

**Response to Comments on
the Modification of the
National Pollutant Discharge Elimination System (NPDES) Permit
For Discharges from the
Joint Base Lewis-McChord Municipal Separate Storm Sewer System
(JBLM MS4)
NPDES Permit No. WAS-026638**

U.S. Environmental Protection Agency, Region 10

December 4, 2014

Table of Contents

Introduction	2
State Certification under Clean Water Act §401	3
Edits to the Final Permit Modification Based on Ecology’s Final §401 Certification	4
Response to Comments	4
Comments Regarding Parts II.A.3 (<i>SWMP Document</i>) & II.B.2.c (<i>SWMP Availability</i>)	7
Comments Regarding Part II.A.7 (<i>Equivalent Documents</i>)	7
Comments Regarding Deadlines for Training New Staff	10
Comments Regarding Part II.B.5 (<i>Stormwater Management for Areas of New Development & Redevelopment</i>)	10
Comment Regarding Part II.C (<i>Pertaining to Stormwater Retrofits</i>)	18
Comments Regarding Part IV (<i>Monitoring, Recordkeeping & Reporting</i>)	21
Appendix A: Department of Ecology’s Final Certification under Clean Water Act §401	24
Appendix B: Summary of Revisions to the Final Permit Modification	29
Table B-1. Summary of Revisions Based on Ecology’s Final §401 Certification	29
Table B-1. Modified Permit Provisions as proposed	30
Table B-2: Edits to the Final Permit Modification based on Public Comment	31

Introduction

In March 2003, Joint Base Lewis-McChord (“JBLM”) submitted a National Pollutant Discharge Elimination System (“NPDES”) permit application for discharges from its municipal separate storm sewer system (“MS4”), and augmented that information in 2011.

The U.S. Environmental Protection Agency Region 10 (“EPA”) issued a NPDES permit for discharges from the JBLM MS4 on August 22, 2013, with an effective date of October 1, 2013 (“2013 Permit”). The U.S. Department of the Army (“Army”) filed Motions for Extension of Time to File Petition for Review which the Environmental Appeals Board (“EAB”) granted. On November 5, 2013, the Army filed its Petition for Review seeking review of the new and redevelopment stormwater management provisions and the stormwater retrofits provisions as well as various compliance dates in the Permit.

On November 22, 2013, pursuant to 40 CFR § 124.16, EPA sent a letter notifying JBLM that the contested Permit provisions and the specific compliance dates identified in the Army’s Petition had been stayed. Pursuant to 40 CFR § 124.16, a new Permit effective date for the uncontested provisions of December 25, 2013 was established.

On December 5, 2013, the parties agreed to participate in the EAB's Alternative Dispute Resolution ("ADR") Program. On June 6, 2014, EPA and the Army entered into a settlement agreement whereby EPA agreed to modify various provisions of the 2013 Permit subject to public comment.

On July 3, 2014, EPA provided a Draft Permit Modification to the Washington Department of Ecology (Ecology) for draft Clean Water Act (CWA) §401 certification. On August 4, 2014, Ecology provided EPA a Draft Clean Water Act §401 Conditional Certification (Draft §401 Certification).

On August 6, 2014, EPA proposed to modify the 2013 Permit for discharges from the MS4s owned and/or operated by JBLM. The public comment period ended on September 8, 2014.

This document provides response to comments received on the proposed modification of the Permit. JBLM is referred to as "the Permittee" or "JBLM;" the modified permit document #WAS-026638 is referred to as "the Permit Modification." EPA received comments from the parties listed below, which are summarized in this document and credited to their author/organization using the abbreviations indicated:

- Pierce County Public Works and Utilities (PC)
- Joint Base Lewis-McChord, Directorate of Public Works (DPW)
- Earthjustice (E)

Comments in this document are broadly organized by topic, in the order the issue appears in the Permit. Where indicated, EPA has made changes to the final Permit Modification. Appendix B of this document summarizes all revised provisions of the final Permit Modification. The Administrative Record contains copies of each comment letter, Ecology's Draft and Final Conditional §401 Certifications, as well as information considered by EPA during the Permit Modification process.

Several comments and/or responses refer to various documents related to the JBLM MS4 Permit, such as: EPA's original JBLM MS4 Permit, issued August 22, 2013 (referred to in this document as the "2013 Permit"); EPA's fact sheet supporting the original permit, dated January 26, 2012, (the "2012 FS"); and, in particular, the Fact Sheet supporting the Permit Modification, dated August 6, 2014 (the "Permit Modification FS"). It is EPA Region 10 policy not to revise the FS discussion(s) based on public comment; instead, upon issuance of the final Permit Modification, EPA considers this Response to Comments document as an appendix to the Permit Modification FS which clarifies such issues as necessary.

State Certification under Clean Water Act §401

Any conditions identified in Ecology's certification must be included in the final Permit Modification, pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). As noted above, on August 4, 2014, Ecology provided EPA with a letter indicating its intent to certify the Draft Permit Modification pursuant to certain conditions as set forth in Ecology's letter. During the public comment period held concurrently with the EPA's comment period, Ecology received comments from the Department of the Army and Earthjustice.

Pursuant to CWA §401(d), EPA revised the text of the Permit Modification to incorporate the conditions set forth in Ecology's certification. On October 2, 2014, EPA submitted to Ecology a Preliminary Final Permit Modification with a Request for Final Certification. The Preliminary Final

Permit Modification reflected the conditions that were incorporated from Ecology's Draft Conditional §401 Certification as well as changes made due to public comments that were received. On November 20, 2014, Ecology certified the Permit Modification subject to certain conditions. A copy of the final certification (Final §401 Certification) is provided in Appendix A of this document.

Edits to the Final Permit Modification Based on Ecology's Final §401 Certification

EPA determines, and Ecology has concurred, that the Permit Modification, as proposed by EPA on August 6, 2014, fully complies with Ecology's Final §401 Certification Conditions #1, #3, and #6. Therefore, EPA has made no changes to the final Permit Modification to address these conditions.

EPA revised proposed Permit Part II.A.7 (*Equivalent Documents, Plans or Programs*) in response to Condition #2 of Ecology's Draft Conditional §401 Certification. EPA submitted the revised Part II.A.7 text to Ecology on October 2, 2014; in its Final §401 Certification, Ecology confirmed that EPA's revised text meets Condition #2. Further discussion of the changes to Part II.A.7 can be found in Response to Comment #9.

