extension" (modification application) must include as much detail as possible regarding the proposed timeline for completion and describe issues that affect completion date; for example, state/local permits, study, design, financing, professional services and contracting, etc.

Condition S2.B.1 will be revised as follows:

Apply for modification of coverage at least 60 days before implementing a *significant process change*; or by May 15th ~~June 1st~~ prior to a Corrective Action deadline, if requesting a Level 2 or 3 time extension or waiver request per Condition S8.B-D.

Puget Soundkeeper, Columbia Riverkeeper, Waste Action Project

17.

Conditions S2.B. and C.

The commenters support the proposed modifications to S2.B. and C. to clarify the process for modification of permit coverage.

Response: Thank you.

Weyerhaeuser

18.

S2.B.1. Modification of Permit Coverage –

It would make sense to coordinate the submittal dates for the Annual Report and any Modification of Permit Coverage requesting a Level 2 or 3 time extension. This point in time is logically when a permittee will confirm their status, announce decisions on Corrective Actions,

and determine if a time extension should be requested. April 1st is fine for the Corrective Action time extension. Ecology should consider advancing the Annual Report date from May 15th to April 1st.

Response: Ecology agrees that the annual report and modification of coverage deadline should be coordinated. Ecology has considered public comments and the pros and cons associated with various deadlines and scheduling constraints, and has decided make the Modification of Coverage deadline (for Level 2/3 waiver or extension requests) consistent with the current Annual Report due date: May 15th. This is also the due date for the 1st quarter DMR, and there are administrative efficiencies gained by making these all due on the same date.

S3. Stormwater Pollution Prevention Plan (SWPPP)

Association of Washington Business

19.

S3.A General Requirements:

NEW SECTION REQUESTED-Ecology needs an unambiguous statement to define "all known, available, and reasonable methods of prevention, control, and treatment (AKART) for stormwater pollution." While S3.A.2.a references AKART under the general requirements of a SWPPP, permittees and Ecology staff should be able to discern what constitutes AKART.

Response: As stated in the Stormwater Management Manual for Western Washington (Volume I, Section 1.6) and Stormwater Management Manual for Eastern Washington (Chapter 1, Section 1.1.1), stormwater management techniques applied in accordance with [the Stormwater Management Manuals] are presumed to meet the technology-based treatment requirement of State law to provide all known available and reasonable methods of treatment, prevention and control (AKART; RCW 90.52.040 and RCW 90.48.010). However, at any given facility there may be different or additional requirements in order to satisfy the state AKART requirements due to site-specific conditions.

Wafertech

20.

Illicit Discharges:

WaferTech is requesting clarification regarding pressure washing using water only. There are situations where our facility will request to be able to pressure wash, using city water only, with no chemicals or added cleaning agents, to clean the side of a building, sidewalk, etc. The temperature of the water is ambient. The purpose of the cleaning would be to remove mold or moss, etc. WaferTech does not believe that this activity negatively impacts stormwater; and in the past request to our DOE inspector for approval for this activity, he has agreed. If some language could be added to the revised permit to allow for this, then it would alleviate WaferTech from requesting approval from DOE for each pressure wash event, as described above.

Response: No, the ISGP does not categorically authorize the discharge of pressure washing water, regardless of the temperature or soap content. The federal NPDES regulations include

requirements to eliminate non-stormwater discharges, such as process wastewater (e.g., pressure washing water). Pressure washing water may contain elevated levels of turbidity, metals and other pollutants regulated under the ISGP (depending on the surface, contamination, location, etc.), and can cause violations of the water quality standards. Continue working with your inspector on site specific activities and BMPs.

Weyerhaeuser

21.

S3.A.7. – New Section – Ecology should include a new subsection which says AKART

a. The identification, application/installation, and maintenance of applicable Best Management Practices from appropriate Stormwater Management Manuals constitutes the provision of “*all known, available, and reasonable methods of prevention, control, and treatment (AKART) for stormwater pollution*”.

Support for Request – An unambiguous statement defining AKART is important. Permittees and Ecology staff should be able to discern, with confidence, what constitutes AKART. The ISGWP requires AKART, but the only permit section which references this legal requirement appears to be in S3.A¹.

Response: As stated in the Stormwater Management Manual for Western Washington (Volume I, Section 1.6) and Stormwater Management Manual for Eastern Washington (Chapter 1, Section 1.1.1), stormwater management techniques applied in accordance with [the Stormwater Management Manuals] are presumed to meet the technology-based treatment requirement of State law to provide all known available and reasonable methods of treatment, prevention and control (AKART; RCW 90.52.040 and RCW 90.48.010). However, at any given facility there may be different or additional requirements in order to satisfy the state AKART requirements due to site-specific conditions.

S4. General Sampling Requirements

Association of Washington Business

22.

S4.B.3 Sampling Documentation: The stormwater sampling documentation change from 30 minutes to 12 hours is greatly appreciated. The modified time frame is a more attainable requirement. Taking a stormwater sample within 30 minutes of the commencement of discharge is extremely difficult due to the complexity of staffing, tasking, calibrating equipment, gathering sampling necessities (even if they are set aside), donning the proper protective wear, and maintaining safety in the storm environment.

Response: Thank you.

1

S3.A. is defining the needed content of the SWPPP and includes a listing of AKART, federal technology-based requirements, and identifying the obligation for sufficient BMPs to allow for achievement of water quality standards.

Association of Washington Business

23.

S4.B.6 Sampling Requirements: The stormwater sampling change suspension from four consecutive quarters to eight consecutive quarters seems excessive. Implementing the *draft* change would mean that if a permit holder had two "dry" quarters (normally during the summer), a permit owner would end up sampling for two and a half years. If a permit holder has a proven track record, why would eight consecutive quarters be necessary? Assuming that Ecology's proposed revision of the "consistent attainment" parameter is driven by the PCHB decision in *Copper Development, et.al. v. Washington Department of Ecology* (PCHB Nos. 09-135 through 09-141), Ecology should simply accept the PCHB's direction that seven consecutive quarterly sample results attaining benchmark values is a demonstration of continuous attainment.

Response: The Pollution Control Hearings Board rejected the reduction from 8 quarters to 4 quarters and ordered Ecology to require "at least seven quarters of meeting benchmark values". Ecology has decided to return to the previous (2002-2009) permit requirement that required a total of 8 consecutive quarterly samples to demonstrate consistent attainment. Ecology has also refined the language that allow permittees that already suspended sampling to count those quarters towards the eight required. Ecology believes that, for the facilities that suspended sampling based on four quarters, requiring 4 more samples would better represent the full range of climatic and seasonal variation compared to only 3.

Condition S4.B.6 will be revised as follows:

- iii. Permittees who suspended sampling based on consistent attainment of benchmarks prior to July 1, 2012 must resume/continue sampling until a total of eight consecutive quarterly samples demonstrate consistent attainment.

Example: If a permittee suspended sampling Zinc on January 1, 2012 based upon 4 consecutive quarterly samples collected in 2011, the permittee must resume sampling Zinc on July 1, 2012 until four more consecutive quarterly samples (for a total of 8) are equal to or less than the Zinc *benchmark*.

BNSF

24.

Proposed revision to Condition S4.B.6

In its April 21, 2011 Findings, Conclusion, and Order in *Copper Development v. Ecology*, 09-131 *et seq* (Order), the Pollution Control Hearings Board (PCHB) criticized Ecology's lack of evidence as to the sufficiency of four quarters of sampling to demonstrate "consistent attainment." The PCHB specifically cited to an internal briefing paper stating that seven quarters are adequate. Order, pp. 65-66. Ecology now proposes to require that facilities successfully sample for eight consecutive quarters to prove consistent attainment. Ecology's Fact Sheet accompanying the draft permit amendments presents no new information or science supporting the increase to eight quarters, the same flaw for which the PCHB criticized Ecology when it set the number at four quarters. Further, the PCHB gave Ecology the discretion to continue with the present four quarters of sampling to demonstrate consistent attainment if sampling resumed

within two to three years, rather than the full five-year permit cycle. Ecology does not explain whether or not it considered this alternative and, if so, why it rejected it.

Response: The Pollution Control Hearings Board rejected the reduction from 8 quarters to 4 quarters and ordered Ecology to require “at least seven quarters of meeting benchmark values”. Ecology has decided to return to the previous (2002-2009) permit requirement that required a total of 8 consecutive quarterly samples to demonstrate consistent attainment. Ecology has also refined the language that allow permittees that already suspended sampling to count those quarters towards the eight required. Ecology believes that, for the facilities that suspended sampling based on four quarters, requiring 4 more samples would better represent the full range of climatic and seasonal variation compared to only 3.

Ecology considered the PCHB decision that gave Ecology the discretion to continue with the present four quarters of sampling to demonstrate consistent attainment if sampling resumed within 2-3 years. Ecology rejected this alternative because it would introduce tracking and compliance issues, since the resumption of sampling would be different for different facilities, and different outfalls, based upon the 2-3 year anniversary date of the 4th consecutive quarter.

BNSF

25.

Off-site storm water run-on

Ecology's proposed permit amendments for facilities that discharge to 303(d)-listed water bodies raises an issue common to a wide variety of industrial facilities. BNSF applauds Ecology for recognizing the difficult position of Permittees whose facilities exceed benchmarks due to influences outside the Permittees' control, but believes that Ecology should provide a broader solution to address this problem at all Washington facilities, not just those that discharge to a 303(d)-listed water body. As currently written, the 2010 ISGP makes Permittees responsible for the pollution that runs onto their property. At some of its facilities, there are sources outside BNSF's control (e.g., public highways and non-point source runoff) that may be the cause of exceedances at some of its facilities, but which are not themselves currently subject to effluent limits for stormwater runoff. There are a variety of reasons why it may be ineffective to negotiate with neighboring landowners (e.g., where there is no existing legal obligation for that neighbor to reduce contaminants in stormwater runoff or the source cannot be identified). Moreover, revising a facility's sampling plan is difficult where, for instance, it is sheet flow from various parts of a neighboring property or non-point source pollution that runs on to the facility from a road that commingles with the stormwater exposed to the Permittee's activities.

In such situations, Ecology should provide a mechanism so that facilities are not unfairly burdened by the (potentially unregulated) discharges of their neighbors. One option would be allowing Permittees to take upstream samples that show that the facility's exceedances are caused by storm water runoff from neighboring properties or from non-point source runoff. Ecology should revise Condition S4.B.2 to allow Permittees to report the results of sequential samples - one on the source property immediately before the stormwater runs on to the Permittee's property and one on the Permittee's property- that estimate the discharges actually caused by the Permittee. More accurate sample results would help a Permittee expeditiously determine whether its facility is the cause of the benchmark exceedances and, if not, would alleviate the significant

cost of preparing a waiver application and/or installing structural or treatment measures to address pollution caused by a neighbor. This information would also help Ecology set its regulatory priorities to address major sources of pollution. BNSF proposes the following language:

S4. GENERAL SAMPLING REQUIREMENTS

A. General Requirements

The Permittee shall conduct sampling of *stormwater* in accordance with this permit and the SWPPP.

B. Sampling Requirements

1. Sample Timing and Frequency

a. The Permittee shall sample the *discharge* from each designated location at least once per quarter:

1st Quarter= January, February, and March

2nd Quarter= April, May, and June

3rd Quarter= July, August, and September

4th Quarter= October, November, and December

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 1st 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.

d. The Permittee shall obtain *representative samples*, which may be a single grab sample, a time-proportional sample, or a flow-proportional sample. e. Permittees need not sample outside of *regular business hours*, during unsafe conditions, or during quarters where there is no discharge, but shall submit a Discharge Monitoring Report each reporting period (Condition S9.A).

2. Sample Location(s)

a. The Permittee shall designate sampling location(s) at the point(s) where it discharges *stormwater* associated with *industrial activity* off-site.

b. The Permittee is not required to sample on-site discharges to ground (e.g., infiltration, etc.) or *sanitary sewer* discharges, unless specifically required by *Ecology* (Condition G 12).

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).

d. The exception to sampling each point of *discharge* in S4.B.2.c does not apply to any point of discharge subject to numeric effluent limitations (Conditions S5.C, S6.C & S6.D).

e. Where *stormwater* from adjacent properties discharges to a Permittee's *facility* and commingles with *stormwater* associated with *industrial activity* at the Permittee's *facility*, the Permittee may conduct sequential sampling and report the sampling results for the

difference in pollutant concentration in the DMR for stormwater associated with *industrial activity* at the Permittee's facility.

Response: Ecology has considered the comment and suggested revision, but has decided to have permittees sample and report stormwater discharge quality, even if that stormwater has been affected by off-site activity or run-on. State and federal laws and rules, and case law, for NPDES permitting does not excuse dischargers from the pollutant contributions that originate from off-site activity and/or sources, including run on that co-mingles with stormwater associated with industrial activity. No change made in response to this comment.

Dawson Consulting LLC

26.

S4. General Sampling Requirements [Consistent Attainment]

We support the modification that allows permittees that suspended sampling based on consistent attainment of four consecutive samples to use those samples toward their new total of eight samples. At the Seattle workshop, Ecology noted that a permittee with six consecutive samples need only meet the benchmark in an additional two consecutive samples. This doesn't appear to be allowed pursuant to the proposed revision at S4.B.6., and should be allowed. Perhaps the requirement could be modified to state that permittees who suspended sampling based on consistent attainment prior to [the modification effective date] must resume/continue sampling until a total of eight samples demonstrate compliance.

Response: Ecology agrees with the suggestion, as it is consistent with the PCHB order and Ecology's intent. Condition S4.B.6 will be revised as follows:

Permittees who suspended sampling based on consistent attainment of benchmarks prior to July 1, 2012 must resume/continue sampling until a total of eight consecutive quarterly samples demonstrate consistent attainment.

Example: If a permittee suspended sampling Zinc on January 1, 2012 based upon 4 consecutive quarterly samples collected in 2011, the permittee must resume sampling Zinc on July 1, 2012 until four more consecutive quarterly samples (for a total of 8) are equal to or less than the Zinc benchmark.

Nisqually Environmental Sampling and Consulting

27.

