

APPENDIX C: DRAFT FACT SHEET FOR THE 2021 PHASE I MUNICIPAL STORMWATER GENERAL PERMIT

A National Pollutant Discharge Elimination System and State Waste Discharge General Permit
for discharges from Large and Medium Municipal Separate Storm Sewer Systems

MODIFICATION DATE: October 20, 2021



2021 Phase I Municipal Stormwater Permit Modification

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Introduction

This Fact Sheet accompanies the proposed 2021 permit modification for the National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Stormwater Permit covering Large and Medium Municipal Separate Storm Sewers (Permit).

The Permit required Phase I municipalities to adopt a stormwater program that will provide equal or greater protection of receiving waters and pollutant control as compared to Appendix 1. Ecology's purpose in modifying the Permit is to incorporate Ecology's determination of equivalency for the stormwater programs submitted by the cities of Seattle and Tacoma, and by Clark, King, Pierce, and Snohomish counties into Appendix 10 of the Permit. Part 3 of Appendix 10 will now list the manuals, ordinances, and other documents that the Phase I municipalities are relying on to meet this permit requirement.

This Fact Sheet documents the legal, technical, and administrative decisions Ecology has made in the process of modifying the Phase I Municipal Stormwater Permit.

You may download copies of the proposed permit modification documents at:

<https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Municipal-stormwater-general-permits/Municipal-Stormwater-Phase-I-Permit>

Historical Context of this Permit Modification

The Washington Department of Ecology (Ecology) issued the first Washington State Municipal Stormwater Permits on July 5, 1995. Three permits were issued for the Phase I Permittees in three specific water quality management areas.

Ecology issued a second cycle of Municipal Stormwater Permits on January 17, 2007. Under this permit cycle Phase I communities were no longer grouped by water quality management areas; instead they were issued separate coverages under a general Phase I Permit.

Ecology issued a third cycle of Municipal Stormwater Permits on August 1, 2012 that became effective on August 1, 2013. The biggest change as part of this cycle was the incorporation of Low Impact Development requirements for new development and redevelopment into the Permit.

The Phase I Municipal Stormwater Permit that went into effect on August 1, 2013 was first modified in 2015 to address resolutions of appeals under settlement agreements and as remanded by the Pollution Control Hearings Board (PCHB) in accordance with WAC 173-220-190(1). The modification went into effect on January 16, 2015. The Phase I Permit was modified once more in 2016 to update Appendix 10 with the equivalent local stormwater management programs and a new Appendix 13 – Adaptive Management Requirements was added.

This fact sheet addresses the proposed modifications to the Phase I Municipal Stormwater Permit that went into effect on August 1, 2019. The Washington Department of Ecology (Ecology) issues this Fact Sheet as Appendix C to the August 15, 2018 Fact Sheet that accompanied the formal drafts of the Phase I Municipal Stormwater Permit and the Western Washington Phase II Municipal Stormwater Permit, both effective August 1, 2019.

A timeline of the history of the Municipal Stormwater General Permits and additional information is available on Ecology's website: <https://ecology.wa.gov/ms4> .

Public Involvement

Public Comment Period

Ecology invites public comment on the proposed permit modification from July 21, 2021 until 11:59 p.m. on August 27, 2021. In order to allow Ecology to adequately address comments, please include the following information with each comment:

- The specific language used in the draft modification subject to your comment. Include the page number(s) and, where indicated, permit section reference (e.g., S8.D.2.b), or reference to the equivalent document.
- A brief, concise comment including the basis for the comment, and in particular the legal, technical, administrative, or other basis for the concern.
- Suggested language or a conceptual alternative to address your concern.

Per the Code of Federal Regulations, 40 CFR 122.62, when a permit is modified, only the conditions subject to modification are reopened. Ecology recommends that reviewers of this proposed permit modification limit comments to Appendix 10, Ecology's decisions to accept the Phase I municipalities' stormwater programs as equivalent to what is required by the Permit in S5.C.5.