EPA revised proposed Permit Part II.B.5.e (*Hydrologic Performance Standard for Onsite Stormwater Management*) and proposed Appendix C (specifically, regarding *Exemptions from the Hydrologic Performance Standard under Part II.B.5.e.iii*), in response to Conditions #4 and #5 of the Draft Conditional §401 Certification, dated August 4, 2014. On October 2, 2014, EPA submitted revised text for Part II.B.5.e.iii and Appendix C to Ecology as part of its Request for Final Certification. Ecology stated in its Final §401 Certification that EPA's revised text partially met its Conditions #4 and #5. EPA has therefore revised Part II.B.5.e.iii to fully respond to Ecology's Final §401 Certification. Further discussion can be found in Response to Comment #15.

A summary of all changes to the final Permit Modification can be found in Appendix B.

Response to Comments

General Topics

1. **(PC)** Pierce County supports changes providing additional time for JBLM to secure resources, and requests EPA actively support and help JBLM to get those operational and capital resources to implement the Permit requirements for monitoring, pollution source identification and reduction efforts, and to design, build and maintain needed stormwater infrastructure.

Response #1: Comment noted.

2. **(PC):** EPA continues to take a different approach to managing municipal stormwater in its permits than Ecology, and EPA's proposed modifications exacerbates those differences. Pierce County also expressed this concern during the 2012 comment period. The result is a disparity of standards for stormwater discharges to the same streams and same watersheds. Permit modifications affording flexibility in scope, scale and format of JBLM's stormwater management program and site development standards conflict with Washington's requirements

for the County/other municipal Permittees. As a consequence, a disproportionate burden for polluted stormwater cleanup is shifted to the County.

Response #2: EPA disagrees. The JBLM permit does not create a disparity of standards for stormwater management between JBLM and adjacent jurisdictions within the same watersheds. The hydrologic performance requirements and required measures for new and re-development in the Permit Modification are equivalent to adjacent jurisdictions' requirements. Ecology has provided a Final §401 Certification stating that the Permit Modification meets state water quality standards subject to the conditions set forth in that Certification. Conditions of Ecology's certification requires JBLM to meet the same new and redevelopment performance standards that all jurisdictions in Western Washington are required to meet. As explained above, EPA has incorporated these conditions into the Permit. See also Response to Comments #12, #13, and #15.

3. **(PC):** EPA should insist Washington accept NPDES delegation of Federal Facilities and Discharges to Tribal Waters. Many of the proposed modifications refocus the permit to federal Clean Water Act requirements and terminologies (e.g., "maximum extent practicable (MEP)" rather than "maximum extent feasible"). Pierce County understands the rationale behind these changes and normally would agree they are appropriate. However, Pierce County, as all other Washington State permittees, are also encumbered with state Department of Ecology requirements under Chapter 90.48 RCW in Ecology's so-called "combined state waste discharge and NPDES permit." Thus, if EPA establishes this standard of partial coverage for its NPDES municipal stormwater discharge permits in Pierce County, the County will continue to be the recipients of disproportionate pollution control and clean up requirement to literally the same waters.

Response #3: EPA continues to work closely with Ecology with regard to implementation of the CWA NPDES requirements to federal operators within Washington State. At this time, Ecology has not sought the authority to issue NPDES permits to federal facilities. In addition, EPA cannot authorize any state to issue NPDES permits to tribal facilities given the sovereign status of federally recognized tribes, EPA's federal trust responsibilities, and the government-to-government relationship between the United States and federally recognized tribes. EPA disagrees with the commenter that the final Permit imposes different stormwater management standards upon JBLM than are in place for other regulated municipal permittees in Western Washington. See also Response to Comments #12, #13 and #15.

4. **(E):** Extraordinary deadline extensions appear in virtually every provision of the proposed modifications, without justification outside of the Army's preference. EPA must explain why the original deadlines were inappropriate and how the new protracted deadlines are in line with the Clean Water Act's MEP standard, particularly in light of the extraordinary delay in imposing the CWA's requirements in the first place. During the issuance of the original permit, JBLM did not even provide comment on deadlines, meaning the Army was prohibited from appealing them to the EAB. The Army should already have begun implementation of the Permit's requirements, which have been in effect since August 22, 2013. It is concerning that EPA should nevertheless grant JBLM additional years of continued pollution discharges.

Response #4: It is within EPA's discretion to allow up to five years from the date of permit issuance for full implementation of required SWMP provisions. See 40 CFR 122.34(a). EPA has previously stated that implementation of the comprehensive SWMP outlined in Part II of the Permit, combined with the monitoring and assessment requirements in Part IV, are designed to

prevent pollutants from causing or contributing to violations of the Washington water quality standards to the MEP and to comply with other water quality provisions of the CWA; on November 28, 2014, Ecology provided its conditional §401 Certification of the Permit Modification. The commenter has not explained why the new deadlines are inappropriate or do not meet the MEP standard.

EPA issued the Permit on August 22, 2013, with an effective date of October 1, 2013. During a meeting on September 11, 2013, the Army verbally expressed concerns to EPA regarding various contested provisions of the Permit, including certain SWMP activity deadlines, and indicated their intention to appeal the Permit. See Meeting Notes in Administrative Record. On September 17, 2013, the Army submitted to EPA a list of requested deadline revisions with the following rationale:

“The reason for the requested modifications is to allow adequate time to obtain financial and staff resources, and to accomplish mandated work specified in the new permit, received by JBLM on 26 August 2013.....EPA approval of the permit allows the Army to classify requests for funds as “Class I” funds requirements, which allows for possible insertion of requirements over similar other Class I requirements as well as overall Class II and III requirements. Financial support for the storm water management program will be inserted in the FY 14 budget year. We are requesting funding for additional staff and for specific projects required to implement the permit.”

The Army’s Petition for Review set forth this same rationale. Pursuant to 40 CFR 124.16, contested permit provisions are automatically stayed pending resolution in the EAB. On November 22, 2013, EPA sent a letter to JBLM setting forth the stayed permit provisions; however, regarding the deadlines, EPA clarified: “the following deadlines are stayed; however the program actions required in the stated permit parts remain in effect.” EPA also stated in the letter that the uncontested permit provisions became effective on December 25, 2013. The specific provisions for which additional time has been granted are related to the creation of SWMP documentation and construction site inspection plan, the initiation of monitoring efforts, the frequency of training for new staff; JBLM has indicated that these actions require dedicated resources and staff, which must be accommodated through the federal budget process; the FY 2014 budget year, during which JBLM sought additional resources, occurred concurrently with the EPA-Army alternative dispute resolution process.