The provisions in the permit requiring notation assuring that the sample was obtained during the first 12 hours of discharge or noting why the sample was obtained outside of the 12 hour window is difficult to implement. Specifically, for a company that operates on a single shift, 8 hour day, a person upon entering the premises during a rain event, would check the discharge location and if there was discharge, would not be able to sample because he or she would not know when the discharge occurred and therefore would not be able to select the two choices offered by ecology (within 12 hours or outside 12 hours). Only discharge that occurred during a rain event that started during the 8 hours of operation would be able to be sampled, assuming that there was

discharge during this 8 hours. We prefer that this provision be stricken from the permit as the data is not collected by Ecology (it is not noted on the DMR or the eDMR system, however realize that this may not be possible and secondarily suggest that a third option be allowed, “Unknown, discharge was occurring during start of business”.

Response: Ecology agrees that there may be circumstances that prevent a permittee from knowing if the discharge was collected within the first 12 hours, or outside the first 12 hours of a discharge. For example, if a permittee arrives at the facility at the start of regular working hours and the discharge was already occurring, and he/she doesn’t know how many hours had elapsed since the discharge began. In such situations, the permittee can’t certify if it was within 12 hours, or outside of 12 hours of the discharge beginning, so the permit conditions S4.B.1.c and S4.B.3.c&d have been revised:

S4.B.1.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; or if it is unknown (e.g., discharge was occurring during start of regular business hours).

S4.B.3.c

A notation describing if the Permittee collected the sample within the first 12 hours of *stormwater* discharge events; or, if it is unknown (e.g., discharge was occurring during start of regular business hours).

S4.B.3.d

An explanation of why it could not collect a sample within the first 12 hours of a *stormwater discharge* event, if it was not possible. Or, if it is unknown, an explanation of why it doesn’t know if a sample was collected within or outside the first 12 hours of *stormwater* discharge.

Port of Tacoma

28.

S4. General Sampling Requirements

B.6.b.iii Permittees who suspended sampling based on consistent attainment of benchmarks for four consecutive quarterly samples must resume/continue sampling until four more consecutive quarterly samples (for a total of 8) demonstrate consistent attainment of the applicable benchmark.

Comment:

The purpose of this section is to prove the facility meets or exceeds the standard for stormwater discharge. Four quarters equates to an entire year of a five-year permit cycle. If the permitted facility has shown to consistently meet benchmarks over an entire year then that facility should be able to suspend sampling for those parameters. Retroactively requiring resuming sampling for an additional four consecutive quarters in the middle of the permit cycle is onerous for those facilities that have been in consistent attainment.

The Port requests clarification about when sampling needs to resume, since there is no effective date to this change.

Response: The change to Condition S4.B.6.b.iii is driven by a PCHB order. Ecology understands the concerns about sampling resuming in the middle of the permit cycle, but cannot continue to allow the suspension of sampling after 4 quarters (one year) of consistently meeting the benchmark.

The resumption of sampling begins on the effective date of the modification, July 1, 2012 (i.e., sampling needs to resume during the 3rd Quarter of 2012), and continues until the benchmark is attained during 8 consecutive quarters.

Puget Soundkeeper, Columbia Riverkeeper, Waste Action Project

29.

Condition S4.B.6.

The commenters support the change in qualification for the consistent attainment exemption from monitoring requirements to eight consecutive quarters below benchmark.

We suggest, however, that Ecology include language stating that the exemption expires at some particular date, i.e., the ISPG expiration date. There is no guarantee that the ISGP will be timely reissued so that it does not continue in effect beyond its expiration date. Ecology has not reliably reissued general permits upon their expiration. For instance, the Phase I Municipal Stormwater General Permit issued in 2000 was in effect for years after its 2005 expiration date. If this ISGP continues in effect beyond its expiration date, without the inclusion of a set consistent attainment monitoring exemption expiration date, the exemption continues with it. This would be an unacceptable result and Ecology should take the precautionary step of including an exemption termination date in this condition.

Why is there no expiration date for the consistent attainment monitoring exemption?

Response: Ecology considered the suggestion, but has decided against having permit requirements change on the expiration date of the permit. Ecology plans to reissue the ISGP with an effective date of January 1, 2015, and sampling will resume on that date. No change to permit.

Washington Refuse & Recycling Association

30.

The modification to S4.B.6. Consistent Attainment

We believe the requirement for "benchmark attainment" required before sampling is suspended should be 7 samples as opposed to the proposed 8 samples.

Proposed Revisions

1.Pg.4 #6. The permitted may suspend sampling for one or more parameters (other than "visible oil sheen") based on consistent attainment of benchmark values when:

a. Seven consecutive quarterly samples demonstrate a reported value equal to or less than the benchmark value; or for Ph within the range 5.0- 9.0. These quarterly samples can be collected prior to the effective date of this regulation.

Reason: PCHB ruling (p 65-66) states "an internal briefing paper stated that seven samples are adequate." Additionally, there is no reason to delay the sampling for the benchmarks for those that have already reached their consistent attainment, let the sampling continue. There are quarters when no sampling can occur because of "no" rain event so to prolong the sampling has no value.

2.S4.B.6 iii Permittees who suspended their sampling based on their consistent attainment of benchmarks for four quarterly samples must resume/continue sampling until three more consecutive quarterly samples (for a total of seven) demonstrate attainment of the applicable benchmark.

Response:

The Pollution Control Hearings Board rejected the reduction from 8 quarters to 4 quarters and ordered Ecology to require "at least seven quarters of meeting benchmark values". Ecology has decided to return to the previous (2002-2009) permit requirement that required a total of 8 consecutive quarterly samples to demonstrate consistent attainment. Ecology has also refined the language that allow permittees that already suspended sampling to count those quarters towards the eight required. Ecology believes that, for the facilities that suspended sampling based on four quarters, requiring 4 more samples would better represent the full range of climatic and seasonal variation compared to only 3.

Weyerhaeuser

31.

S4.B.6. Sampling Requirements –

Ecology's proposed revision of the "consistent attainment" parameter is driven by the PCHB decision in Copper Development, et.al. vs. Washington Department of Ecology (PCHB Nos. 09-135 through 09-141). In Conclusion of Law 31, the PCHB said "...we conclude that at least seven quarters of meeting benchmark values should be expected prior to a suspension of sampling for the remainder of the permit term."

Why would not Ecology simply accept the PCHB direction that seven consecutive quarterly sample results attaining benchmark values is a demonstration of continuous attainment? The agency should change the proposed permit language from "Eight" to "Seven consecutive quarters..."

Response: The Pollution Control Hearings Board rejected the reduction from 8 quarters to 4 quarters and ordered Ecology to require "at least seven quarters of meeting benchmark values". Ecology has decided to return to the previous (2002-2009) permit requirement that required a total of 8 consecutive quarterly samples to demonstrate consistent attainment. Ecology has also refined the language that allow permittees that already suspended sampling to count those quarters towards the eight required. Ecology believes that, for the facilities that suspended sampling based on four quarters, requiring 4 more samples would better represent the full range of climatic and seasonal variation compared to only 3.

Condition S4.B.6 will be revised as follows:

Permittees who suspended sampling based on consistent attainment of benchmarks prior to July 1, 2012 must resume/continue sampling until a total of eight consecutive quarterly samples demonstrate consistent attainment.

Example: If a permittee suspended sampling Zinc on January 1, 2012 based upon 4 consecutive quarterly samples collected in 2011, the permittee must resume sampling Zinc on July 1, 2012 until four more consecutive quarterly samples (for a total of 8) are equal to or less than the Zinc benchmark.

S6. Discharges to 303(d)-Listed or TMDL Waters

Association of Washington Business

32.

S6.Table 5 Sampling and Effluent Limits Applicable to Discharges to 303(d)-Listed Waters: Several of the proposed footnote "h" requirements relating to mandatory BMPs targeting fecal coliform in stormwater are not practical and likely to be misunderstood. The broad language used to define "mandatory BMPs" in h(1) is vague. The proposed narrative limits include requirements to install "effective structural source control BMPs" and "effective source control BMPs to eliminate" known sources of bacteria. What is meant by "effective" and "eliminate"? Further, what are "all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility"? Will Ecology's final version of the Table 5 fecal coliform requirement be the model for other stormwater permittees discharging fecal coliform to 303(d)-listed waters? Will Phase I and Phase II municipal stormwater permits or the WSDOT municipal stormwater permit be subject to the same AKART requirements?

Response: Ecology has considered public comments and has refined the mandatory BMPs:

A numeric effluent limit does not apply, but permittees must sample according to Table 5. In addition, the following mandatory BMPs shall be incorporated into the SWPPP and implemented:

- 1) Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility. Nothing in this section shall be construed as allowing violations of any applicable federal, state or local statutes, ordinances, or regulations including the Migratory Bird Treaty Act.
- 2) Perform at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections;
- 3) Install structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, animal products, etc.);
- 4) Implement operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste, etc.);
- 5) Additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis.

Boeing

33.

Condition S6. 303(d) Limits

Ecology proposes to replace numeric effluent limitations for discharges to section 303(d) water bodies listed as impaired for fecal coliform criteria with narrative limits. The proposed narrative limits include requirements to install “effective structural source control BMPs” and “effective source control BMPs to eliminate” known sources of bacteria. Boeing has substantial concern about what is meant by “effective” in the proposed narrative limits. This is an imprecise word that is subject to varying interpretations. Combined with a proposed condition that facilities must “eliminate” known sources of bacteria, the narrative limits are potentially as stringent and likely as impossible to attain as the current numeric limits.

Rather than introducing new and ambiguous terms, Ecology should consider using familiar terminology. For example, the phrase AKART is a generally accepted concept from which to start a discussion on BMP implementation.

Boeing recommends that industrial sites with activities that are not associated bacterial pollution be excluded from the fecal coliform provision in Condition S6 of the ISGP. Ecology concludes in its own report to the legislature² and in the 2009 draft ISGP fact sheet that there is no need for any fecal coliform limit to industrial activities that are not associated with bacterial pollution. It is unrealistic for industries not associated with bacterial pollution to attempt to control or eliminate the bacteria associated with animal life, such as birds. The unrealistic nature of such coverage is emphasized by conclusions recently documented in EPA’s International Stormwater BMP Database that stormwater treatment systems are likely to act as incubators for animal-introduced bacteria.

Boeing recommends that Ecology work with the permittee to develop a quarterly monitoring program focused on the effectiveness of the BMPs in attaining a sustainable reduction in bacterial pollution. This program would create an adaptive management scheme to apply the preferred BMP approach as conditions change at a facility. The BMP effectiveness approach provides a more objective evaluation of the facility’s efforts to use AKART successfully than relying on end-of-pipe measurements, particularly in light of the information discussed in previous paragraph.

Boeing has the following questions regarding the proposed modifications to Condition S6:

Q1: Are the BMPs associated with detection and removal of illicit connections (S3.B.7) sufficient to meet the narrative requirement for ensuring exclusion of human-caused fecal coliform bacteria?

Q2: Ecology’s proposed modifications to Condition S6 contain ambiguous terms. Permittees need to have a process by which they can determine how they are to satisfy the conditions imposed by these terms.

Q3: What constitute “effective” structural and operation source control BMPs?

² Industrial Stormwater Discharges to Impaired Water Bodies, Options for Numeric Effluent Limitations, Ecology No. 09-10-005 (Dec. 2008).

Q4: What manuals and guidance documents should be consulted in identifying effective BMPs to reduce or eliminate bacterial pollution?

Q5: What BMP(s) does Ecology consider applicable or recommended for eliminating bacterial contamination in industrial stormwater?

Q6: Does Ecology believe that it would be reasonable and lawful to exclude all wildlife including birds from an industrial facility, with particular concern for species protected under the Endangered Species Act, Migratory Bird Treaty Act, or other similar statutes?

Response: Ecology agrees that the current limits are as stringent as the previous numeric effluent limitations, as they are Narrative Water Quality-Based Effluent Limitations, intended to prevent discharges which cause or contribute to violations of the water quality standards for bacteria. Ecology. They are intended to be as stringent as the previous limits, so as to not run afoul of the Anti-backsliding provisions of the Clean Water Act. Ecology disagrees that the mandatory BMPs are impossible to attain. Ecology also disagrees with Boeing's suggestion to use "AKART" because it would imply that the limits are technology-based, which is not the case. Rather, the BMPs are narrative water quality-based limits which, along with Condition S10 – COMPLIANCE WITH STANDARDS, are intended to prevent discharges that could cause or contribute to a violation of water quality standards in waterbodies that are already polluted, and "listed" pursuant to Section 303(d) of the Clean Water Act. No change to permit based on comment. Ecology believes it would be unlawful to following Boeings recommendation to exclude "industrial sites with activities that are not associated with bacterial pollution" from the fecal coliform provision in Condition S6 of the ISGP. RCW 90.48.555(7)(b) doesn't allow for the exclusion suggested by Boeing: "By July 1, 2012, the industrial storm water general permit must require permittees with discharges to water bodies listed as impaired for bacteria to comply with nonnumeric, narrative effluent limitations."

Ecology has considered public comments and has refined the mandatory BMPs:

A numeric effluent limit does not apply, but permittees must sample according to Table 5. In addition, the following mandatory BMPs shall be incorporated into the SWPPP and implemented:

- 1) Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility. Nothing in this section shall be construed as allowing violations of any applicable federal, state or local statutes, ordinances, or regulations including the Migratory Bird Treaty Act.
- 2) Perform at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections;
- 3) Install structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, animal products, etc.):
- 4) Implement operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste, etc.);
- 5) Additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis.

City of Everett

34.

My comments do not relate strictly to critical analysis of the permit, but act rather as an appeal for the actions taken in the Legislature and applied to the permit to be considered with regard to municipalities under the Phase I and II NPDES municipal stormwater permits. I am referring to page 11 of the draft fact sheet titled *Revisions Related to Numeric Effluent Limits for Discharges to 303(d) Waters*. As a result of recent legislation, industrial permittees will not longer be subject to numeric effluent limits for fecal coliform. One question I do have, is will this also apply to industries and businesses that have the potential for fecal coliform contamination as a result of their processes? I am referring to businesses involving composting, soils manufacture, and animal handling. If local jurisdictions are still required to inspect these businesses, will it be sufficient to only look at BMPs, and not ask for sampling results (or not sample ourselves if we observe problems)? It seems that these businesses should retain limits.