How to Submit Comments

Ecology will accept written and oral comments on the modified permit and supporting documents until **11:59 p.m., August 27th, 2021**. Ecology will accept comments sent in by any of the following three ways:

- **Preferred method – Online via the eComment form:**
<https://wg.ecology.commentinput.com/?id=AmZ57>
- By postal mail to:
Municipal Permit Comments
Washington State Department of Ecology
P.O. Box 47600,
Olympia, WA 98504-7600
- By oral testimony at the public hearings

Public Workshops and Hearings

August 24, 2021 9:00 a.m. – Webinar

Find the webinar information at <https://ecology.wa.gov/ms4>

August 24, 2021 5:00 p.m. – Webinar

Find the webinar information at <https://ecology.wa.gov/ms4>

The purpose of the workshops is to explain the proposed changes to the Permit, and to answer questions about the proposed changes. Ecology will accept formal oral testimony or comments on the draft Permit modification and/or fact sheet after the public workshops, during the hearings. The hearings will immediately follow the workshops.

Issuance of the Final Modified Permit

Ecology will issue the final modification after it considers all public comments and makes final changes to the draft modified Permit. If public comments cause a substantial change in the Permit conditions from the final draft Permit modifications, another public notice of draft modification(s) and comment period may ensue.

Ecology expects to issue the final modified Permit in October, 2021. The Permit modifications will be effective 30 days later in November, 2021. Ecology will send a copy of the Notice of Issuance to all persons who submitted written comment or gave oral testimony at the public hearing.

With the issuance of the final modified Permit, Ecology will publish a *Response to Comments* as Appendix D to the Fact Sheet which will address the comments submitted during the public comment period. People who submit comments will receive a notice on how to obtain copies of the final Permit and Ecology's response to comments.

Ecology Contact Information

Please direct questions about the workshop, hearing, and requests for printed copies of the draft modification to Emma Trehwitt (360) 338-5831, or emma.trehwitt@ecy.wa.gov, or

Emma Trehwitt
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Phase I Municipal Stormwater Permit Modification

The proposed modification focuses on Appendix 10 of the Permit.

Appendix 10 - Equivalent Programs for Runoff Controls for New and Redevelopment and Construction Sites

Ecology proposes to modify Appendix 10, Part 3 of the Phase I Municipal Stormwater Permit (Permit) that went into effect on August 1, 2019. The proposed modification implements the

outcome of Ecology's determination that each Phase I municipality adopted and made effective a local program that meets the Permit requirements in S5.C.5.

Historical Context of Appendix 10

On April 8, 2008 the Pollution Controls Hearing Board (PCHB) issued a Summary Judgment and Order on Dispositive Rulings for Phase I appeals. The PCHB summary judgment agreed with appellants that Ecology's determinations of stormwater program equivalency under the 2007 Phase I Municipal Stormwater Permit lacked a public process and constituted a permit modification. The order required Ecology to name approved alternative stormwater programs within the Permit in order to allow, through the major permit modification requirements in WAC 173-220-060, a public review, public comment, and appeal process on Ecology's decision.

Ecology implemented the PCHB's order by modifying the 2007 Phase I Municipal Stormwater Permit on June 17, 2009. This modification included a list of approved documents in a new appendix to the Phase I Permit, Appendix 10.

In the Phase I Municipal Stormwater Permit that went into effect on August 1, 2013, Permittees were required to continue implementation of their ongoing programs as well as modify their programs by the deadlines established within the Permit. With this in mind Ecology divided Appendix 10 into two parts. Part 1 continued to list the documents associated with the ongoing programs that had received equivalency approval per the requirements in the 2007 Phase I Municipal Stormwater Permit. Part 2 served as a placeholder to eventually list the documents that would receive equivalency to meet the Permit requirements in S5.C.5.a.

With the 2016 permit modification, Part 2 no longer served as a placeholder, and listed the documents that Ecology determined to be functionally equivalent to Appendix 1 and the applicable parts of Ecology's *Stormwater Management Manual for Western Washington (SWMMWW) as Amended in 2014*. The modification process also allowed the public a chance to review, comment, and appeal Ecology's determinations of stormwater program equivalency under the Permit requirements.