EPA has modified deadlines for specific SWMP control measure actions after considering the rationale provided by Army. EPA does not agree with the commenter that longer deadlines to complete certain tasks equate to more pollution. EPA believes the extensions of time for the specified provisions are justified.

5. **(E):** Endangered Species Act (ESA) consultation must be reinitiated prior to completing any modifications. In 2013, the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) concluded the Permit was not likely to adversely affect endangered Puget Sound marine species, Bull Trout or terrestrial species. The commenter expects to work with NMFS and USFWS to ensure that the flaws in the proposal that fail to protect water quality are corrected.

Response #5: EPA has fulfilled its obligations with respect to Section 7 of the ESA. On July 15 and 24, 2014, EPA notified NMFS and USFWS, respectively, of its intent to modify the Permit,

and requested concurrence that the changes in the Modified Permit did not alter the “not likely to adversely affect” determinations made on the original Permit. On August 7, 2014, USFWS acknowledged EPA’s notification of the Permit Modification and agreed with the EPA’s conclusion that, because the Permit Modification does not alter the beneficial outcomes previously identified for listed species within the action area, re-initiation of consultation is not warranted. On September 19 and 22, 2014, NMFS confirmed to EPA that the Permit Modification did not warrant the re-initiation of consultation because the Permit Modification does not alter NMFS concurrence with EPA’s effects determinations for ESA listed species and their critical habitat, or does not alter NMFS concurrence with regard to effects on Essential Fish Habitat (EFH), as identified under the Magnuson-Stevens Fishery Conservation and Management Act.

6. **(E):** In its brief to the EAB, EPA mounted a robust defense of its Permit and explained its justification for concluding that the standards therein were required to meet the MEP standard. One important consideration was that every jurisdiction around JBLM, from major counties to small towns, is already required to meet essentially identical standards. Yet, in the face of a meritless appeal, EPA chose to weaken those standards across the board, without any apparent justification and, it appears, solely to satisfy the preferences of JBLM. Commenter urges EPA to reaffirm the original Permit and, if necessary, continue to defend it before the EAB.

Response #6: EPA declines to reaffirm the original Permit as requested by the commenter. In the Permit Modification, EPA made changes to the permit text to ensure that the new development and redevelopment hydrologic performance requirements applicable to JBLM are no less stringent than those that apply to surrounding jurisdictions. To the extent that Ecology felt that EPA did not accurately reflect the new development and redevelopment hydrologic performance requirement for onsite stormwater management in its Permit Modification, Ecology has provided conditions within its Final §401 Certification that ensure that JBLM is held to the same performance standards as surrounding jurisdictions. See Response to Comments #2, #12, #13, and #15.

Comments Regarding Parts II.A.3 (SWMP Document) & II.B.2.c (SWMP Availability)

7. **(PC):** The County supports giving JBLM time to get fiscal and staff resources needed to meet the operational and maintenance requirements of the Permit, particularly for Parts II.A.3 and II.B.2.c.

Response #7: Comment noted.

Comments Regarding Part II.A.7 (Equivalent Documents)

8. **(PC):** The County opposes modification of this section because it increases the differences in permit requirements between EPA's permit to JBLM and Washington State's permit to Pierce County for MS4 discharges to shared watersheds and waterbodies.

Response #8: Comment noted. EPA has revised Part II.A.7 pursuant to Condition #2 within Ecology’s Final §401 Certification. See Response to Comment #9.

9. (E): EPA’s proposed modification invites reliance on unapproved “Alternative Documents” without standards or public scrutiny. It allows the use of “alternative documents” to define JBLM’s legal obligations, which is unlawful because it violates the public participation requirements of the Clean Water Act. *See Environmental Defense Center v. EPA*. The Environmental Groups object to the proposed language (in Part II.A.7 and) in section II.B.5 that would allow JBLM to develop and submit “an alternative document, plan or program that describes functionally equivalent run-off controls” instead of following the approved, widely-accepted state manuals, including the *Stormwater Management Manual for Western Washington*. The Permit does not explain what EPA’s metrics will be for approving these “alternative documents.” The Washington manual provides extensive flexibility—there is no demonstrated need for alternative approaches. EPA must either require JBLM to comply with effluent limitations on which the public has already had a chance to comment and seek a hearing; or it must provide for the Permit to be formally modified upon submission of the “alternative documents,” triggering opportunities for formal public participation.

Response #9: EPA disagrees that Part II.A.7 is unlawful; however, EPA has revised Part II.A.7 pursuant to Condition #2 within Ecology’s Final §401 Certification. A summary of these revisions is outlined below.

EPA’s original intent for Part II.A.7, as stated in its 2013 Response to Comments document (2013 Response to Comments) was to address JBLM/Army comments that at least two existing Army documents (developed in compliance with other federal and state environmental requirements) contained elements that JBLM considered to meet one or more of the SWMP requirements. EPA did not review these documents while preparing the draft permit; therefore EPA wrote Part II.A.7 to express how EPA would review such existing materials submitted by JBLM after the permit issuance date. EPA noted materials would be reviewed similarly as EPA reviews documentation submitted by other permittees as in other NPDES permits. EPA explained that all submitted documents, plans or programs would become public record and made available for public review during the future permit reissuance process. EPA stated in its 2013 Response to Comments that it did not intend Permit Part II.A.7 to be analogous to Ecology’s “determination of equivalency” (which compares locally adopted stormwater management ordinances or other documents to the specifications of the 2012 *Stormwater Management Manual for Western Washington*).¹

In its proposed Permit Modification, EPA altered the original purpose of Part II.A.7 to include “any documents, plans, or programs,” not limited to those existing as of the permit effective date, and including materials which may not yet have been developed.