Jurisdictions also have parking lots and trees that attract birds. We also build stormwater ponds that attract birds and wildlife, and retain natural features such as wetlands, which is a requirement of state and federal law. Part of our TMDL program under the NPDES Phase II permit requires us to visually inspect for flows coming into impaired waterbodies in the dry season. A number of these flows are coming from wetlands inhabited by birds. During these low flow periods, the numbers for fecal coliform can be very high, and yet there is little we can do about these natural discharges with wildlife as a primary cause of bacterial pollution. Once we have done the education efforts, put up the Mutt Mitt stations, developed enforcement strategies for pet waste, and inspection programs for animal handling facilities, it is difficult to see an effective path forward when remaining coliform problems appear to be from wildlife. Microbial Source Tracking has confirmed this in at least one location in Everett.

What I would request is opening a serious dialog between jurisdictions with TMDLs and Ecology to discuss what can be realistically done when fecal coliform exceedances are a result of wildlife. Application of AKART to natural wetlands would put us in violation of laws protecting wildlife. We are all aware that when it rains, stormwater carries fecal coliform from multiple sources to the creeks, so is the state standard realistic? We do recognize that shellfish areas require special effort, and we agree that it is important to protect this resource.

Thank you for your consideration of these comments, and I look forward to further discussion with Ecology.

Response: Ecology has verified that no compost, soil manufacturing, or animal handling facilities under the ISGP discharge to fecal coliform 303(d)-listed waterbodies (Water Quality Assessment Category 5). Therefore, industrial facilities in those sectors were not previously subject to 303(d)-related numeric effluent limits under the ISGP.

Condition S6.D of the ISGP will continue to require compliance with any additional requirements set forth in an EPA-approved Total Maximum Daily Load (TMDL, or Water Clean-up Plan). The Phase I and Phase II Municipal Stormwater Permits (Appendix 2) also specifies additional requirements for certain jurisdictions with TMDLs.

In addition, Ecology may require specific ISGP facilities with elevated risk for fecal coliform contamination to perform appropriate monitoring (per Condition G12 Additional Sampling) or pollution prevention measures. Municipalities are encouraged to work with Ecology on identifying and addressing issues at facilities with materials or processes likely to cause bacteria-related pollution.

Ecology agrees that the issues regarding the fecal coliform standard, municipal stormwater, and TMDLs are complex and in a state of evolution. Local jurisdictions, Ecology, and other stakeholders certainly need to continue discussing the issues and working together on solutions.

City of Longview

35.

Consider adding to sections S1.D.8 and S6.B the exclusion for the fecal parameter when discharging to 303(d) listed waters.

Response: Ecology cannot make changes to the legal requirements for *new* dischargers to 303(d)- listed waterbodies. Ecology's change regarding fecal coliform is based upon RCW 90.48.555(7)(b), which only applies only to *existing* dischargers to 303(d)-listed waterbodies.

Lincoln Loehr

36.

I concur with the ISGP moving away from numeric bacteria limits for stormwater discharges to 303(d) listed waters. The proposed narrative requirements however are probably asking more than is necessary. If a facility isn't likely to have bacterial discharges as a result of industrial or human practices at the site, then there really isn't much to be concerned about. Generally there should be no need for any provision for bacteria for such facilities in the general permit.

Assuming that Ecology will not remove bacteria provisions from the general permit, then the proposed bacteria requirement for S6.C Table 5 footnote h to "1) Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility" is excessive. Essentially this is putting AKART style requirements in the permit to prevent wildlife from utilizing the site. This is especially odd since some of the best stormwater management practices actually create habitat that is attractive to wildlife, particularly aquatic birds. This should be viewed as an enhancement, and birds as a bacterial concern should not require management, at least in most cases. Perhaps management even of birds is appropriate in some situations, such as adjacent to commercial shellfish operations, but thats about the only reason to go to such an extreme.

The laws pertaining to AKART relate to wastes proposed for discharge (RCW 90.52.040, and RCW 90.54.020) or to toxics (RCW 90.48.520). Bacteria is not a toxic, nor is it a waste that the facilities propose to discharge or expect to result in their discharge from human or process inputs. To the extent that it occurs from inputs of non-domestic wildlife, that should not warrant actions to control. Waterfowl will get to water and will introduce bacteria. Diverting water fowl away will simply result in their bacteria inputs occurring to other nearby water.

Change 1) in proposed footnote "h" to read something like the following:

1) Evaluate whether domestic animals (e.g., horses, cattle, dogs) might have access to stormwater systems such as ponds and take reasonable methods to prevent them from doing so. Ponds, wetlands and swales are expected to attract birds and other wildlife and generally that is OK. This permit does not require actions to discourage birds or other wildlife that may be attracted to stormwater systems and property. If the facility lies in a shellfish protection district, there could be wildlife controls imposed through that process.

Response: Ecology disagrees with the suggestion that AKART requirements don't apply to bacteria or other pollutants that are unexpected or not directly related to human or process inputs. However, the mandatory BMPs related to fecal coliform bacteria are water quality-based narrative effluent limits [RCW 90.48.555(7)], rather than technology based (AKART) effluent limits.

Ecology believes that (1) in footnote "h", is properly focused on nuisance animals and birds that would be associated with industrial facilities (e.g., seagulls, pigeons, rats, etc.), and believes that it would be inappropriate to mention domestic animals (e.g., horses, cattle, etc.). Ecology also disagrees with the suggestion for the permit to state that birds and wildlife are "OK". Concentrated populations of Canada geese and other waterfowl can cause damage and water quality problems in stormwater ponds including erosion; invasive species; increased nutrients, bacteria and other pathogens; and increased turbidity from waterfowl sifting through the pond bottom for invertebrates.

Best management practices (e.g., un-mowed pond buffers, etc.), including a range of commercial bird control products (e.g., predator decoys, noise makers, lights, wires, repellants, etc.) are available to upset the behavior of waterfowl and encourage them to move elsewhere.

Puget Soundkeeper, Columbia Riverkeeper, Waste Action Project

37.

Condition S6.C.

The commenters oppose the removal of the numeric fecal coliform effluent limitation for discharges to receiving waters 303(d)-listed for fecal coliform and its replacement with mandatory fecal coliform-specific BMPs. Commenters understand that amendment of RCW 90.48.555 to specifically call for this change is pending, but this modification violates federal law.

The fecal coliform numeric effluent limitations are water quality-based effluent limitations. Where receiving waters do not meet fecal coliform water quality criteria, resulting in their inclusion on the 303(d) list, it is reasonable to conclude that stormwater discharges, or any discharges, that contain a concentration of fecal coliform greater than the water quality criteria contribute to the impairment. Certainly, in such a situation, reasonable potential to cause or contribute to violations of water quality standards (per 40 C.F.R. § 122.44(d)) exists. Under federal law, this reasonable potential means that the permit must include a numeric effluent limitation for fecal coliform, so long as one is feasible. The Pollution Control Hearings Board specifically found that the fecal coliform numeric effluent limitation is appropriately derived. Thus, the fecal coliform numeric effluent limitation is required by federal regulations. There is

no legal or appropriate consideration of Ecology's stated basis for this proposed modification – the “uniqueness of fecal coliform” and that “industrial facilities are not considered a significant source of bacteria in Washington's water bodies” – in light of these legal requirements and the findings of the Board. Furthermore, the substitution of a short list of mandatory BMPs (proposed footnote h. to Table 5) for the fecal coliform numeric effluent limitation conflates water quality-based and technology-based effluent limitations. Because the ISGP must require strict compliance with water quality standards, this is insufficient. *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1164 (9th Cir. 1999); *see also, Ackels v. U.S. Env'tl. Protection Agency*, 7 F.3d 862, 865-66 (9th Cir. 1993) (when it comes to ensuring compliance with water quality standards, “economic and technological constraints are not a valid consideration” in developing NPDES permits).

Does Ecology contend that the proposed mandatory BMPs constitute an acceptable water quality-based effluent limitation for fecal coliform? If so, why?

What information does Ecology have that indicates that implementation of these mandatory BMPs will reduce fecal coliform discharge concentrations to levels low enough to ensure that discharges will not contribute to fecal coliform water quality criteria violations in receiving waters that are 303(d)-listed for fecal coliform?

Does Ecology contend that there is no reasonable potential for ISGP permittees discharging into receiving waters impaired for fecal coliform to cause or contribute to a violation of the fecal coliform water quality criteria? If so, why?

Does Ecology contend that the inclusion of the fecal coliform numeric effluent limitation is infeasible? If so, why?

The deletion of the fecal coliform numeric effluent limitation violates the anti-backsliding prohibition of 33 U.S.C. § 1342(o) because the modified ISGP will have effluent limitations that are less stringent than the comparable effluent limitations in the current permit. None of the exceptions to the anti-backsliding prohibition apply, so the proposed modification is illegal. Does Ecology contend that the removal of the fecal coliform numeric effluent limitation does not constitute backsliding? If so, why?

Does Ecology contend that one or more of the 33 U.S.C. § 1342(o)(2) exceptions to the anti-backsliding prohibition applies? If so, which one(s) and why?

Commenters have been involved in citizen enforcement actions against a number of permittees where there are or have been issues of compliance with the fecal coliform numeric effluent limitations. These cases include ones concerning Meltec (Division of Young Corp.), SSA Terminals LLC, Total Terminals, Inc., and Manke Lumber Co. These cases involved sometimes very elevated fecal coliform stormwater discharge concentrations, sometimes an order of magnitude or two above the applicable numeric effluent limitation. In each case, we suspect that the cause of the elevated fecal coliform was not only birds, but also (as identified by proposed footnote h. para. 3) of the draft modified permit) dumpsters, composting materials, food waste, or animal products. In our monitoring of discharge monitoring reports and other submissions by

these and other permittees, we have certainly seen indications that permittees can indeed control fecal coliform levels in stormwater discharges and bring them below the numeric effluent limitations through the implementation of reasonable measures.

What is the basis for the fact sheet assertion that permittees currently subject to the fecal coliform effluent limitation are or will be unable to comply “due to factors beyond the control of industrial facilities”? Has Ecology evaluated this assertion in light of examples of permittees that have managed to reduce fecal coliform concentration levels? What analysis of permittee monitoring data has Ecology performed to support this assertion?

In addition, the commenters note that the fecal coliform numeric effluent limitation was part of the 2004 legislative bargain resulting in enactment of RCW 90.48.555. The state statutory mandate to include numeric effluent limitations for discharges into 303(d) listed waters was one of the primary concessions obtained by the environmentalist side from Ecology and the regulated entities in the agreement. As parties actively involved in the negotiations that resulted in RCW 90.48.555, commenters are very dismayed by Ecology’s efforts to remove this effluent limitation.

If the fecal coliform numeric effluent limitation is removed as proposed, what provisions of the permit ensure that discharges to fecal coliform-impaired (303(d)-listed) waters will not contribute to the impairment? Given the ISGP’s treatment of other pollutants of concern (e.g., copper) with stringent benchmarks and corrective actions up to level 3 implementation of treatment BMPs, why is there no benchmark and adaptive management process for fecal coliform?

Response: Ecology considers the mandatory BMPs in Condition S6, along with Condition S10 – Compliance With Standards, “water quality-based narrative effluent limitations” for fecal coliform bacteria and consistent RCW 90.48.555(7). Ecology does not consider the narrative effluent limits less stringent than the previous numeric effluent limitations, and has concluded that the revision does not run afoul of the Anti-backsliding provisions of the federal Clean Water Act. Ecology believes that the mandatory BMPs listed in Table 5 (footnote h) will prevent discharges that could cause or contribute to violations of water quality standards. Ecology agrees that birds are not the only potential source of bacteria at industrial facilities; other on-site sources and activities are sometimes responsible for elevated bacteria levels. Ecology believes that appropriate best management practices can prevent stormwater contamination from dumpsters, composting materials, food waste, or animal products and reduce high fecal coliform levels in stormwater down to the water quality standards for bacteria.

Snoqualmie Tribe

38.

NOTE: The following is a *summary* of Oral Testimony Provided by Matt Bearwold, Water Quality Manager - Snoqualmie Tribe, at March 12, 2012 Public Hearing, South Seattle Community College – Georgetown Campus. Ecology’s website contains an .mp3 file with Mr. Bearwold’s complete testimony:
<http://www.ecy.wa.gov/programs/wq/stormwater/industrial/commentsfeb12/iswgphearingseattle.mp3>

My comments are limited to revisions to the numeric effluent limits, for discharges to 303(d) listed water bodies.

It's easy to construe it that you're almost giving up on 303(d) water bodies. When Ecology's rational for the changes is explained, understand you're looking for regulatory flexibility; that may or may not be justified. The 303(d) impaired waterbodies, we're supposed be working harder to protect - concerned the proposed changes can in effect reverse that. Even if not in effect, it's sort of an attitude. (2:43)

If we're doing quarterly monitoring anyway, and we have the numbers/data available, why don't we use that? Leaves too much room for ambiguity. How much is too much? Previous limits, based on state limits, that's easy to justify. Troublesome to adjust them, if they don't concur with the state limits, you [Ecology] need to figure out how to make these mesh.

Concern is that we change rules more in direction of protecting resource, not away from it.

Response: Ecology sincerely appreciates the testimony given at the March 12, 2012 public hearing in Seattle. Ecology considers the mandatory BMPs in Condition S9, along with Condition S10 – Compliance With Standards, “water quality-based narrative effluent limitations” for fecal coliform bacteria and consistent RCW 90.48.555(7). Ecology is certainly not giving up on the waterbodies impaired for bacteria and considers new narrative effluent limits to be no less stringent than the previous numeric effluent limitations. Ecology believes that appropriate best management practices can prevent stormwater contamination from dumpsters, composting materials, food waste, or animal products and reduce previously high fecal coliform levels in stormwater down to the water quality standards for bacteria.

Washington Refuse and Recycling Association

39.

Change requirements for Bacteria "impaired" waterbodies

We agree with the Department of Ecology's proposal to replace numeric effluent limits with BMP's. As we stated in our opening general comments, we believe that Best Management Practices be employed in lieu of strict numeric measurement as the best approach to the unique situation of each facility.

Response: Thank you.

Weyerhaeuser

40.

S6. Table 5 Discharges to 303(d) or TMDL Waters – Several of the proposed footnote “h” requirements relating to mandatory BMPs targeting fecal coliform in stormwater are not practical and/or will be misunderstood, and thus in the end, largely ignored.