The 2019 Permit followed a similar, but more streamlined approach as compared to the 2013 Permit. The current Permit required Permittees to continue to implement the ongoing programs established during the 2013 Permit term until their modified programs became effective. Appendix 10 of the Permit describes the needed changes to a local program adopted under the 2013 Permit. Phase I Permittees were required to submit their modified local programs to ensure equivalency with Appendix 1 and the SWMMWW no later than July 1, 2020. Permittees were then required to adopt and make effective their modified programs by July 1, 2021.

Associated Permit Requirements

S5.C.5 of the Permit requires Permittees to adopt and make effective a program designed to prevent and control the impacts of runoff from new development, redevelopment and construction sites as part of their Stormwater Management Program (SWMP). The Permit requires these programs to include:

- Minimum requirements, thresholds, and definitions that are equivalent to those listed in Appendix 1 of the Permit.
- Requirements, limitations, and criteria that when used to implement the minimum requirements in Appendix 1, will:
 - Protect water quality.
 - Reduce the discharge of pollutants to the maximum extent practicable.
 - Satisfy the state requirements under chapter 90.48 RCW to apply all known, available and reasonable methods of prevention, control, and treatment prior to discharge.

Permittees may have chosen to meet these requirements through the adoption of Appendix 1 and the required portions of Ecology’s *Stormwater Management Manual for Western Washington* (SWMMWW). Phase I Permittees that chose to implement programs that varied from the adoption of Appendix 1 / SWMMWW were required to submit their draft enforceable requirements, technical standards, and manuals to Ecology for review and approval. This process is generally referred to as an “equivalency review.”

Appendix 10, Part 3

Appendix 10 has three Parts.

- Part 1 - lists of Ecology-approved local programs that meet the requirements for controlling runoff.
- Part 2 – lists the significant changes to Appendix 1.
- Part 3 –lists the local programs approved to meet the 2019 (or Part 2) local program requirements. When the Permit is first issued, this section serves as a placeholder until the process to update this section is completed through the permit modification process.

Ecology proposes modifying Appendix 10, Part 3 to include a list of approved document packages for each of the six Phase I municipalities: King County, the City of Seattle, the City of Tacoma, Pierce County, Clark County, and Snohomish County. Ecology also included the approved document package for the Washington State Department of Transportation (WSDOT). Each jurisdiction has taken a different approach to meeting the Permit requirements contained in S5.C.5 that is specific to their municipal codes and land conditions.

Ecology’s Review Process

Appendix 1 and the 2019 SWMMWW had relatively minor changes made from the 2013 Permit or the SWMMWW as amended in 2014. Many of the changes to the 2019 SWMMWW were organizational. Only significant changes to Appendix 1 or the 2019 SWMMWW were required to be made to the local programs. The focus of the required changes were where those changes were critical to ensuring that the practices put in place would provide an advancement in the level of protection provided equivalent to the 2019-2024 Permits and 2019 SWMMWW. Because there are so few changes, Ecology created a streamlined Appendix 1 and manual equivalency process for Phase I as described below.

There were three main categories of changes that are required to be included in the 2019-2024 stormwater programs to be equivalent with Ecology's Appendix 1/SWMMEW update:

1. Adjustments to align with the Construction Stormwater General Permit (CSWGP),
2. Incorporation of an updated continuous runoff model that is more suitable to LID implementation, and
3. Updating the requirement for sites only subject to Minimum Requirements #1-5 choosing the LID Performance Standard to include Soil Quality and depth (BMP T5.13).

Ecology conducted a review process of each of the programs proposed by the Phase I municipalities (though there was a separate, earlier process for WSDOT). Each Permittee prepared a submittal for review in the format specified in Appendix 10 Part 2 that directly calls out where the revisions were made. Ecology limited its review to those required sections, unless a Permittee requested review of other sections. Ecology assigned both an Ecology permit planner and technical review lead to each of the manual reviews. Ecology staff worked with the Permittees to review multiple iterations of each program until Ecology determined that each program was functionally equivalent to Appendix 1 and the applicable portions of the SWMMWW; and that each program met the requirements in S5.C.5 of the Permit.