Ecology subsequently denied certification of Part II.A.7 as proposed in the Permit Modification. See Condition #2 in Ecology’s Draft and Final §401 Certifications. In response, EPA significantly revised Part II.A.7 in order to: to refer to provisions for submitting materials to EPA cited elsewhere in the Permit [namely, Parts II.E (*Reviewing and Updating the SWMP*)];

¹ See EPA’s *Response to Comments on National Pollutant Discharge Elimination System (NPDES) Permit For Discharges from the Joint Base Lewis-McChord Municipal Separate Storm Sewer System (JBLM MS4) NPDES Permit No. WAS-026638*, dated August 22, 2013, (2013 Response to Comments) Responses #24 and 25; this document can be found online at http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638_jblm_ms4_rtc.pdf;

See also EPA’s 2012 FS, page 22, at <http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638-jblm-ms4-fs.pdf>

VI.D (*Addresses*); VI.A (*Permit Actions*); and VI.E (*Signatory Requirements*); to delete all reference to EPA written approval of a submitted document, plan or program, and the subsequent expectations for program documentation; to clarify that EPA will follow the permit modification procedures pursuant to the NPDES regulations at 40 CFR §122.62 and 124.5; and to specify that any request for a permit modification does not stay any permit condition during the interim time until the permit modification is complete. Part II.A.7 of the final Permit Modification is therefore revised from the original 2013 Permit text and from the August 2014 proposed Modification to read as follows:

*The Permittee may submit to EPA any ~~existing~~ documents, plans, or programs existing prior to the effective date of this Permit which ~~that~~ the Permittee **believes is equivalent to** ~~deems to fulfill~~ a required SWMP minimum control measure or component ~~as specified in~~ **in** by this Permit. Such ~~pre-existing~~ documents, plans or programs must be individually submitted to EPA pursuant to **Parts II.E and Part IV.D** for review ~~and approval~~ at least six months prior to the compliance date of the required SWMP minimum control measure **or component**. ~~If Where~~ EPA determines, ~~in writing,~~ that the Permittee's ~~pre-existing~~ document, plan or program **is equivalent to** ~~complies with~~ the required SWMP minimum control measure **or component**, **EPA will commence a permit modification procedure pursuant to 40 CFR §§122.62 and 124.5 if necessary.** **In determining whether a permit modification is needed, EPA will look at whether the equivalent document, plan or program needs to be cited in the Permit.** ~~As specified in Part VI.A, the filing of a request by the Permittee for a permit modification does not stay any permit condition.~~ ~~the Permittee is not required to develop of a separate SWMP document, plan or program for that control measure. A copy of EPA's written approval of each equivalent document, plan or program must be maintained within the SWMP document required in Part II.A.3 and referenced in subsequent Annual Reports. The Permittee must submit to EPA as specified in Parts **II.E and IV.D** the following documentation with each individual request for review:~~*

- a) A complete copy of the relevant document, plan or program, (or applicable section of such documentation, provided the Permittee provides the full citation of the source material); and
- b) A detailed written overview identifying the required SWMP program component addressed by the submittal, and the reasons, citations and references sufficient to demonstrate that the submitted material meets or exceeds the required SWMP program component.

Comments Regarding Deadlines for Training New Staff

In: Part II.B.3.g (Staff Training-Illicit Discharge Detection & Elimination Program); Part II.B.4.h (Staff Training for Construction Site Stormwater Runoff Control); Part II.B.5.k (Staff Training for Stormwater Management for Areas of New Development and Redevelopment); and Part II.B.6.g (Staff Training for Pollution Prevention and Good Housekeeping for Municipal Operations and Maintenance)

- 10. (PC):** The language as modified in these provisions does not take into consideration temporary employees, ongoing training, define "stormwater management program," and "who work directly on stormwater management issues." Lacking these, it is difficult to understand how performance can be monitored.

Response #10: EPA disagrees that the modified language added to each of these Parts makes the respective requirement unclear, and declines to make any changes to these provisions. First, the definition of "SWMP" is included in Part VII. Second, each of the modified provisions specifically address "who" is to receive the relevant training, (for example, Part II.B.3.g requires "all staff (emphasis added) responsible for the identification, termination, clean up and reporting of illicit discharges including spills and illicit connections" associated with the Illicit Discharge Detection & Elimination control measure of the SWMP). The modified text, as proposed in each of these provisions, requires training for new staff to be conducted within the first six months of employment. Further, the existing text in each of these provisions specifically requires a summary of the Permittee's training activities during the permit term. No changes have been made in response to this comment.

Comments Regarding Part II.B.5 (Stormwater Management for Areas of New Development & Redevelopment)

Pertaining to proposed modifications of the first sentence in Part II.B.5

- 11. (PC):** Pierce County opposes revisions to the first sentence of II.B.5. Pierce County would support a return to the federal Clean Water Act (CWA) standard for municipal stormwater dischargers (i.e., "maximum extent practicable) instead of the much higher standard imposed by the State of Washington on Pierce County and other counties and cities in its combined state waste discharge and NPDES permit under Chapter 90.48 RCW. Pierce County will continue to be held to more extensive permit requirements that JBLM for discharges to the same waterbodies.

Response #11: Comment noted. See Response to Comments #12.

- 12. (PC, E):** Commenters oppose the proposed modification to the first sentence of Part II.B.5, noting that the revision appears to increase the differences in permit requirements between EPA's JBLM MS4 permit and Washington State's permit to Pierce County for discharges to the same watersheds and waterbodies by replacing a relatively objective and specific statement that requires JBLM to implement a SWMP that "preserves and restores the area's predevelopment hydrology" to an unacceptably vague statement that imposes a duty to "prevent [] or minimize [] water quality impacts to the maximum extent practicable." Commenters believe that the proposed language is undefined and extremely unclear, potentially hindering EPA and the public's ability to monitor compliance with, and if necessary enforce, the Permit. EPA cannot

delegate to the Army the discretion to decide its own program. See *Environmental Defense Ctr., Inc. v. EPA*, 344 F.3d 832, 854-56 (9th Cir. 2003). *Puget Soundkeeper Alliance v. State of Washington*, 2008 WL 5510413 (Aug. 7, 2008). Further, allowing permit compliance to be “left entirely to the discretion of the” permittee amounted to “impermissible self-regulation.” *Id.*; see also *Waterkeeper Alliance v. EPA*, 399 F.3d 486 (9th Cir. 2005).

Response #12: EPA agrees that the proposed revisions to the first sentence of Part II.B.5 creates unintended ambiguity with regard to managing stormwater from new development and redevelopment sites, and has revised the introductory portion of Part II.B.5 as outlined below.

EPA originally organized Part II.B.5 by using introductory text, meant to define how and when JBLM must implement the listed SWMP elements a. through k., and reference the content of the Annual Report. Parts II.B.5.a-k detail requirements corresponding to Department of Ecology’s Minimum Requirements (MR) #1, and #3-9 for new development and redevelopment as imposed upon other regulated MS4s in Western Washington.² The Permittee’s full implementation and compliance with Parts II.B.5.a through k, coupled with full implementation of all remaining provisions of the Permit, will reduce pollutants from the JBLM MS4 to the maximum extent practicable.