First, recognize the scope of the Table 5 requirements is probably significant. There appear to be about 500-600 waterbody segments listed for fecal coliform on the 2008 Section 303(d) Category 5 report. The point here is that there may be 100's of ISWGP permittees who discharge into a Category 5 waterbody segment, and thus subject to the S6. Table 5 proposed requirements.

Second, the broad language used to define “mandatory BMPs” in subsection 1) is problematic. To illustrate, in subsection 1), what exactly are the “all known, available and reasonable methods” which Ecology has in mind? Will it be necessary for permittees to hire hunters/trappers

to kill or divert all animal life that seeks entry to a facility? Is this a 24/7 obligation? Should sound machines or ribbons or netting or an electrified fence be placed around the perimeter of a property? These techniques/equipment (and many others) would certainly be AKART contenders.

A practical approach (and one consistent with the PCHB Conclusion of Law 21 in Copper Development) would substitute this language as the “footnote h”:

h) ISWGP dischargers to 303(d) or TMDL waters must:

- 1) Perform and document a dry weather inspection to identify and eliminate sanitary sewer cross-connections;
- 2) Install operational and structural source control, and describe in the SWPPP, those BMPs which seek to minimize precipitation/stormwater contact with probable sources of fecal coliform bacteria (e.g., dumpsters, compost piles, exposed food wastes, exposed animal products)
- 3) Sampling/analysis for fecal coliform would be required if Ecology determines the industrial activity at a Facility is a likely and persistent source of fecal coliform to the stormwater discharge(s).

Finally, should we expect that Ecology’s final version of this Table 5 fecal coliform requirement will now be the model for other stormwater permittees discharging to fecal coliform/303(d) waterbodies? For example, will future versions of the Phase I and Phase II municipal stormwater permits, or the WSDOT Municipal stormwater permit, include the same requirements? If not, why not?

Response: Ecology recognizes that there are 500-600 waterbody segments “impaired” for fecal coliform, and approximately 80 facilities are affected by the additional fecal coliform requirements. The ISGP does not require extreme measures like hunting/trapping, but there are known, available and reasonable best management practices (e.g., un-mowed pond buffers, “Don’t feed the birds” signs, etc.) and commercial products (e.g., predator decoys, noise makers, lights, wires, repellants, etc.) are available to comply with permit conditions and prevent discharges that violate the water quality standards for bacteria.

Ecology has considered public comments and has refined the mandatory BMPs:

A numeric effluent limit does not apply, but permittees must sample according to Table 5. In addition, the following mandatory BMPs shall be incorporated into the SWPPP and implemented:

- 1) Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility. Nothing in this section shall be construed as allowing violations of any applicable federal, state or local statutes, ordinances, or regulations including the Migratory Bird Treaty Act.
- 2) Perform at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections;

- 3) Install structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, animal products, etc.):
- 4) Implement operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste, etc.);
- 5) Additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis.

S8. Corrective Actions

Association of Washington Business

41.

Generally, Ecology should consider deferring any modifications to Condition S8 until the appeal of the ISGP is final. Modifications to Condition S8 are premature, unless Ecology is prepared to adopt permit language or policies that fully implement the statutory presumption of compliance as required by the statute. Ecology's revisions do not meet any reasonable standard of adaptive management for Corrective Actions; rather, the revisions continue the directed management approach that the PCHB noted needed more agency involvement and information, especially at Level 3.

Response: Ecology has decided not to defer modifications to Condition S8, due the nature of the ongoing litigation. Ecology has made significant revisions to the Level 2 and 3 requirements in S8, based on public comments, including more Ecology involvement at Level 3 through the review of engineering reports for treatment systems that involve site specific design or sizing.

The final permit language:

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~~ S8.D. A Level 2 Corrective Action is not required.

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. Revisions shall include additional operational and/or structural source control BMPs if necessary for proper performance and maintenance of *Treatment BMPs*.
 - 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; or the treatment BMP doesn't require site-specific design or sizing (e.g., off-the-shelf filtration units, etc.).
 - ii. *Ecology* will not waive the Level 3 requirement for a licensed or certified professional more than one time during the permit cycle.
3. Before installing treatment BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, the Permittee shall submit an engineering report, plans and specifications, and an operations and maintenance (O&M) manual to Ecology for review in accordance with Chapter 173-240 WAC.
 - a. The engineering report shall be submitted no later than the May 15th prior to the Level 3 deadline, unless an alternate due date is specified in an order.
 - b. The plans and specifications and O&M Manual shall be submitted at least 30 days before construction/installation, unless an alternate date is specified in an order. Upon request of the Permittee, Ecology may allow final conceptual drawings to be substituted for plans and specifications.
4. Summarize the Level 3 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B). Include information on how monitoring, assessment or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.
5. **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 30th 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, *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 1st~~ May 15th 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.
 - d. For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Auto Recyclers of Washington

42.

The proposed requirement that a permittee take a corrective action and modify its SWPPP within 14-days of exceeding a benchmark clearly has a disproportionate economic impact on small businesses. Small business operators have over 100,000 requirements imposed on them every day by a large number of federal, state and local government agencies and small businesses do not have a legion of staff with extensive technical expertise available to determine a corrective action, assess its costs and how it will be paid for, locate items to implement it, and how accomplish it and modify its SWPPP within 14 days. This provision is totally unworkable for the hundreds of small businesses covered by the ISWGP and must not be adopted as proposed. At a minimum, small businesses must have more than 14 days to accomplish all of these corrective action tasks, no less than 45-days. The Department must recognize that the two major parties representing the business community in the appeal of the ISWGP were two of the largest corporations in Washington State with relatively infinite resources as compared to an average small business and they were not in a position to understand and represent the needs and concerns of small businesses subject to the ISWGP. In its decision, the Board did not issue any analysis or consider any impact of its decision on small businesses covered by the permit. The new permit provisions cannot make small businesses the innocent collateral casualties of this appeal and these changes.

Response: The PCHB order correctly pointed out that the previous iterations of the ISGP (2002-2009) required permittees to initiate a Level 1 response within two weeks:

A Level 1 corrective action is required for any exceedance of the applicable benchmark, and requires the permittee to make appropriate revisions to the SWPPP to include additional Operational Source Control BMPs with the goal of achieving applicable benchmark values in future discharges. The permittee must summarize the Level 1 corrective actions in its annual report to Ecology. The permit establishes a deadline to fully implement the revised SWPPP “as soon as possible, but no later than the DMR due date for the quarter the benchmark was exceeded” (which is forty-five days after the end of the quarter, per Condition S9.A.4.). Condition S8.B. Although Ecology views this Level 1 provision as substantially identical to the previous permit, the 2010 ISGP does not have a specific timeframe by which a permittee must initiate a response to a benchmark exceedance, whereas the previous permit required a facility inspection “as promptly as possible but no later than two weeks after sampling results.” Exs. P-5, B-36; Killelea Testimony.

Ecology believes that the draft permit language is reasonable and workable, based on experience gained during 2002-2009, and it is legally necessary to comply with the PCHB order. As such, no change will be made in response to this comment.

Auto Recyclers of Washington

43.

Ecology proposes that the corrective action plan be completed two months sooner than under the current permit. This will be totally unworkable for many small businesses. Many corrective

actions may require a permit to install, the purchase of new items, and will result in unexpected costs to small business covered by the ISWGP.

Those new costs may require that the business to go find and arrange financing to pay for the corrective action. This requirement will prove unworkable for many small businesses covered by the ISWGP and will have a huge disproportionate economic impact on small businesses and should not be adopted as currently proposed. The timeframe for small businesses cannot realistically be reduced by two months to be fair to small business operators. The proposed reduction of two months must not apply to small businesses.

Response: The concerns about the economic impact of a shortened corrective action timeline were considered, but Ecology has to apply the PCHB ruling to all permittees, including small businesses. Based on public comments, and consideration of 1) wet-weather construction constraints, 2) environmental impacts of working during the wet season (erosion, fish windows, wet weather paving, etc.), and 3) the potential for increased workload from Level 2 extension requests, Ecology has decided to implement the PCHB ruling by shortening the Level 2 deadline from September 30th, to August 30th, and allowing facilities to implement a Level 3 corrective action in lieu of a Level 2 corrective action. Ecology also clarified that a Level 2 corrective action is not *required* if a permittee has triggered a Level 3 corrective action.

Association of Washington Business

44.

S8.C.2 and D.2 Level Two and Level Three Corrective Actions: The current permit language demands that "additional" BMPs be identified and implemented in pursuit of the goal of achieving the applicable benchmark values. This directive is counter to RCW 90.48.555(6) which states that, at all times, "all applicable and appropriate best management practices" be selected, implemented and maintained. Responsible permittees have already been adjusting their SWPPPs with an "adaptive management" approach for quite a number of years. At some point in the Corrective Action process a permittee is likely to conclude that all applicable and appropriate BMPs have been implemented. A demand for serial "addition" of BMPs may be hollow. Ecology would more appropriately reference the "all applicable and appropriate" language.

Response: Ecology disagrees with the suggestion that S8.C.2 and D.2. are counter to RCW 90.48.555(6). Ecology believes Condition S8 contains an "enforceable adaptive management mechanism" that is consistent with the intent and requirements of the PCHB order and applicable state and federal water quality laws and regulations.

Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Association of Washington Business

45.

S8.C.5 and D.S- Additional Corrective Action May Be Required: The subsection heading indicates additional corrective actions "may" be required; the section text says "must." What

permit requirement does Ecology intend? The comment offered above for S8.C.2. and D.2. also applies to C.5. and D.5.

Response: Based on public comments, additional revisions have been made to clarify Ecology's intent that additional Level 2 or 3 corrective actions aren't triggered (accrued) during the calendar year following the calendar year that the permittee triggered a Level 2 or 3 corrective action. However, benchmark exceedances begin counting towards additional Level 2 or 3 corrective actions the year after the Level 2 or 3 deadline. An example is provided below. The final language is:

S8.C.4.d:

For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S8.D.5.d:

For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Example:

- Permittee exceeds zinc benchmark during 3 quarters in 2011, therefore a Level 3 corrective action must be completed by September 30, 2012.
- To allow a "time-out" period for the permittee to plan/install/monitor their Level 3 treatment BMPs in 2012, any zinc exceedances in 2012 do not trigger additional Level 2 or 3 corrective actions.
- If the permittee continues to exceed the zinc benchmark in 2013 (calendar year following Level 3 Treatment due date), another Level 3 corrective action is required by September 30, 2014.
- Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Association of Washington Business

46.

S8.D.2 Level Three Corrective Actions - Treatment BMPs: The last sentence demands Level 3 Treatment BMPs or additional BMPs necessary to "meet" the goal of achieving the applicable benchmark value(s). The permit treats benchmark values as if they are numeric effluent limits, but they are just goals. Under the permit, if the goals (effluent limits) are not consistently achieved, additional actions must be taken. With this nuanced approach and outcome, Ecology must be prepared to accept a permittee's judgment on BMP adequacy.

Response: Benchmark values are not *water quality standards* and are not numeric effluent limitations; they are indicator values used in conjunction with Condition S8 to comply with RCW 90.48.555(8)(a).

BNSF

47.

Proposed revision to Condition S8.B

In its Fact Sheet, Ecology again does not present any reason for selecting a 14-day deadline for initiating investigations as part of Level 1 corrective action responses. The PCHB required only a "reasonably short timeline." A strict 14-day deadline does not recognize that many businesses rely on the same environmental consultants to perform this work, and that this limited pool of consultants would have to conduct investigations at facilities all over Washington within a greatly compressed time frame. Thirty days is a more reasonable timeline.

Response: The PCHB order correctly pointed out that the previous iterations of the ISGP (2002-2009) required permittees to initiate a Level 1 response within two weeks:

A Level 1 corrective action is required for any exceedance of the applicable benchmark, and requires the permittee to make appropriate revisions to the SWPPP to include additional Operational Source Control BMPs with the goal of achieving applicable benchmark values in future discharges. The permittee must summarize the Level 1 corrective actions in its annual report to Ecology. The permit establishes a deadline to fully implement the revised SWPPP "as soon as possible, but no later than the DMR due date for the quarter the benchmark was exceeded" (which is forty-five days after the end of the quarter, per Condition S9.A.4.). Condition S8.B. Although Ecology views this Level 1 provision as substantially identical to the previous permit, the 2010 ISGP does not have a specific timeframe by which a permittee must initiate a response to a benchmark exceedance, whereas the previous permit required a facility inspection "as promptly as possible but no later than two weeks after sampling results." Exs. P-5, B-36; Killelea Testimony.

Ecology believes that the draft permit language is reasonable and workable, based on experience gained during 2002-2009, and it is legally necessary to comply with the PCHB order. As such, no change will be made in response to this comment.

BNSF

48.

Proposed revision to Condition S8.C

Ecology proposes to shorten the deadline for Level 2 and Level 3 corrective actions from September 30th of the following year to July 30th of the following year. The PCHB characterized the Level 2 deadline as "excessively long" only in conjunction with footnote 4 and only in the "absence of evidence that structural source control BMPs typically require this long to implement, become effective, and be evaluated." Since Ecology deleted footnote 4, which is part of the basis for the PCHB's disapproval, Ecology should re-evaluate whether the facts justify the current September 30th timeline. For example, most Level 2 and Level 3 treatment options require significant construction, and a permittee will need the full summer construction season to complete this kind of work. Ecology should collect evidence on the timeline for major construction activities before making this type of change to the permit.

Response: Ecology did not propose to shorten the deadline for Level 3 corrective actions; the change is limited to Level 2 corrective actions (structural source control BMPs). Ecology agrees that footnote 4 was related to the PCHB's disapproval of the Sept. 30th deadline, but disagrees that the deletion of Footnote 4 would allow Ecology to disregard their order and retain the September 30th Level 2 deadline. This portion of the PCHB order is unambiguous:

We also conclude that the deadline for implementation of a Level 2 corrective action (September 30 of the following calendar year) is excessively long and must be shortened. As currently written, the timeframe provides a permittee up to one and one half years of the five year permit cycle to implement a Level 2 corrective action, depending on when during the calendar year the benchmark exceedences occur.

Based on public comments, and consideration of 1) wet-weather construction constraints, 2) environmental impacts of working during the wet season (erosion, fish windows, wet weather paving, etc.), and 3) the potential for increased workload from Level 2 extension requests, Ecology has decided to implement the PCHB ruling by shortening the Level 2 deadline from September 30th, to August 31st (beginning in 2013). This deadline may be extended on a case by case basis by submitting a Modification of Coverage request by May 15th prior to the Level 2 deadline. The problem with "Footnote 4" has been resolved with new language in S8.C.4.d.