The Phase I documents, and records of Ecology's original comments and their resolution, are available on Ecology's website at: <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Municipal-stormwater-general-permits/Municipal-Stormwater-Phase-I-Permit>

Revisions to Phase I Programs after Ecology's Equivalency Determination

If a Phase I Permittee chooses to revise their program from that listed in the finalized version of Appendix 10, the responsibility is on the Permittee to document how the revisions to their program meets the Permit requirements as described above. In this case, the Permittee cannot rely on Ecology's determination of equivalency associated with the Phase I programs because Ecology's equivalency determination is based on a review of the specific documents listed in Appendix 10. Permittees are cautioned that this practice may create potential liability.

Considerations for Phase II Municipal Stormwater Permittees

Both the Phase I Municipal Stormwater Permit (special condition S5.C.5) and the Western Washington Phase II Municipal Stormwater Permit (WWA Phase II Permit) (special condition S5.C.6) require permitted cities and counties to establish enforceable programs to manage stormwater from new development, redevelopment, and construction activities.

For these special conditions, the primary distinction between the two permits is that Phase I Permittees must submit their draft enforceable requirements, technical standards and manuals to Ecology for review and approval, whereas Phase II Permittees are not given the option to do so. Ecology does not have the capacity to review Phase II programs in detail, and thus relies on the Phase II Permit and Appendix 1 to ensure the minimum requirements, thresholds, and definitions are consistently applied to projects in Phase II coverage areas.

Without Ecology's approval and an associated determination of equivalency of a local stormwater program, the local jurisdiction must rely on its own justification and documentation that the local program meets the Permit requirements. Ecology, EPA, or a third party may review such documentation to evaluate compliance with the Permit.

Ecology encourages any Permittee who is considering using an Ecology-approved equivalent Phase I program (or elements of such a program) to review the comments and resolution documentation associated with that Phase I program review. How to obtain these materials can be found online at: <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Stormwater-manuals/Equivalent-Stormwater-Manuals-for-Municipal-stormwater>

In the subsections below, Ecology also provides some critical information that Phase II Permittees should consider when adopting specific Ecology-approved equivalent Phase I programs. Ecology does not intend for the information below to be all inclusive.

Combining Different Manuals

It is important to keep in mind that a Phase II Permittee may only establish alternative requirements to the minimum technical requirements, thresholds, and definitions contained in Appendix 1 through adoption of an Ecology-approved basin plan (Section 7 of Appendix 1) or through the adoption of an Ecology-approved Phase I program. In the past, some Phase II Permittees have expressed interest in selecting specific components of several different Phase I equivalent programs and/or the SWMMWW, and combining these requirements into a unique local program.

Ecology expects that Phase II Permittees adopting an Ecology-approved Phase I program for S5.C.6 requirements (i.e., in lieu of Appendix 1) are also adopting the associated site planning requirements, BMP selection, design, infeasibility criteria and limitations, and LID competing needs criteria from that same Ecology-approved Phase I program. If a Phase I program has received Ecology's approval for alternatives to the minimum technical requirements, thresholds, definitions, adjustment and variance criteria in Appendix 1, such alternatives are only appropriate when implemented with the requirements, limitations and criteria addressing S5.C.6.b.ii.(a)-(f) that are part of that Ecology-approved program, and any additional conditions that Ecology places on such an approval.

If a Phase II Permittee chooses to select different BMP limitations or criteria, or site planning requirements (S5.C.6.b.ii.(a)-(f)) from several different Phase I programs, the responsibility is on the Permittee to document how this composite manual meets the Permit requirements as described above. In this case, a Permittee cannot rely on Ecology's determination of equivalency associated with the Phase I programs because Ecology's equivalency determination is based on a review of the individual Phase I program as a whole. It is incorrect to assume that individual elements of approved equivalent Phase I programs can be isolated, recombined, and

still be equivalent to Appendix 1 and the SWMMWW. Permittees are cautioned that this practice may create potential liability¹.