Upon consideration of Ecology’s conditions outlined in its Final §401 Certification, and public comments received, EPA finds that the first sentence of Part II.B.5 does not add to the meaning or intent of the SWMP requirements in Part II.B.5. To avoid further ambiguity, EPA has decided to delete the first sentence of Part II.B.5. Part II.B.5 now reads, in pertinent part, as follows:

~~*Not later than one year from the effective date of this Permit, the Permittee must implement a program to manage stormwater from developed areas new development and redevelopment project sites in a manner that maintains the site’s predevelopment runoff conditions to the maximum extent practicable and prevents or minimizes water quality impacts.*~~ *The Permittee must use an ordinance (or other regulatory mechanism available under the legal authorities available to JBLM) to implement and enforce a program to control stormwater runoff from all public and private new development or redevelopment project sites that will disturb 5,000 square feet or more of land area.*

The Permittee must include a written description of the program within the SWMP document. In each Annual Report, the Permittee must summarize the implementation status of these requirements for all new development and redevelopment project sites occurring during the relevant reporting period. Certain projects may be exempt from specific provisions of this Part, as defined in Appendix C.

Pursuant to the procedures in Part II.A.7, the Permittee may submit to EPA for approval an alternative document, plan or program that describes functionally equivalent run-off controls to the 2012 Stormwater Management Manual for Western Washington and other manual provisions cited below.

At a minimum, within one year of the permit effective date, the Permittee must implement the following program components as described in Part II.B.5.a through k:

² Note: Ecology’s MR #2 is implemented through the Permit in Part II.B.4, as well as through the requirements of EPA’s applicable NPDES General Permit for Stormwater from Construction Activities, #WAR12-000F.)

13. (E): In Parts II.B.5.d and II.B.5.e (*New Development and Redevelopment Site Design to Minimize Impervious Areas, Preserve Vegetation, and Preserve Natural Drainage Systems and Hydrologic Performance Standard for Onsite Stormwater Management*, respectively), EPA's proposed modification adds the words "to the maximum extent practicable" into various Permit provisions governing substantive standards, which does not provide "clarity." EPA proposes to modify and replace [original 2013 Permit] requirements to take certain actions "to the maximum extent technically feasible" (i.e., wherein EPA had imposed a requirement based on technological feasibility) with alternative language requiring action "to the maximum extent practicable" (i.e., arguably introducing undefined considerations of cost). These proposed modifications are in addition to several other references to the "maximum extent practicable" (MEP) standard throughout the existing Permit text. While the MEP standard is the one adopted by Congress in the 1987 amendments to the CWA, it was never Congress' intention that this open-ended language be simply inserted into permits. Attaching the words "to the maximum extent practicable" into various Permit provisions which govern substantive standards does not provide "clarity."

Other EPA Regions have objected to state-issued MS4 permits on the grounds that they contained the very same language Region 10 has proposed to insert here. Including "to the maximum extent practicable" in permits flouts the advice of the National Research Council's committee on reducing stormwater pollution. The commenter believes inserting the phrase "to the maximum extent practicable" into the Permit is unwarranted and unlawful; EPA should delete all Permit language requiring JBLM to comply with requirements "to the maximum extent practicable," and instead hold the permittee to specific, objective obligations that EPA has already determined satisfy the Clean Water Act's MEP standard.

Response #13: Condition #4 of Ecology's Draft and Final §401 Certifications requires, in part, that EPA revise Part II.B.5 to delete and replace the phrase "*to the maximum extent practicable*" with references to technical feasibility, similar to text as contained in the original 2013 Permit. Pursuant to Ecology's Final §401 Certification and these public comments, EPA has replaced the phrase "*to the maximum extent practicable*" in Parts II.B.5.d and II.B.5.e.ii with the phrase "***to the extent feasible***" in order to be consistent with Ecology's MS4 permits and associated feasibility criteria in the 2012 *Stormwater Management Manual for Western Washington*.

EPA agrees that the individual Permit requirements do not need to include the phrase "*to the maximum extent practicable*" for specific requirements; rather it is the Permittee's compliance with Permit as a whole that serve to satisfy the CWA's MEP standard for controlling municipal stormwater discharges. NPDES permits for municipal stormwater discharges should include requirements determined by the NPDES permitting authority to represent MEP. As explained in the original 2012 Permit FS, EPA previously determined that the provisions of the Permit as a whole meet the MEP standard.³ EPA's determination did not change as a result of the Permit Modification, and Ecology has confirmed, with its conditions in the Final §401 Certification, that it concurs with EPA on its determination.

³ See 2012 Permit FS, pages 14-19, available at <http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638-jblm-ms4-fs.pdf>
See also: Puget Soundkeeper Alliance v. State of Washington, 2008 WL 5510413 (Aug. 7, 2008).

Pertaining to the phrase “in accordance with” vs. “consistent with” in Part II.B.5.c (Source Control of Pollution)

- 14. (E):** In Part II.B.5.c, the Permittee must use source control BMPs to reduce pollution. The 2013 Permit required that such BMPs be “*selected, designed, and maintained in accordance with*” the state manual; however the proposed Permit Modification softens this requirement to require that BMPs be “consistent with” the manual. In its Permit Modification FS, EPA takes pains to emphasize that this language does not require “absolute compliance” with the Manual, but EPA fails to say what it does actually require. In violation of the law EPA has replaced a reasonably clear and accepted standard with an undefined one, leaving JBLM with discretion to determine how much pollution control will be achieved.

Response #14: EPA used the terms “consistent with” and “in accordance with” interchangeably in the original 2013 Permit when referring to specifications contained in other documents or references. EPA views the terms as being synonymous. EPA determines that, because the 2013 Permit used the term “consistent with” throughout Parts II.B.5.b, e and j (i.e., in *Site Planning Procedures, Hydrologic Performance Standard for On-site Stormwater Management, and Operation and Maintenance*, respectively), the Permit Modification will use the same term, “***consistent with***” throughout the modified provisions of Part II.B.5. EPA notes that the common definition of “consistent with” means “free from variation or contradiction; tending to be arbitrarily close to the true value of the parameter;” and the term “in accordance” means “agreement or conformance.”⁴ The terms are used interchangeably elsewhere throughout the uncontested provisions of the Permit, and EPA believes that the interchangeable usage of these terms does not compromise the interpretation or plain meaning of these Permit requirements. No changes have been made in response to this comment.