The final language is:

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 August 31st the following year⁴.

- a. If installation of necessary *Structural Source Control BMPs* is not feasible by August 31st 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 May 15th prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete *Modification of Coverage* request.
- d. For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

⁴ For Level 2 Corrective Actions triggered in 2011 and due in 2012, the Level 2 Deadline is September 30, 2012.

BNSF

49.

Ecology should revise the ISGP to explicitly allow Permittees to obtain a waiver from Level 2 and 3 requirements where the facility has established that the primary cause of the exceedances triggering structural/treatment BMPs is run-on from a neighboring property. The current ISGP requires that a facility demonstrate that structural/treatment BMPs are (1) not feasible; or (2) not necessary to prevent discharges that may cause or contribute to violation of a water quality standard. BNSF suggests that Ecology revise Condition S8.C.4.b and S8.D.4.b as follows: If installation of *[Structural Source Control BMPs or Treatment BMPs]* is not feasible, or not necessary to prevent discharges that may cause or contribute to a violation of a water quality standard, or where the exceedances requiring the construction of *[Structural Source Control BMPs or Treatment BMPs]* are due to stormwater run-on from adjacent properties, Ecology may waive the requirement for additional *[Structural Source Control BMPs or Treatment BMPs]* by approving a *Modification of Permit Coverage*.

Response: Ecology considered the suggestion, but has determined that disregarding the requirements for discharges affected by off-site sources (run-on from adjacent properties, aerial deposition, fugitive dust, etc.) would not be consistent with applicable laws, regulations and case law. In some cases, the existing ISGP criteria for waivers (i.e., not feasible/not necessary) may apply to a discharge affected by run-on from adjacent properties.

Boeing

50.

Condition S8. Corrective Actions

1. ***Ecology should defer any modifications to Condition S8 until Boeing's appeal of the ISGP finally has been resolved.*** The Court of Appeals has accepted direct review of PCHB rulings on the legality of the ISGP. (*See e.g., Copper Development Association v. Ecology*, PCHB No 09-135 Findings of Fact, Conclusions of Law and Order (Apr. 25, 2011) (hereinafter, "PCHB Final Order"). One of the issues in that appeal is whether Condition S8 is consistent with the statutory presumption of compliance in RCW 90.48.555. Modification of Condition S8 prior to a decision from the Court of Appeals would be premature, unless Ecology is prepared to adopt permit language or policies that fully implement the statutory presumption of compliance contained in the statute. Modification of Condition S8 corrective actions prematurely could subject permittees to a whip saw of permit changes, not only in response to the Court of Appeals' decision on Boeing's ISGP appeal, but also to the Thurston County Superior Court's ruling on Boeing's administrative appeal of Ecology's ISGP "Frequently Asked Questions" document. Moreover, as discussed below, the proposed modifications to the permit are inconsistent with a key aspect of the PCHB ruling addressing implementation of adaptive management. Withdrawing the proposed Condition S8 corrective action modifications will ensure that permittees are subjected to the least disruption and can best protect the environment. Boeing is open, as noted above, to revised permit language that addresses the Board's intent by incorporating an effective, efficient and enforceable adaptive management process into the permit that recognizes presumption of compliance with a narrative standard. Boeing provides some suggestions below on how this outcome feasibly could be achieved.

2. The proposed additional requirements for annual reporting contained in Condition S8.D is inconsistent with the PCHB Final Order on the consolidated ISGP appeals. In the PCHB Final Order, the PCHB held that “Quarterly discharge monitoring reports. . are likely inadequate in more complex situations such as Level 3 treatment BMPs.” The PCHB ordered Ecology to refine Condition S8.D to reflect an “iterative exchange and evaluation of BMPs” between Ecology and a permittee. To accomplish this the PCHB directed Ecology in Condition S8.D to “require the use of monitoring, assessment, or evaluation information as a basis **on which Ecology** and the permittee may determine whether further modification of the BMPs or additional BMPs are necessary to meet the goal of achieving the applicable benchmarks in future discharges.” PCHB Final Order, pp 71-72 (emphasis added). Implicit in any such iterative process is a determination whether a permittee must meet permit benchmarks to demonstrate its compliance with water quality standards.

The language proposed by Ecology to modify Condition S8.D does not establish the iterative process required by the PCHB Final Order. Ecology’s proposed language merely requires vague additional information about monitoring and assessment in an annual report. There is no meaningful process for Ecology review and feedback in which Ecology and the permittee can work together to determine whether further modification of BMPs is necessary. If anything, the proposed language makes it more ambiguous as to when and what corrective actions are necessary. In addition, Ecology’s reliance on permit waivers and time extensions may be insufficient to satisfy the PCHB’s requirement of an iterative adaptive management program. Had these existing tools been adequate, in all likelihood the PCHB would not have found it necessary to require Ecology to refine Condition S8 to become involved in the interplay necessary for adaptive management when a risk to water quality might exist.

Ecology needs to address how the proposed modification to annual reports are to address the requirement for engineering reports stated in the March 2011 Frequently Asked Questions document #51.2 In that document Ecology states that any treatment system subject to engineering design requires the preparation of an engineering report as provided in WAC 173-240-130. With respect to this requirement, Ecology should explain:

- 2 Frequently Asked Question related to this comment letter are contained in appendix 2
- o The specific requirements for an engineering report and how that is to be addressed in the proposed modifications to the annual reporting requirements.
 - o How the annual reporting requirements will address the submission and approval of engineering reports under WAC 173-240-130.
 - o Does Ecology intend to review and approve engineering reports under the proposed modifications to reporting requirements as required under WAC 173-240-130?
 - o How will the deadlines in the permit for implementing corrective action be addressed pending Ecology review and approval of engineering reports?

Ecology also needs to address an additional new requirement in the ISGP FAQ Document #50 that permittees in Level 3 corrective action must consider treatment BMPs that are not in Ecology manuals or approved by Ecology and further prepare a demonstrably equivalent analysis if the permittee selects a treatment BMP that has not been approved by Ecology. With respect to this requirement Ecology should explain:

How permittees should incorporate that analysis into the new annual reporting requirements. If approval is necessary from Ecology before implementing a demonstrably equivalent treatment BMP described in an annual report.

How will Ecology implement the PCHB-required iterative review process for demonstrably equivalent treatment BMPs?

How will a permittee know that it is required to evaluate and implement demonstrably equivalent BMPs?

How, as part of the PCHB required iterative process, will Ecology evaluate the new information required in the annual reporting and determine when demonstrably equivalent treatment BMPs must be considered by a permittee?

Ecology also needs to address how the proposed annual reporting requirements will incorporate the requirement in the ISGP FAQ Document #48 to aggregate discharge exceedances from all outfalls for a specific parameter into a single site value for determination of corrective actions. The resulting corrective action level determination is then applied site-wide. Historically, each discharge at a site was treated as an independent location for purposes of counting exceedances and corrective actions were limited to the basin in which the exceedances occurred. This new theory in counting exceedances results in a greatly increased requirement for corrective actions from facilities with multiple discharges. With respect to this requirement Ecology should explain:

How does the department differentiate between the requirement for a site using a sampling approach as allowed in S3.B.5.b Substantially Identical Outfalls and the approaches described in response to Question 48 contained in the ISGP FAQ Document?

How does the permittee count a sampling exceedance when it occurs at different discharge locations on different sample dates but within the same sampling period?

Do discharges to different receiving waters require aggregation, or are those discharges to be counted independently?

Will a permittee be allowed to average across the same sample points for determination of benchmark reporting value?

3. *Boeing proposed Level 3 corrective action.* In the event Ecology intends to develop an iterative Level 3 corrective action process as required by the PCHB prior to a final ruling on the petition for judicial review, Boeing recommends the modifying and replacing Condition S8.B through D as follows:

B. Corrective Action

Permittees that exceed any applicable *benchmark* value in Table 2 or Table 3, or an approved *site specific benchmark* in lieu of a permit *benchmark*, shall complete Corrective Action for each parameter exceeded with the following:

- a. Review the SWPPP and ensure that it fully complies with Permit Condition S3, and contains the correct BMPs from the applicable *Stormwater Management Manual*.
- b. Make appropriate revisions to the SWPPP to include additional *Operational Source Control*, *Structural Source Control*, and *Treatment BMPs* with the goal of achieving the applicable benchmark values in future discharges. The SWPPP may include an *adaptive management plan* for the implementation of BMPs over time as needed based on monitoring results.
- c. If the *geometric mean* of monitoring data from any single outfall in the preceding two years or previous eight quarterly samples exceeds any applicable *benchmark* in Table 2 or Table 3, the review and revisions of the SWPPP must be conducted by a *stormwater professional* and specifically consider *Treatment BMPs*. The *stormwater professional* shall conduct a comprehensive review of the SWPPP and select BMPs that fully implement *AKART* with the goal of eliminating or reducing pollutants to meet *benchmarks*. The *stormwater professional*

shall design and stamp the portion of the SWPPP that addresses *stormwater treatment* structures or processes.

d. In considering *Treatment BMPs* the *stormwater professional* should consider all known, available and reasonable *Treatment BMPs*. The review should not be limited to *Treatment BMPs* identified or incorporated by reference in an applicable *Stormwater Management Manual*. The SWPPP revision and *Treatment BMP* design do not require the preparation or submission of an engineering report under WAC 173-240-130 but must include a summary of the review and analysis that the existing and selected BMPs are technologically available and economically achievable in light of the best industry practice. The Permittee is not required, however, to document that any *Treatment BMP* selected for corrective action is *demonstrably equivalent* under Condition S3.A.3.d.

e. The Permittee may apply for a *site specific benchmark* based on available data or request additional time to collect data to establish a *site specific benchmark*. The corrective actions required under Condition S8.B.c and d shall be based on the goal of meeting approved *site specific benchmarks*.

f. Summarize Corrective Actions (planned or taken) in the Annual Report (Condition S9.B).

g. **Corrective Action Deadlines:** The Permittee shall fully implement any additional or modified *Operational Source Control BMPs* and related revisions to SWPPP as soon as possible but no later than the DMR due date for the quarter the *benchmark* was exceeded. The Permittee shall fully implement any additional or modified *Structural Source Control or Treatment BMPs* and related revisions to SWPPP as soon as possible but no later than July 30th the following year unless *Ecology* has granted a request for a *site specific benchmark*, an *adaptive management plan*, a time extension or waiver.

Ecology may grant a request for a *site specific benchmark* or schedule to implement a sampling and monitoring plan to develop information to support a *site specific benchmark* by approving a *Modification of Permit Coverage*. A request for a *site specific benchmark* must be supported by an analysis by a *stormwater professional* documenting the basis for a *site specific benchmark* or a proposed sampling and monitoring plan and data analysis plan for calculating a *site specific benchmark*.

If installation of necessary *Structural Source Control or Treatment BMPs* cannot be completed by September 30th of the following year, *Ecology* may approve additional time, by approving a *Modification of Permit Coverage*.

The application for an extension may include an *adaptive management plan*. *Ecology* may approve additional time as provided in the *adaptive management plan* by approving a *Modification of Permit Coverage*.

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

To request a *site specific benchmark*, 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 Permit Coverage* form to *Ecology* and complete public notice in accordance with Condition S2.B, by April 1st prior to the September 30th deadline applicable to the facility. The application *Modification of Permit Coverage* shall be approved denied or automatically commence as provided in Condition S2.C.

h. Additional corrective action is not necessary in the following year, where a waiver has been granted, or during the term of any approved extension or *adaptive management plan*.

Boeing offers this suggested language as an adaptive management approach that creates an iterative process between Ecology and a permittee as required by the PCHB. It is also consistent with the concept of adaptive management in program management and LEAN manufacturing systems as composed of four distinct phases:

Plan: Identify the need and actions / equipment needed to resolve the identified or anticipated problem. In this case, the focus would be using the sampling data to identify where additional BMPs or other actions may be warranted to reduce pollution or flows.

Do: Implement the plan by installing, operating, maintaining and inspecting BMPs and by taking such additional actions, such as engineering sampling, to further refine the effectiveness of the pollution control effort.

Check: Conduct sampling, flow monitoring, inspections and other action that collect data useful in evaluating the effectiveness of the BMPs and supporting actions.

Act: Using the data collected in the check phase revise the plan to focus on areas where improvement has been insufficient to consistently meet discharge goals. The use of data (*i.e.*, metrics) is a critical element in adaptive management. As noted during the PCHB hearing data collection for a stormwater effort is fraught with challenges due to high variability in weather patterns, industrial activities and sources of pollutants.

The adaptive management process should be a continuous effort in which a permittee collects data on a regular basis and compares the results to the desired outcome. The “plan-do-check-act” cycle described here is repeated until the desired results are attained or feasibility conditions preclude additional actions.

Here is a more detailed summary of the voluntary alternative corrective action approaches that Boeing is proposing:

Geometric mean. Boeing proposes that Ecology use the same statistical analysis, geometric mean, evaluated over eight quarter, used in the EPA’s Multi-Sector General Permit, to address the high variability of stormwater discharges.³ The Boeing proposed permit language will still trigger Level 3 corrective action, but a determination not to implement additional treatment BMPs could be made on the basis of geometric mean assessment of the monitoring data. This option provides an important tool when assessing quarterly monitoring data. Each sampling quarter is an independent meteorological regime. Rainfall patterns differ throughout the year and there are different exposed industrial activities during each quarter. The combination of quarter specific rainfall patterns and activities will result in different pollutants and pollutant loadings being discharged from any given facility when compared to other quarters in the year. Thus a permittee’s facility cannot be reasonably characterized on one year’s worth of data since each quarter’s data is not representative of any other quarter in that year. Weather patterns in Washington State are often significantly different from year to year which further complicates the comparison of quarterly data.

Allowance for geometric mean assessment of monitoring data over eight quarters is consistent with the PCHB ruling that at least seven quarters of data is necessary to determine if a facility can consistently attain benchmarks. And as the PCHB ruled, four quarterly samples are likely to be inadequate to determine whether additional treatment BMPs are necessary at a facility. PCHB Final Order at 71.