Adopting Phase I Programs That Were Revised After Ecology's Equivalency Determination

If a Phase I Permittee chooses to revise their program from that listed in the finalized version of Appendix 10, the responsibility is on the Permittee to document how the revisions to their program meets the Permit requirements as described above. If a Phase II Permittee decides to adopt a Phase I Program that was revised after Ecology's equivalency determination, the responsibility is also on the Phase II Permittee to document how their program meets the Permit requirements as described above.

In this case, neither the Phase I Permittee or the Phase II Permittee can rely on Ecology's determination of equivalency associated with the Phase I programs because Ecology's equivalency determination is based on a review of the specific documents listed in Appendix 10. Permittees are cautioned that this practice may create potential liability.

Special considerations for Phase IIs

The following provides additional detail on each of the Phase I local programs and the limitations of applicability for Phase II Permittees. Many of these considerations are consistent with the approval under the 2013 Permits.

King County's Stormwater Program Special Considerations

Phase II Permittees considering adopting King County's *Core Requirement #9: Flow Control BMPS* in King County's *2021 Surface Water Design Manual* will need to ensure they also adopt the bioretention sizing requirements in King County's *Surface Water Design Manual*.

City of Seattle's Stormwater Program Special Considerations

Phase II Permittees considering adopting the City of Seattle's Stormwater Manual Section 5.2 On-site Stormwater Management will need to ensure they also adopt the bioretention sizing requirements associated with the requirements in Section 5.2.

Additionally, many of the requirements in the City of Seattle's Stormwater Program apply specifically to highly urbanized areas that have had at least 40% total impervious areas since 1985 (see I-3.4.7 MR7: Flow Control, in the SWMMWW). It may be inappropriate for Phase II Permittees to adopt the City of Seattle's program requirements designed to address these areas.

City of Tacoma's Stormwater Program Special Considerations

The City of Tacoma's Stormwater Program is only approved for use within the City of Tacoma's city limits.

¹ Furthermore, it may be inappropriate to adopt a Phase I program designed to address specific general conditions in a Phase I community (e.g., highly urbanized, fully built-out city) in a jurisdiction with significantly different characteristics (large-lot suburbs at the fringe of an urbanized area).

Pierce County's Stormwater Program Special Considerations

Pierce County completed an infiltration capacity analysis to justify placing Downspout Dispersion at the same list level as bioretention for sites that are underlain by Spanaway soils. The requirements, characteristics and descriptions of Spanaway Soils are defined and discussed in several locations in the approved Pierce County Stormwater Management and Site Development Manual (Pierce County's Manual). Phase II Permittees adopting Pierce County's Manual will need to continue using the same information should they choose to adopt the Pierce County Manual.

Downspout Dispersion being placed at the same level as bioretention is not approved for any other soil.

Clark County's Stormwater Program Special Considerations

Clark County Stormwater Manual references a Clark County-specific calibration of the 2012 Western Washington Hydrogeology Model (WWHM2012). Version 4.2.12 of WWHM2012 introduced this calibration in the Clark2012SG mapping unit.

The Clark2012SG is not approved by Ecology for use outside of Clark County. Phase II Permittees outside of Clark County must continue using the standard WWHM2012 or another approved continuous runoff model, even if they choose to adopt this manual.

Phase II Permittees within Clark County may use the Clark2012SG in conjunction with other approved stormwater manuals, and are not constrained to using solely Clark County's Stormwater Manual simply because they choose to use the Clark2012SG.

Washington State Department of Transportation's Highway Runoff Manual (HRM) Special Considerations

Ecology has determined the HRM to be equivalent to both of Ecology's Western and Eastern Stormwater Management Manuals for minimum design requirements and best management practices for public road projects. Permittees may adopt and employ these equivalent sections (only) for use for public road projects within their jurisdictions. It should be noted that there are some different thresholds, additional provisions (or exemptions) in the HRM that apply only to Washington State Department of Transportation and are not appropriate for local governments to follow and implement.

Snohomish County's Stormwater Program Special Considerations

There are no applicable special considerations for Snohomish County's Stormwater Program.