Pertaining to modifying Part II.B.5.e.iii (Hydrologic Performance Requirement for Onsite Stormwater Management)

- 15. (E):** The Proposal provides an unnecessary new exemption for “competing needs.” Similar to the proposed language providing an exemption for compliance in cases of “severe economic cost,” proposed language for Part II.B.5.e.iii’s hydrologic performance standards also allows JBLM to exempt project sites from full compliance due to “competing needs.” This language is extremely unclear. “Competing needs” could be interpreted to mean nearly any Army objective that is not protection of water quality. Indeed, the list of examples provided in the proposal is undefined but effectively invites the Army to seek exemptions for any purpose at all. The proposed language does not explain how JBLM is to weigh these “competing needs” against water quality objectives in order to provide an exemption. Given its vagueness, this language will inevitably lead to inappropriate exemptions from the Permit’s requirements. It is therefore incompatible with the MEP standard and must be rejected.

Response #15: Conditions #4 and #5 of Ecology’s Draft and Final §401 Certifications address this provision. These conditions each require EPA to cite the specific, appropriate and relevant provisions of the 2012 *Stormwater Management Manual for Western Washington*. As a result, EPA significantly revised Part II.B.5.e.iii pursuant to Ecology’s Draft and Final §401 Certifications.

⁴ See *Webster’s New Collegiate Dictionary*.

The Final Permit Modification now requires the Permittee to use one of three available options to demonstrate compliance with the hydrologic performance requirement for stormwater flows from sites creating/replacing 5,000 sq. feet or more of hard surfaces – (1) through compliance with Ecology’s Low Impact Development (LID) performance standard; (2) through compliance with the BMPs cited in List #2 of MR#5 in Volume 1 of the 2012 *Stormwater Management Manual for Western Washington*;⁵ or (3) by designing controls to retain onsite the volume of stormwater produced by the 95th percentile rainfall event.

In addition, through its Final §401 Certification Ecology directed EPA to delete its original Appendix C-6 (relating to *Exemptions from the Hydrologic Performance Requirement for Onsite Stormwater Management in Part II.B.5.e.iii*), and instead allow project site exemptions and infeasibility determinations associated with the onsite stormwater management performance requirement only when using the List #2 option or the option to retain the 95th percentile rainfall event. Further, such exemptions and infeasibility determinations may be allowed only through a documented evaluation of BMP feasibility using the design criteria, limitations and infeasibility criteria identified for each applicable BMP in the 2012 *Stormwater Management Manual for Western Washington*, as well as the competing needs criteria described in Chapter 5, Volume V of the 2012 *Stormwater Management Manual for Western Washington*.

Part II.B.5.e.iii of the final Permit Modification is now revised to comply with Conditions #4 and #5 of Ecology’s Final §401 Certification as follows:

iii) *For new development or redevelopment project sites creating or replacing 5,000 square feet or more of hard surfaces:*

(1) *The Permittee must ensure ~~stormwater controls are designed to retain onsite the volume of stormwater produced from the 95th percentile rainfall event. As an alternative, the Permittee may instead comply with this requirement to manage stormwater runoff from new or replaced hard surfaces >5,000 square feet by ensuring the post-development stormwater discharge flows from the project site do not exceed the pre-development discharge flows for the range of 8% of the 2-year peak flow to 50% of the 2-year peak flow, as calculated by using the Western Washington Hydrology Model (or other continuous runoff model). For the purposes of this permit the Western Washington Hydrology Model, the modeled pre-development condition for all new development and redevelopment project sites must be “forested land cover” (with applicable soil and soil grade), unless reasonable historic information indicates the site was prairie prior to settlement (and may be modeled as “pasture” when using the Western Washington Hydrology Model); or~~*

⁵ List #2 is found in Minimum Requirement #5 within Volume 1 of the 2012 *Stormwater Management Manual for Western Washington*, on pages 2-31 through 2-32; Volume 1 of the Manual is available online at <https://fortress.wa.gov/ecy/publications/publications/1210030part2.pdf>

(2) The Permittee must ensure the controls for post-development stormwater discharge flows from the project site meet the requirements for onsite stormwater management BMPs cited in List #2 of Minimum Requirement #5 in Volume 1 of the 2012 Stormwater Management Manual for Western Washington.

(a) The Permittee must keep written records for each new development or redevelopment project site summarizing the BMPs selected from List #2 of Minimum Requirement #5 in Volume 1 of the 2012 Stormwater Management Manual for Western Washington, and any feasibility determinations for not selecting higher priority BMPs from List #2;

or

(3) As an alternative, the Permittee must ensure stormwater controls. The Permittee must ensure the controls for post-development stormwater discharge flows from the project site are designed to retain onsite the volume of stormwater produced from the 95th percentile rainfall event.

- Pursuant to the procedures in Appendix C-6, the Permittee may exempt a project site from full compliance with the performance standards cited above if the competing needs or infeasibility criteria referenced in Appendix C-6 prevent use of certain BMPs to attain the performance standards.**

(a) The Permittee may exempt a new development or redevelopment project site from retaining the total volume of runoff calculated to meet the 95th percentile rainfall event, provided the Permittee fully documents its determination that compliance with the performance standard is not feasible. Feasibility must be determined by evaluation against design criteria, limitations, and infeasibility criteria identified for each stormwater best management practice in the 2012 Stormwater Management Manual for Western Washington starting with the BMP list hierarchy in List #2 and the competing needs criteria listed in Chapter 5 of Volume V of the 2012 Stormwater Management Manual for Western Washington).

(b) The Permittee must keep written records of all exempt project determinations. The following information regarding each exempt project identified during an annual reporting period must be included in the corresponding Annual Report:

- (i) Name, location and identifying project description.**

- (ii) Reasons why full retention of the total volume of runoff calculated to meet the 95th percentile rainfall event is not feasible, including supporting documentation and all relevant engineering calculations, geologic reports and/or hydrologic analysis; and
- (iii) The estimated annual runoff volume that can/will be successfully managed on site and the remaining annual runoff volume for which it is deemed not feasible to successfully manage onsite.

16. (PC): Regarding *Appendix C-6 (Exemptions from New Development & Redevelopment Requirements of Part II.B.5.e)*. Pierce County opposes these proposed revisions to Part II.B.5.e and Appendix C-6 because it increases the differences in permit requirements between EPA's JBLM MS4 permit and Washington State's permit to Pierce County for discharges to shared watersheds and waterbodies.