Site Specific Benchmarks. The permit should include a simplified mechanism to apply for a site specific benchmark using the same general criteria used to generate the permit benchmarks using more site specific data and receiving water data to create the site specific benchmark. This is not a new concept as the current permit requires waivers when additional treatment BMPs are not necessary to prevent a discharge from causing or contributing to a violation of water quality standards. Boeing is merely proposing a formal and explicit process for developing information that can be used on an iterative basis by Ecology and the permittee to determine whether additional treatment BMPs are necessary. In other words, Ecology would have to approve the equivalent of site specific benchmarks, developed by the permittee, to grant a waiver under the current permit. Boeing recommends that a probabilistic modeling approach be used in developing a site specific benchmark in recognition of the high variability of rainfall and receiving water conditions. This value would not be an effluent limit as the use of probabilistic models and limited parameters considered would not constitute a reasonable potential analysis. It would, however, be far more representative of the impact that a particular discharger would have on the receiving water. This would be the basis for creating an effective adaptive management system approach to attaining consistent protection of the receiving waters. Inclusive in the analysis for a site specific benchmark would be consideration of a technology based benchmark applicable to the facility. If that discharge value was lower than the water quality based value then the discharge value would be used as the new site specific benchmark.

Adaptive Management Plan. A facility at which the statistical average for the discharge is above the benchmark for the two years could report that fact in its annual report, together with an adaptive management plan prepared by a stormwater professional. The adaptive management plan would be subject to Ecology approval as an addition to the SWPPP in S3. A permittee choosing this option would be required to commence implementation of source, structural and treatment BMPs on the approved adaptive management schedule and provide an annual progress report on implementation to the department. The permit should be clear that upon completion of the adaptive management plan approved by Ecology that the permittee has attained the statutory presumption of compliance based on the narrative standard applicable to the ISGP. Should Ecology have information that shows that the permittee is adversely affecting water quality attainment then the department could exercise its authority under RCW 90.48.555 to require the permittee to obtain an individual or alternative general permit. Time extensions as provided under the current permit can be cumbersome and set artificial deadlines. Permittees should have the ability to submit plans that provide the necessary time and decision making tools to reduce stormwater pollution in the most effective, efficient and least resource demanding approach.

Response: Ecology has decided not to defer modifications to Condition S8, due the nature of the ongoing litigation. The suggested framework and language is inconsistent with state and federal laws, regulation and relevant case law. Furthermore, the suggested remedies are overly complex, labor intensive and unworkable for a general permit in Washington or any other state in the country.

Ecology has made significant revisions to the Level 2 and 3 requirements in S8, based on public comments, including more Ecology involvement at Level 3 through the review of engineering reports for treatment systems that involve site specific design or sizing.

Final permit language for Condition S8.D is included in Response to Comment #41, on page 35.

51.

The six-month window to identify and implement all capital BMPs is less than the typical select-design-bid-build project cycle for such investments. It is far less than the one- to five-year capital budget cycles of most Permittees. Perhaps acknowledging the imposition of such a deadline, Ecology has provided a mechanism for extensions (per S8.B.4.c). However, the mechanism is a permit modification, a two-month process which must be initiated no more than three months into the six-month project. This is a ridiculous solution to the impractical deadline.

We understand that the Pollution Control Hearings Board (PCHB) ordered Ecology to shorten the deadline for completing a Level 2 corrective action; but reducing the deadline from September 30th to July 30th the following year slashes precious sunshine off the construction season (e.g. not much roofing, paving, excavation, and painting done in April). This problem is exacerbated if the Level 2 corrective action is triggered late in the previous year. The April 1st deadline to request an extension occurs too early in the corrective action cycle, and should be pushed deep into summer. Plus, why should every prudent project manager have to do a complete Modification of Coverage including public notice requirements just to hedge against weather or other common project delays. This highly compressed schedule will inevitably inflate contract costs at a time when public dollars are scarce. Zinc and copper measurements are inherently erratic and the permit limits for them are tough to meet even by the cleanest, best intentioned business; so it is imperative that the corrective action process be realistic, have a simpler process for obtaining a time extension, and extend into the good weather months of August & September for structural controls.

Also, where is Table 6? The permit should summarize the corrective actions required and their associated timelines in Table 6.

Response: Based on public comments, and consideration of 1) wet-weather construction constraints, 2) environmental impacts of working during the wet season (erosion, fish windows, wet weather paving, etc.), and 3) the potential for increased workload from Level 2 extension requests, Ecology has decided to implement the PCHB ruling by shortening the Level 2 deadline from September 30th, to August 31st (beginning in 2013). This deadline may be extended on a case by case basis by submitting a Modification of Coverage request by May 15th prior to the Level 2 deadline. This deadline coincides with the Annual Report due date, and the 1st quarter DMR, and allows enough time for Ecology to review the request and make a decision in advance of the Level 2 implementation deadline. The problem with “Footnote 4” has been resolved with new language in S8.C.4.d. Table 6 was proposed in 2008 to summarize corrective actions and deadlines, but Ecology has determined that it is no longer required.

The final language is:

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 August 31st the following year⁴.

- a. If installation of necessary *Structural Source Control BMPs* is not feasible by August 31st the following year, *Ecology* may approve additional time, by approving a *Modification of Permit Coverage*.

⁴ For Level 2 Corrective Actions triggered in 2011 and due in 2012, the Level 2 Deadline is September 30, 2012.

- 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 May 15th prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete *Modification of Coverage* request.
- d. For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Dawson Consulting LLC

52.

S8.C. and D. Corrective Actions, Level Two and Level Three

At the Seattle workshop Ecology noted that under the current permit, a facility that triggers a Level Two Corrective Action and then a Level Three Corrective Action (same calendar year) can skip the Level Two and continue with the Level Three Corrective Action. This makes sense, particularly for facilities that have exhausted their Level Two BMPs but continue to exceed a benchmark. If we heard this correctly, which permit provision allows the permittee to skip Level Two? This isn't clear. The proposed revision also does not clearly address this. An additional sentence or two would be helpful, as well as an explanation and example in the Fact Sheet addendum. It would be helpful also for Ecology to confirm that Level Two can be skipped without the permittee having to obtain a waiver to do so.

In requiring further refinement of S8., the Pollution Control Hearings Board seemed to intend a joint effort on the part of the permittee and Ecology in determining whether further BMP modifications or additional BMPs are necessary at a facility to meet the goal of achieving benchmarks in future discharges. The proposed permit revisions add the requirement for the permittee to include "monitoring, assessment or evaluation information" in its Annual Report, to be used as the basis for Ecology and the permittee to make BMP determinations. However, the proposed revisions do not specify when and how Ecology will provide feedback on this monitoring, assessment or evaluation information. Meaningful and timely feedback from Ecology may be necessary for the permittee to confirm it is meeting Ecology expectations for taking "all the steps required by the adaptive management process."

Additional language is needed in the permit and in the Fact Sheet addendum to explain the mechanisms by which Ecology will participate, as necessary, in determining the required adaptive management process. This could include timely agency feedback on the Annual Report information submitted by the permittee.

Response: Ecology confirms that permittees do not have to do a Level 2 corrective action if they have to do a Level 3 corrective action for the same parameter. Additional language has been added to S8.D to clarify that a Level 2 is not required when a Level 3 is triggered.

S8.D: 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 S8.D. A Level 2 Corrective Action is not required.

Also, a sentence has been added to S8.C that allows permittees who exceed the benchmark during only 2 quarters to skip Level 2 (without a waiver), and go directly to the implementation of a Level 3 Corrective Action:

S8.C: 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 S8.C. Alternatively, the permittee may skip Level 2 and complete a Level 3 Corrective Action in accordance with Condition S8.D.

Examples:

- If a permittee exceeds the zinc benchmark during (only) 2 quarters during a calendar year (not 3 or 4 quarters), a Level 2 corrective action is required.
 - The permit also allows facilities subject to a Level 2 the ability to do a Level 3 (instead of a Level 2) without obtaining a waiver. Sometimes Level 3 treatment is more appropriate, effective, and/or inexpensive than Level 2 source control.
- If a permittee exceeds the zinc benchmark during 3 quarters during a calendar year, a Level 3 corrective action is required, but a Level 2 corrective action is not required.
- However, the Level 3 SWPPP revision must include additional operational and/or structural source control BMPs if necessary for proper performance and maintenance of Treatment BMPs.

Also, Ecology has made significant revisions to the Level 2 and 3 requirements in S8, based on public comments, including more Ecology involvement at Level 3 through the review of engineering reports for treatment systems that involve site specific design or sizing. Final permit language for Condition S8.D is included in Response to Comment #41, on page 35.

Dawson Consulting LLC

53.

C.4. Level 2 Deadline, new paragraph d. For clarity, Ecology may want to change “a” previous calendar year to “the” previous calendar year if this is the intent.

Ecology proposes to delete footnotes 4 and 5 to clarify how a permittee moves from Level 2 to Level 3. The proposed revision doesn’t clarify the requirements, particularly with the reference to Level 3 in the Level 2 deadline provision.

Example 1: Facility exceeds copper benchmark in Q1 and Q2 of 2012; therefore, a Level 2 corrective action is due by July 30th of 2013. If this facility exceeds the copper benchmark in Q4 of 2012, and has begun implementing a structural BMP at this point, then a Level 3 corrective action is *not* triggered in 2012? This would make sense, given that the Level Two corrective action may not have been in place long enough to show its effectiveness. Is it relevant that the facility began implementing the corrective action before the Q4/2012 exceedance?

Example 2: Facility exceeds copper benchmark in Q1 and Q2 of 2012; therefore, a Level 2 corrective action is due by July 30th of 2013. Facility begins implementing a structural BMP in

2012 and completes it before July 30, 2013. Facility exceeds copper benchmark in Q1, Q2 and Q3 of 2013. A Level 2 corrective action is *not* triggered for copper in 2013, correct? Is a Level 3 corrective action triggered for copper in 2013? Which “applicable deadline” applies here?

D. 4. Level 3 Deadline, new paragraph d. For clarity, Ecology may want to change “a” previous calendar year to “the” previous calendar year if this is the intent. As noted for the Level 2 proposed permit revision, the proposed Level 3 provision is confusing.

Example 3: Facility exceeds turbidity benchmark in Q1, Q2 and Q3 of 2012; therefore, a Level 3 corrective action is due by September 30, 2013. Facility begins implementing a treatment BMP. Facility exceeds turbidity benchmark in Q1 and Q2 of 2013. A Level 2 corrective action is *not* triggered for turbidity in 2013, correct? Facility implements the treatment BMP by September 30, 2013, but exceeds the turbidity benchmark in Q4 of 2013. A Level 3 corrective action is *not* triggered for turbidity in 2013, correct?

Example 4: Facility exceeds turbidity benchmark in Q1, Q2 and Q3 of 2012; therefore, a Level 3 corrective action is due by September 30, 2013. Facility implements a treatment BMP in Q4 of 2012, but continues to exceed the turbidity benchmark in Q1, Q2 and Q3 of 2013. Is it correct that Level 2 and Level 3 corrective actions are *not* triggered for turbidity in 2013?

If a facility has implemented (and continues to implement) Level 3 corrective actions for a parameter but continues to exceed the benchmark, under what circumstances is the facility ever required to implement a Level 2 corrective action? If the facility does not implement a Level 2 corrective action, is the facility required to obtain (and repeatedly obtain) a Level 2 waiver from Ecology?

Response: Based on public comments, additional revisions have been made to clarify Ecology’s intent that additional Level 2 or 3 corrective actions aren’t triggered (accrued) during the calendar year following the calendar year that the permittee triggered a Level 2 or 3 corrective action. However, benchmark exceedances begin counting towards additional Level 2 or 3 corrective actions the year after the Level 2 or 3 deadline. An example is provided below.

The final language is:

S8.C.4.d:

For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S8.D.5.d:

For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Example:

- Permittee exceeds zinc benchmark during 3 quarters in 2011, therefore a Level 3 corrective action must be completed by September 30, 2012.
- To allow a “time-out” period for the permittee to plan/install/monitor their Level 3 treatment BMPs in 2012, any zinc exceedances in 2012 do not trigger additional Level 2 or 3 corrective actions.
- If the permittee continues to exceed the zinc benchmark in 2013 (calendar year following Level 3 Treatment due date), another Level 3 corrective action is required by September 30, 2014.
- Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Landau Associates, Inc.

54.

Section S8.C.4.d of the Modified Draft Industrial Stormwater General Permit (Draft Permit), states that: ***“Permittees do not trigger additional Level 2 or 3 Corrective Actions, if they are already implementing a Level 2 or 3 from a previous calendar year (for the same parameter), and the applicable deadline hasn’t passed yet.”***

This is similar to Section S8.C footnote 4 of the current permit which states that: ***“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.”***

We have found both of these citations difficult to interpret with respect to knowing which data should be used to determine if a new corrective action is needed the following year. Is it Ecology’s intent to allow Permittees not to consider benchmark exceedances from quarters that preceded the corrective action deadline when adding up the number of quarters that exceeded a benchmark in a calendar year? If so (and we assume this to be the case), this should be clearly stated. The above citation for the modified permit needs to be changed because the phrase “and the applicable deadline hasn’t passed yet” nullifies the entire first half of the citation if a benchmark is exceeded after the applicable deadline. For example, if a Permittee exceeds one or two benchmarks in the third or fourth quarter following implementation of a Level 2 by July 30, they must consider data from all four quarters of that year to determine if a corrective action is needed again the following year. We suggest that this citation be replaced with the following modified citation:

Permittees do not trigger additional Level 2 or 3 Corrective Actions, if they are already implementing a Level 2 or 3 from a previous calendar year (for the same parameter) except that an additional Level 2 Corrective Action is triggered the following year if benchmarks are exceeded in both the third and fourth quarter following implementation of a Level 2 by the applicable deadline.

Note that a similar exception is not needed for implementation of a Level 3 corrective action because only one quarter of data (the fourth quarter) will be collected following the Level 3 deadline and therefore there is no way to trigger a Level 3 in the following year.