Response #16: Comment noted. EPA has deleted Appendix C-6 (as proposed) and changed Part II.B.5.e.iii, pursuant to Ecology's Final §401 Certification. See Response to Comment #15.

17. (E): The existing Permit Part II.B.5.e.iii requires JBLM to design stormwater controls to retain stormwater produced by the 95th percentile storm, with an alternative approach being to limit peak flows. EPA's modification of this provision reverses the order in which these two options are listed, presenting peak flow limits as the default approach with on-site retention as the alternative. The commenter believes that a focus on limiting peak flows should not be the default approach to stormwater management. The National Research Council has strongly stated that a focus on peak discharges is less effective at protecting water quality than a focus on reducing overall stormwater volume. EPA should therefore restore the existing text of Part II.B.5.e.iii, keeping onsite retention of stormwater as the default, preferred approach.

Response #17: EPA disagrees with the commenter, and no change has been made to the Permit Modification as a result of this comment. The Permit Modification does not provide a peak flow standard as an alternative to the 95% percentile on-site retention requirement. The "peak flow" performance requirement is contained Part II.B.5.f –*Hydrologic Performance Requirement for Flow Control* and is separate from the Part II.B.5.e on-site stormwater management requirements. Consistent with Ecology's Final 401 Certification, and outlined in Response to Comment #15, Part II.B.5.e now contains three expressions of the performance requirements for on-site stormwater controls to manage runoff from smaller more frequent storm events.

Pertaining to modifying Part II.B.5.f (*Hydrologic Performance Standard for Flow Control*)

18. (PC): Pierce County opposes these revisions to Part II.B.5.f because it increases the differences in permit requirements between EPA's JBLM MS4 permit and Washington State's permit to Pierce County for discharges to shared watersheds and waterbodies.

Response #18: EPA disagrees that the editorial revision to Part II.B.5.f creates different flow control requirements for JBLM, versus the flow control requirements that adjacent jurisdictions

must comply with under Ecology's MS4 permits. The proposed revisions to Part II.B.5.f merely reorganized the existing text, and added an appropriate reference to Appendix C.

- 19. (DPW)** On Page 14 of 32 of the Permit Modification FS[*in the discussion of the proposed modification of Part II.B.5.f*] EPA states that drainage areas for #OF-4 and #OF-5 are exempt from the hydrologic performance requirement for flow control. The commenter notes that, as a result of the Joint Basing effort, JBLM maintains two sets of outfall numbers, one for each of the two merged installations. Commenter recommends adding, after #OF-4 and #OF-5, "on the system serving the Lewis cantonment areas" for clarification.

Response #19: EPA declines to revise the Permit as requested by the commenter. The text referenced here was not revised during this Permit Modification. The text referenced by the commenter exempts any development sites that would drain through #OF-4 and #OF-5 from the performance requirement for flow control.

- 20. (E):** With regard to the language proposed for section II.B.5.f, third bullet, to the extent that "severe economic cost" makes the use of "certain BMPs" impracticable, that does not give EPA free rein to excuse JBLM from compliance with the underlying level of water quality protection. The proposed language only refers to the cost of "certain BMPs," but not *all* BMPs. In order to ensure that JBLM in fact reduces its pollution discharges to the *maximum* extent practicable, it should be required to evaluate the use of *all* potential BMPs that can be used to attain the performance standards before it grants an exemption to the project site. Then, if an exemption is granted, it should take the form of a waiver from full *on-site* compliance while still requiring the use of *off-site* mitigation to ensure that the full stormwater flows are captured somewhere on the Base. Off-site mitigation is clearly a practicable option to ensure full compliance with the MEP standard—and EPA has no basis to depart from its own past practice here, at least without greater explanation. See EPA, *MS4 Permit Improvement Guide* at 55-56. As written, the proposed modification falls short of what is practicable and therefore violates the mandates of the Clean Water Act.

Response #20: EPA did not intend to limit the scope of this provision through its proposed modification of Part II.B.5.f by adding a reference to exemptions in Appendix C. All available flow control BMPs must be evaluated by JBLM. As set forth in its 2013 Response to Comments,⁶ EPA believes that flow control techniques are cost effective, practicable, and feasible to employ at most development sites in Western Washington. EPA has therefore changed the phrase "*certain BMPs*" to "*all BMPs*" in Part II.B.5.f, third bullet.

As EPA noted in response to previous comments, establishing an offsite mitigation program in the Permit is not appropriate at this time.⁷ As written, Part II.B.5.f acknowledges possible project site exemptions from otherwise applicable flow control requirements; the Permit does so in a manner that does not contradict the similar exceptions which Department of Ecology allows

⁶ See: Responses #54, 55, 56 and 57 in *Response to Comments on National Pollutant Discharge Elimination System (NPDES) Permit For Discharges from the Joint Base Lewis-McChord Municipal Separate Storm Sewer System (JBLM MS4) NPDES Permit No. WAS-026638*, August 22, 2013 at http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638_jblm_ms4_rtc.pdf

⁷ See Response #56 in *Response to Comments on National Pollutant Discharge Elimination System (NPDES) Permit For Discharges from the Joint Base Lewis-McChord Municipal Separate Storm Sewer System (JBLM MS4) NPDES Permit No. WAS-026638*, August 22, 2013 at http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638_jblm_ms4_rtc.pdf.

other regulated MS4s to permit for development within their respective jurisdictions – (i.e., through local ordinance, municipalities may allow certain site developments to forego full attainment of the flow control standard based on justification of severe economic cost.) In its Response to Comments regarding the original 2013 Permit, EPA noted that on a case-by-case basis, it intends to review any site proposed for exemption by JBLM or its representatives due to severe economic costs.⁸ However, because soil characteristics on JBLM are well suited for infiltration-based stormwater management techniques, EPA believes it is unlikely that JBLM will need to exempt any new development or redevelopment projects from the requirements of Part II.B.5.f. EPA may reconsider this view based on information provided by the Permittee during the Permit term.

Pertaining to revising the schedule associated with Part II.B.5.i (*Inspections*) and adding reference to Part II.A.7 in Part II.B.5.j (*Operation & Maintenance*)

21. (PC): The County is concerned that, unlike the permit issued to Pierce County by Ecology, there are no timeframes to implement needed maintenance referenced in Parts II.B.5.i and 5.j. Well maintained stormwater facilities significantly avoid water quality impacts and aid to the durability and longevity of the stormwater asset. The County encourages that maintenance needs (to be determined by inspections of permanent flow control or water quality treatment facilities as required by Part II.B.5.i) be tied to the 6-, 12- and 24- month inspection frequencies [as reflected] in the Washington Phase I MS4 Permit. Should maintenance frequency vary, the County believes it should be because inspections and routine maintenance provide a justification for relaxed frequency. The County's experience has shown that following a couple of years of active inspections and maintenance, lower frequency maintenance of many facilities and catch basins can be clearly justified.