Response: Based on public comments, additional revisions have been made to clarify Ecology's intent that additional Level 2 or 3 corrective actions aren't triggered (accrued) during the calendar year following the calendar year that the permittee triggered a Level 2 or 3 corrective action. However, benchmark exceedances begin counting towards additional Level 2 or 3 corrective actions the year after the Level 2 or 3 deadline. An example is provided below. The final language is:

S8.C.4.d:

For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S8.D.5.d:

For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Example:

- Permittee exceeds zinc benchmark during 3 quarters in 2011, therefore a Level 3 corrective action must be completed by September 30, 2012.
- To allow a "time-out" period for the permittee to plan/install/monitor their Level 3 treatment BMPs in 2012, any zinc exceedances in 2012 do not trigger additional Level 2 or 3 corrective actions.
- If the permittee continues to exceed the zinc benchmark in 2013 (calendar year following Level 3 Treatment due date), another Level 3 corrective action is required by September 30, 2014.
- Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Nisqually Environmental Sampling and Consulting

55.

Reduction of the time to implement a level 2 response should include a provision for those who are currently in a level 2 response from 2011 data. Specifically, a company who is currently expecting to have until September 30th to fully implement a level 2 response from 2011 data now will have 2 months removed from this deadline with little notice. Additionally, with the implementation of this permit modification suggested to be July 1st, and the roll back of the waiver acceptance date to April 1st, it would be difficult for those implementing a level 2 to react and be compliant to the new permit. We think this puts undue burden on those responding to 2011 data. We suggest an exclusion from this provision for those responding to 2011 data, but implementation for those responding to 2012 data.

Response: Ecology agrees that it would be unduly burdensome to shorten the Level 2 Deadline for facilities are currently working on installing Structural Source Control BMPs. These facilities began implementing Level 2 with the expectation that they had until September 30, 2012, and Ecology has decided to make the new Level 2 deadline effective in 2013 (for facilities that

triggered Level 2 based on 2012 sampling data). In the mean time, the current Level 2 deadline of September 30, 2012 remains in effect.

Ecology has added “Footnote 4” to S8.C.4:

For Level 2 Corrective Actions triggered in 2011 and due in 2012, the Level 2 Deadline is September 30, 2012.

Port of Tacoma

56.

S8. Corrective Actions

B.1. Within 14 days of receipt of sampling results that indicate a benchmark exceedance:

a. Conduct an inspection to investigate the cause.

Comment:

This change will inhibit permittees from sampling for water quality purposes through-out the quarter, then average results for the Discharge Monitoring Report. The permit currently requires monthly inspections; facilities will be less inclined to conduct sampling more than once a quarter if a Level One response is required for each sampling event.

Example: A facility begins sampling at the beginning of the quarter and the results indicate they are slightly above benchmarks. They conduct the inspection within 14 days, review, modify and recertify the SWPPP. The facility waits till the end of the quarter before sampling again because they do not have the resources to conduct another “Level One” response, (modify and recertify the SWPPP) more than once in a quarter.

Response: Ecology understands the concern, but is not able to reconcile this issue in light of the PCHB order. As such, no change will be made in response to this comment.

Port of Tacoma

57.

S8.C.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 30th the following year.*

Comment:

This proposed change will jeopardize constructability during the driest months of the year; requiring facilities to begin construction during the wettest season; and increasing the potential for turbid runoff during construction activities. The Port is a public agency and therefore has a very public and lengthy process for procurement of engineering firms, Commission approvals for projects, design-bid-build process for hiring contractors, etc. If the permittee reaches a Level Two Corrective Action and starts the public process at the beginning of the year, July 30th does not allow sufficient time to coordinate and construct the required Level Two Structural Source Control BMPs and concurrently eliminates the ability to construct the BMP during the summer months.

This issue will require the permittee to apply for a permit modification for time extension and subsequent Administrative Order. As discussed in an earlier section, the modification for

extension requires the facility to have a “technical basis”. If the intent of this permit is to improve the quality of stormwater discharges, the permittee needs the appropriate amount of time to:

1. Analyze the problem;
2. Investigate potential solutions;
3. Initiate a project scope;
4. Perform the cost analysis;
5. Get budget approval (for public entities this process is lengthy)
6. Contract with a design engineer
7. Apply for and obtain permits
8. Contract with general contractor
9. Complete construction

This process takes more than 4 to 7 months to complete. The permittee would rather complete the Level 2 Corrective Action in a timely manner, without having to be under an Administrative Order. This would also reduce the amount of time Ecology would have to spend for the administration of the Order.

If the appropriate amount of time is not allotted to a permittee, the consequences would be that the source control BMP that was chosen in haste to meet the permit deadline does not work and the permittee will repeat the same process the next year, causing undue costs and constraints to the facility, to Ecology and will not provide a quality or efficient corrective action solution.

Response: Based on public comments, and consideration of 1) wet-weather construction constraints, 2) environmental impacts of working during the wet season (erosion, fish windows, wet weather paving, etc.), and 3) the potential for increased workload from Level 2 extension requests, Ecology has decided to implement the PCHB ruling by shortening the Level 2 deadline from September 30th, to August 31st (beginning in 2013). This deadline may be extended on a case by case basis by submitting a Modification of Coverage request by May 15th prior to the Level 2 deadline. This deadline coincides with the Annual Report due date, and the 1st quarter DMR, and allows enough time for Ecology to review the request and make a decision in advance of the Level 2 implementation deadline.

Ecology wants to clarify that a permittee requesting a Level 2/3 time extension is not required to submit complete information on the specific BMPs that will be implemented to address the corrective action; often the permittee hasn't selected the BMPs at this stage in the process. However, the permittee is likely aware of the project management issues that can affect the completion date. Therefore the permittee's “technical basis for extension” (modification application) must include as much detail as possible regarding the proposed timeline for completion and describe issues that affect completion date; for example, state/local permits, study, design, financing, professional services and contracting, etc.

Condition S8.C.4 will be revised as follows:

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 August 31st the following year⁴.

- a. If installation of necessary *Structural Source Control BMPs* is not feasible by August 31st 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 May 15th prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete *Modification of Coverage* request.
- d. For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Port of Tacoma

58.

S8.C.5. Additional Corrective Actions May Be Required: *Permittees that continue to exceed benchmark values after a Level 2 Corrective Action has been completed must complete additional corrective actions per S8.B, C or D.*

Comment:

The permittee should be allotted the appropriate amount of time to investigate and implement the appropriate Level Two Corrective Action BMP to avoid being required to repeat the process as discussed above.

S8.D.5. Additional Corrective Actions May Be Required: *Permittees that continue to exceed benchmark values after a Level 3 Corrective Action has been completed must complete additional corrective actions per S8.B, C or D.*

Comment:

The Level 3 Corrective Action is due to be completed by September 30. This does not allow enough time to monitor/assess/evaluate the success of the newly treatment BMP. If the goal is to achieve benchmarks in all future discharges, the permittees need sufficient time for monitoring after implementation.

The Port suggests allowing Level 3 Corrective Action due date to be extended to **November 30th** to allow for construction during the dry season and completing the necessary assessment and monitoring of the new system during the “First fall storm event”, per Section S4.B.1.b., General Sampling Requirements, of the current permit. This will allow permittees to determine any modification(s) necessary to protect future discharges prior to the Level 3 deadline.

⁴ For Level 2 Corrective Actions triggered in 2011 and due in 2012, the Level 2 Deadline is September 30, 2012.

The proposed changes do not address whether a permittee that has completed the Level 3 Corrective Action (installed treatment) begins the next sampling event with a “clean slate” or restarts the clock at the stage before a Level 1 Corrective Action is reached.

Example: If the permittee completes implementation of treatment and samples for the first quarter, the data shows the facility to be above benchmarks, the permittee then completes a Level 1 Corrective Action and is done until the following quarter. OR does the permittee remain in the Level 3 Corrective Action?

The Port requests clarification as to whether installing treatment completes the Level 3 Corrective Action and restarts the clock for future sampling events.

Response: Based on public comments, additional revisions have been made to clarify Ecology’s intent that additional Level 2 or 3 corrective actions aren’t triggered (accrued) during the entire calendar year following the calendar year that the permittee triggered a Level 2 or 3 corrective action. However, benchmark exceedances begin counting towards additional Level 2 or 3 corrective actions the year after the Level 2 or 3 deadline. An example is provided below. The final language is:

S8.C.4.d:

For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S8.D.5.d:

For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Example:

- Permittee exceeds zinc benchmark during 3 quarters in 2011, therefore a Level 3 corrective action must be completed by September 30, 2012.
- To allow a “time-out” period for the permittee to plan/install/monitor their Level 3 treatment BMPs in 2012, any zinc exceedances in 2012 do not trigger additional Level 2 or 3 corrective actions.
- If the permittee continues to exceed the zinc benchmark in 2013 (calendar year following Level 3 Treatment due date), another Level 3 corrective action is required by September 30, 2014.
- Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Port of Tacoma

59.

S8. D.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. The revisions shall

be based upon monitoring, assessment or evaluation information to determine whether further modification of the Level 3 Treatment BMPs or additional BMPs are necessary to meet the goal of achieving the applicable benchmark value(s) in future discharges.

S8. D.3. Summarize the Level 3 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B). Include information on how monitoring, assessment or evaluation information was (or will be) used to determine whether further modification of the BMPs or additional BMPs are necessary to meet the goal of achieving the application benchmark value(s) in future discharges.

Comment:

The Level 3 Corrective Action is due to be completed by September 30. This does not allow enough time to monitor/assess/evaluate the success of the newly installed treatment BMP. If the goal is to achieve benchmarks in all future discharges, the permittees need sufficient time for monitoring after implementation.

The Port suggests allowing the Level 3 Corrective Action due date to be extended to November 30 to allow for construction during the dry season and assessment and monitoring of the new system during the “First fall storm event”, per Section S4.B.1.b., General Sampling Requirements, of the current permit. This will allow permittees to determine any modification(s) are necessary to protect future discharges prior to the Level 3 deadline.

S8. D.4.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~~ April 1st 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.

Comment:

This proposed change for the due date of the modification will inhibit the ability of the permittee to complete an appropriate analysis of potential source control Best Management Practices (BMPs). Ecology’s *Modification of Permit Coverage Form*, ECY 070-361 (Rev. 04/2011), requires the Level 2/ Level 3 extensions requests provide a “technical basis for extension” and include a “proposed timeline for completion and describe issues that affect completion date; for example, state/local permits, study, design, financing, professional services and contracting, etc.” Reducing the submission schedule does not allow enough time to provide all of the technical information that is needed for selecting BMPs that will solve the problem, provide source control and improve water quality.

The Port suggests that Ecology not change the application due date to ensure there is adequate time for facilities to investigate/analyze the problem, select appropriate source control BMPs and support the intent of this permit, which is to improve water quality stormwater discharges at industrial facilities.

Response: Ecology has decided not to extend the Level 3 implementation deadline to November 30th as suggested; once the treatment system is installed, testing and adjustments can occur during the remainder of the year (September 30-December 31) without accruing any new Level 2 or 3 corrective actions. Ecology has considered public comments and the pros and cons associated with various deadlines and scheduling constraints, and has decided make the

Modification of Coverage deadline (for Level 2/3 waiver or extension requests) consistent with the current Annual Report due date: May 15th. This is also the due date for the 1st quarter DMR, and there are administrative efficiencies gained by making these all due on the same date.

Ecology wants to clarify that a permittee requesting a Level 2/3 time extension is not required to submit complete information on the specific BMPs that will be implemented to address the corrective action; often the permittee hasn't selected the BMPs at this stage in the process. However, the permittee is likely aware of the project management issues that can affect the completion date. Therefore the permittee's "technical basis for extension" (modification application) must include as much detail as possible regarding the proposed timeline for completion and describe issues that affect completion date; for example, state/local permits, study, design, financing, professional services and contracting, etc.

Condition S8.D.5.c will be revised as follows:

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 May 15th ~~June 1st~~ 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.

Port of Tacoma

60.

Overall Comment:

The Port is concerned that the proposed modifications and schedule of implementation does not give the permittees adequate time to prepare and budget for the changes in operations necessary to ensure compliance with the new permit. Modifying the permit as part of the regular permit cycle would have allowed facilities to adapt their operations to prepare for implementation and provide enough time for facilities to plan/update their program budgets to account for the additional sampling, staff/consultant time for inspections, the shortening of the implementation schedule for Modification applications and Level 3 Corrective Action deadlines.

The Port feels these mid-cycle/mid-budget year proposed modifications will be difficult and costly to permittees and limit their ability to plan for effective source control solutions.

Response: Based on public comments, and consideration of 1) wet-weather construction constraints, 2) environmental impacts of working during the wet season (erosion, fish windows, wet weather paving, etc.), and 3) the potential for increased workload from Level 2 extension requests, Ecology has decided to implement the PCHB ruling by shortening the Level 2 deadline from September 30th, to August 31st (beginning in 2013). This deadline may be extended on a case by case basis by submitting a Modification of Coverage request by May 15th prior to the Level 2 deadline. The problem with "Footnote 4" has been resolved with new language in S8.C.4.d.

The final language is:

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 August 31st the following year⁴.

- a. If installation of necessary *Structural Source Control BMPs* is not feasible by August 31st 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 May 15th prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete *Modification of Coverage* request.
- d. For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Puget Soundkeeper, Columbia Riverkeeper, Waste Action Project

61.

Condition S8.B.

The commenters support the proposed modification of S8.B. to include a 14-day timeline for commencement of a Level One Corrective Action.

However, the commenters suggest a further modification to provide for summary reporting of Level One Corrective Actions on discharge monitoring reports. The modified S8.B. would continue to limit reporting requirements for Level One to summarization in the annual report. Additional reporting on the discharge monitoring report forms (or in a brief submission accompanying electronically-filed DMRs) would encourage compliance by reminding permittees of the Level One requirements and would facilitate Ecology regulation by providing more timely indications of permittee compliance. As written, an Ecology inspector or facility manager, or a member of the public, has no way to know whether a permittee has performed a Level One Corrective Action before reviewing an annual report without either asking the permittee or conducting an inspection.

Response: Ecology considered this suggestion but has decided not to require permittees to summarize their Level 1 corrective actions on their Discharge Monitoring Reports (DMRs). Under the previous permit, DMRs were generally not reviewed by Ecology inspectors because they are kept at Ecology headquarters for data entry and filing; the discharge monitoring data is hand-entered in the Ecology's PARIS database, but the information in the DMR comments section (where Level 1 corrective actions were summarized prior to 2010) is not entered into PARIS due to database and resource issues. Ecology believes the Annual Reports are a better

⁴ For Level 2 Corrective Actions triggered in 2011 and due in 2012, the Level 2 Deadline is September 30, 2012.

way to track and review Level 1 summaries because they are scanned and uploaded into PARIS, making the entire Annual Report available to permittees, inspectors and the public.

Puget Soundkeeper, Columbia Riverkeeper, Waste Action Project

62.

Condition S8. Footnotes and S8.C.4.d., S8.C.5., S8.D.4.d., and S8.D.5.

The commenters support the removal of the confusing footnotes 4 and 5. However, while the proposed new language in S8.C.4.d. and S8.D.4.d. certainly represents an improvement in clarity, we suggest the following language for S8.C.4.d. and S8.D.4.d., which is yet more clear: Permittees do not trigger additional Level 2 or 3 Corrective Actions if they are already implementing a Level 2 or 3 Corrective Action (for the same parameter) triggered the previous calendar year and the applicable Level 2 or 3 implementation deadline has not yet passed. The new language in S8.C.5. and S8.D.5. is also helpful for clarification. We suggest further clarification by inserting the words “or after the applicable deadline for Level 2 implementation has passed,” after “has been completed” in S8.C.5., and “or after the applicable deadline for Level 3 implementation has passed,” after “has been completed” in S8.D.5. This is important to notify permittees that failure to meet the implementation deadlines does not afford them additional time to exceed benchmarks without triggering a new Level Two or Level Three Corrective Action.

Response: Based on public comments, additional revisions have been made to clarify Ecology’s intent that additional Level 2 or 3 corrective actions aren’t triggered (accrued) during the calendar year following the calendar year that the permittee triggered a Level 2 or 3 corrective action. However, benchmark exceedances begin counting towards additional Level 2 or 3 corrective actions the year after the Level 2 or 3 deadline. An example is provided below.

The final language is:

S8.C.4.d:

For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S8.D.5.d:

For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Example:

- Permittee exceeds zinc benchmark during 3 quarters in 2011, therefore a Level 3 corrective action must be completed by September 30, 2012.
- To allow a “time-out” period for the permittee to plan/install/monitor their Level 3 treatment BMPs in 2012, any zinc exceedances in 2012 do not trigger additional Level 2 or 3 corrective actions.

- If the permittee continues to exceed the zinc benchmark in 2013 (calendar year following Level 3 Treatment due date), another Level 3 corrective action is required by September 30, 2014.
- Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Puget Soundkeeper, Columbia Riverkeeper, Waste Action Project

63.

Condition S8.C.4.

While the modifications to the Level Two Corrective Action timing requirements represent an improvement over the current permit language, they do not satisfy the PCHB's order. The modifications simply move up by two months the deadlines for implementation of Level Two Corrective Actions and for waiver or time extension requests. The PCHB rejected the Level Two timeline because it provides "a permittee up to one and one half years of the five year permit cycle to implement a Level 2 corrective action, depending on when during the calendar year the benchmark exceedences occur." *Copper Dev. Ass'n v. Ecology*, PCHB No. 09-135, Findings of Fact, Conclusions of Law, and Order (4/25/11) at 67. This deficiency is not adequately addressed by taking two months off the schedule – leaving a permittee with up to one year and four months of the five year permit cycle to implement a Level 2 corrective action if it is triggered in the second quarter of a calendar year. Ecology probably must depart from its dependence on the calendar year-based Level 2 implementation schedule to satisfy the PCHB's order. We suggest that the permit allow six months from the second benchmark exceedence to implement the additional structural source control BMPs required for Level 2, or until the next July 30, whichever is later, if necessary construction work can only be legally performed during the dry season.

Response: Based on public comments, and consideration of 1) wet-weather construction constraints, 2) environmental impacts of working during the wet season (erosion, fish windows, wet weather paving, etc.), and 3) the potential for increased workload from Level 2 extension requests, Ecology has decided to implement the PCHB ruling by shortening the Level 2 deadline from September 30th, to August 31st (beginning in 2013). Conditions S8.C & D have been clarified with respect to Level 2 and 3 for a parameter being mutually exclusive. Permittees need to consider data from the entire calendar year to determine if a Level 2 or Level 3 is required for a parameter. As such, the August 31st deadline allows 8 months to complete a Level 2 corrective action. The problem with "Footnote 4" has been resolved with new language in S8.C.4.d.

The final language is:

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 August 31st the following year⁴.

⁴ For Level 2 Corrective Actions triggered in 2011 and due in 2012, the Level 2 Deadline is September 30, 2012.

- a. If installation of necessary *Structural Source Control BMPs* is not feasible by August 31st 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 May 15th prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete *Modification of Coverage* request.
- d. For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Puget Soundkeeper, Columbia Riverkeeper, Waste Action Project

64.

Condition S8.D.

The commenters are concerned that the additional language in S.8.D.2. makes yet less clear what is required for a Level Three Corrective Action. We worry that the addition of this language is likely to seriously complicate efforts to enforce Level Three Corrective Action requirements, a crucial part of the ISGP scheme. We support the additional language in S8.D.3. and believe that the inclusion of this language would suffice to comply with the PCHB's order that Level Three "should *also* require the use of monitoring, assessment or evaluation information as a basis on which Ecology and the permittee may determine whether *further* modifications of the BMPs or additional BMPs are necessary" and the inclusion of this information in the annual report. *Id.* at 71 – 72 (emphasis added). In its order on this point, the PCHB was addressing Boeing's complaint about Level Three with a mandate for feedback and iterative evaluation to avoid an endless do-loop of successive Level Three Corrective Actions. *Id.* at 39, 71 – 72. The PCHB did not tell Ecology to remove or lessen the requirement to implement additional treatment BMPs as part of a Level Three Corrective Action, which is a possible interpretation of the confusing and contradictory new language in S8.D.2.

The existing S8.D.2. language provides unequivocally that Level Three entails revision to the SWPPP to include additional treatment BMPs. The proposed additional language muddies this relatively clear direction by stating that the SWPPP revisions are to be based on monitoring, assessment or evaluation "to determine whether further modification of the Level 3 Treatment BMPs or additional BMPs are necessary" Does this mean, as permittees and their lawyers are likely to assert, that the SWPPP revision need not include additional treatment BMPs unless this monitoring, assessment or evaluation information indicates that such are necessary? If it does, what is the standard for determining the necessity of the additional treatment (or other) BMPs? This interpretation of this additional language would render S8. inadequate to ensure that discharges do not cause or contribute to violations of water quality standards, as Ecology intended it to do. The proposed language should be removed from S8.D.2.

How does the proposed modification to S8. substantively change what a permittee must do to satisfy the Level Three Corrective Action requirement? How are the two sentences of S8.D.2. reconciled with each other?

Response: Ecology agrees that the proposed revisions to S.8.D.2 (draft) could have introduced confusion and made it less clear what is required a Level 3. Ecology did not intend this section to mean that the SWPPP revision need not include additional treatment BMPs unless this monitoring, assessment or evaluation information indicates that such are necessary. Ecology has always intended Level 3 Corrective Actions to include additional treatment BMPs (e.g., modification of existing treatment BMPs, or installation of new treatment BMPs) unless the requirement is waived through a Modification of Coverage. Ecology has made significant revisions to the Level 2 and 3 requirements in S8, based on public comments, including more Ecology involvement at Level 3 through the review of engineering reports for treatment systems that involve site specific design or sizing.

Final permit language for Condition S8.D is included in Response to Comment #41, on page 35.

Washington Refuse and Recycling Association

65.

The modification to S8. Corrective Actions

We believe that the changes of the deadline for completing Level 2 corrective measures is just not reflective of the true building/construction period available in which construction can take place in our state, specifically western Washington. Most Western Washington residents live by the saying "summer starts on July 5th", and that is true for the period of time for much of our construction activities as well. The losing of August and September for months to comply with a problem identified the previous year seems unrealistic to many of our companies.

Proposed Revisions

3. Pg 5 #4 Level 2 Deadline: The Permittees 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 August 30th the following year.

Reason: Footnote 4 and 5 has been deleted, thereby reducing the amount of exceedances that can be registered. To shorten or remove both the months of August and September, from the construction calendar in the rainy state of Washington is extremely burdensome on the facility owner. Many of the BMP's need a dry preparation and installation period i.e. painting, re-sealing, paving etc.

Response: Based on public comments, and consideration of 1) wet-weather construction constraints, 2) environmental impacts of working during the wet season (erosion, fish windows, wet weather paving, etc.), and 3) the potential for increased workload from Level 2 extension requests, Ecology has decided to implement the PCHB ruling by shortening the Level 2 deadline from September 30th to August 31st, and allowing facilities to implement a Level 3 corrective action in lieu of a Level 2 corrective action. Ecology also clarified that a Level 2 corrective action is not *required* if a permittee has triggered a Level 3 corrective action.

The final language is:

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 August 31st the following year⁴.

- a. If installation of necessary *Structural Source Control BMPs* is not feasible by August 31st 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 May 15th prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete *Modification of Coverage* request.
- d. For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Washington Refuse and Recycling Association

66.

The Modification to S8.c.4 and S8.D.4

We believe that Ecology's proposed revisions allow some leeway for permittees that are still in the process of installing Level 2 and 3 Corrective Actions from an exceedance during the prior year. Specifically, proposed revisions state "Permittees do not trigger additional Level 2 or 3 Corrective Actions, if they are already implementing a Level 2 or 3 Corrective Action from a previous calendar year (for the same parameter) and the applicable deadline hasn't passed." This is a reasonable consideration, allowing permittees to complete Corrective Actions before additional penalties are incurred. However, many Corrective Actions will likely have a favorable impact on other parameters as well. We think that the exception to avoid additional penalties should not be limited to just the same parameter so long as the permittee can reasonable demonstrate that the Corrective Action being installed will have a favorable impact on the new parameter(s) that are exceeding limits.

Proposed Revisions

4. Pg. #6- Level 2 and Level 3 Corrective Actions: Permittees do not trigger additional Level 2 or 3 Corrective Actions, if they are already implementing a Level 2 or 3 Corrective Action from a previous calendar year (for the same parameter) and the applicable deadline hasn't passed. If additional parameters have triggered Corrective Action during the calendar year of a Corrective Action installation, and the permittee can demonstrate that those parameters can reasonably be expected to be addressed by the Corrective Action being installed, Ecology may grant an exception allowing sufficient time to determine if the Corrective Action is effective for the additional parameters.

⁴ For Level 2 Corrective Actions triggered in 2011 and due in 2012, the Level 2 Deadline is September 30, 2012.

Response: Based on public comments, additional revisions have been made to clarify Ecology's intent that additional Level 2 or 3 corrective actions aren't triggered (accrued) during the calendar year following the calendar year that the permittee triggered a Level 2 or 3 corrective action. However, benchmark exceedances begin counting towards additional Level 2 or 3 corrective actions the year after the Level 2 or 3 deadline. An example is provided below.

The final language is:

S8.C.4.d:

For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S8.D.5.d:

For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Example:

- Permittee exceeds zinc benchmark during 3 quarters in 2011, therefore a Level 3 corrective action must be completed by September 30, 2012.
- To allow a "time-out" period for the permittee to plan/install/monitor their Level 3 treatment BMPs in 2012, any zinc exceedances in 2012 do not trigger additional Level 2 or 3 corrective actions.
- If the permittee continues to exceed the zinc benchmark in 2013 (calendar year following Level 3 Treatment due date), another Level 3 corrective action is required by September 30, 2014.
- Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Weyerhaeuser

67.

S8.C.2. and D.2. – Level Two and Level Three Corrective Actions – The current permit language demands that "additional" BMPs be identified and implemented in pursuit of the goal of achieving the applicable benchmark values. This directive is counter to RCW 90.48.555(6) which states that, at all times, "all applicable and appropriate best management practices" be selected, implemented and maintained. Ecology needs to recognize that responsible Permittees have been adjusting their SWPPPs with an "adaptive management" approach for quite a number of years by now. At some point in the Corrective Action process a Permittee is likely to conclude that all applicable and appropriate BMPs have been implemented in the pursuit of the "goal" of achieving the benchmark value(s). As such, a demand for serial "addition" of BMPs may be hollow. The agency would more appropriately reference the "all applicable and appropriate" language.

Response: Ecology disagrees with the suggestion that S8.C.2 and D.2. are counter to RCW 90.48.555(6). Ecology believes Condition S8 contains an “enforceable adaptive management mechanism” that is consistent with the intent and requirements of the PCHB order and applicable state and federal water quality laws and regulations.

Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.

Weyerhaeuser

68.

S8. C.5. and D.5. – Additional Corrective Action May Be Required – The subsection heading indicates additional corrective actions “may” be required; the section text says “must.” What permit requirement does Ecology intend?

The comment offered above for S8.C.2. and D.2. applies to C.5. and D.5. as well.

S8. D.2. – The last sentence demands Level 3 Treatment BMPs or additional BMPs necessary to “meet” the goal of achieving the applicable benchmark value(s). The permitting concepts and language are really strained at this point (with no thanks to the PCHB). The permit pushes to treat benchmark values as numeric effluent limits, but not really as they are just goals, but then unending activity needs to continue if the goals are not consistently achieved (ala effluent limits). With this nuanced approach and outcome, Ecology needs to be prepared to accept Permittee judgments on BMP adequacy as equally credible as agency determinations.

Response: Based on public comments, additional revisions have been made to clarify Ecology’s intent that additional Level 2 or 3 corrective actions aren’t triggered (accrued) during the calendar year following the calendar year that the permittee triggered a Level 2 or 3 corrective action. However, benchmark exceedances begin counting towards additional Level 2 or 3 corrective actions the year after the Level 2 or 3 deadline. An example is provided below. The final language is:

S8.C.4.d:

For the year following the calendar year the permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S8.D.5.d:

For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Example:

- Permittee exceeds zinc benchmark during 3 quarters in 2011, therefore a Level 3 corrective action must be completed by September 30, 2012.
- To allow a “time-out” period for the permittee to plan/install/monitor their Level 3 treatment BMPs in 2012, any zinc exceedances in 2012 do not trigger additional Level 2 or 3 corrective actions.

- If the permittee continues to exceed the zinc benchmark in 2013 (calendar year following Level 3 Treatment due date), another Level 3 corrective action is required by September 30, 2014.
- Waivers are available if a permittee can justify that additional treatment BMPs are not feasible or not necessary to prevent discharges that cause or contribute to violations of water quality standards.