Response #21: Comment noted. EPA declines to revise this provision as suggested by the commenter, and clarifies that Part II.B.5.i requires a program to “inspect *newly installed* permanent stormwater facilities in order to verify proper installation and operation of these new facilities at a new development/redevelopment site” (emphasis added). Part II.B.5.i does not replace the subsequent requirement for ongoing inspection and maintenance as required in Part II.B.6.a, where maintenance of permanent stormwater facilities and catch basins is tied to the 6-, 12- and 24- month inspection frequency.

Comment Regarding Part II.C (Pertaining to Stormwater Retrofits)

22. (PC): Pierce County strongly supports this change because it focuses attention on cleaning up and preventing further degradation of Clover Creek, a shared waterbody with Pierce County. Additionally, intensive outfall monitoring from JBLM discharges, identification of potential locations to reduce stormwater pollutant loadings from JBLM, and preparation of a retrofit report is a practical, responsible outcome of the municipal stormwater permit. The requirement to “strongly encourage JBLM to actively participate in Pierce County watershed groups and to coordinate its monitoring and assessment work” with Pierce County is greatly appreciated.

⁸ See Response #54, pages 32-33 in *Response to Comments on National Pollutant Discharge Elimination System (NPDES) Permit For Discharges from the Joint Base Lewis-McChord Municipal Separate Storm Sewer System (JBLM MS4) NPDES Permit No. WAS-026638*, August 22, 2013 at http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638_jblm_ms4_rtc.pdf.

Response #22: Comment noted.

- 23. (E):** EPA’s proposed modification fundamentally guts the important retrofit requirements by eliminating the requirement to develop and implement a retrofit “plan,” and replaces it with a conditional and exceedingly modest requirement that the Army develop a retrofit “report” with significantly reduced implementation requirements. In a five-year permit, this is modest indeed, and a major step backwards from the initial permit. Retrofitting is critical to the protection and recovery of Puget Sound’s threatened water resources. Standards for new development only prevent the problem from getting worse; to make progress on restoring water quality, existing developed areas must be retrofitted to reduce or eliminate runoff. The Permit’s original modest requirements at least made some progress towards this goal; the proposed modification I all but eliminates them.

Response #23: The revised retrofit provision in Part II.C more effectively targets resources by having JBLM focus on a single watershed during this permit term—the Clover Creek Watershed—instead of the three watersheds draining from the developed JBLM cantonment areas. The original 2013 Permit provision, along with its original companion monitoring provisions, only required JBLM to collect minimal outfall monitoring data, whereas the Permit Modification now requires extensive outfall monitoring to assist in determining sources of stormwater pollutants from the installation discharging into Clover Creek. This monitoring is meant to ensure that JBLM focuses effort and resources on retrofit projects that provide the most effective improvement to water quality conditions in Clover Creek.

EPA also notes that no other Phase II community surrounding JBLM is required to implement retrofit projects. EPA declines to make any changes to the Permit Modification as a result of this comment.

- 24. (E):** As proposed, the modifications to Part II.C fall short of the “maximum extent practicable” standard. The commenter cites to the District of Columbia MS4 Permit as an example of other issued MS4 permits nationally which require retrofit plans to be developed and implemented. EPA has provided no evidence why implementation of the plan (or “report”) is not similarly practicable for JBLM. The proposed language also violates the MEP standard because it provides that, if evaluation of monitoring data does not indicate that JBLM’s discharges impact water quality, no retrofit “report” is even required in the first place – even if completing one would be practicable. Under the Clean Water Act, the MEP standard always applies as a technology-based standard irrespective of any water quality impacts (or lack thereof).

Response #24: EPA disagrees the stormwater retrofit provisions in the Permit Modification fall short of the MEP standard. First, it is the Permittee’s compliance with Permit requirements as a whole that serve to satisfy the CWA’s MEP standard for controlling municipal stormwater discharges. NPDES permits for municipal stormwater discharges should include requirements determined by the NPDES permitting authority to represent MEP.⁹ JBLM is required to develop

⁹ See: EPA’s 2012 FS, pages 14-19, at <http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638-jblm-ms4-fs.pdf>

See also: *Puget Soundkeeper Alliance v. State of Washington*, 2008 WL 5510413 (Aug. 7, 2008).

a stormwater retrofit report as part of the 4th year annual report, with a targeted focus on Clover Creek. The report must include evaluation of downspout disconnections from existing buildings and, based on the monitoring data, watershed plans, and other relevant information, identify other potential retrofit options and locations to reduce stormwater runoff from the MS4 system into the Clover Creek.

Upon consideration of this comment, EPA has replaced the words “*If the*” with “*To the extent that*” in Part II.C.2.b to clarify that EPA expects that some retrofit options and locations will be evaluated in the retrofit report, but the number of options and locations in the report can be scaled to the extent that monitoring information shows that JBLM MS4 discharges contribute to water quality and/or beneficial use impairment of Clover Creek. EPA also notes that the inclusion of requirements in other MS4 permits is inherently case-specific; for example, the retrofit plans and tree planting requirements contained in the District of Columbia MS4 Permit were derived from the EPA-approved TMDL analysis, and wasteloads allocated to the District of Columbia MS4. The commenter’s comparison in this instance is not directly appropriate, because an applicable TMDL assigning wasteload allocations has not yet been completed for Clover Creek.

To summarize, EPA expects that some retrofit options and locations will be evaluated by JBLM in the retrofit report and has revised Part II.C.2.b as proposed to read as follows:

~~If the~~ ***To the extent that*** information evaluated in Part II.C.2.a indicates that the Permittee’s MS4 discharges impact water quality, including beneficial uses, in Clover Creek, the Permittee must analyze potential locations to reduce stormwater pollutant loadings, including sediment loadings and bank scouring caused by MS4 stormwater discharges from cantonment area sub-basins draining to Clover Creek.

- 25. (E):** With regard to the language proposed for Part II.C.2.h, a funding proviso is inappropriate for a requirement aimed at attainment of water quality standards. A lack of funding cannot excuse continued non-compliance with water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1342(a); 40 C.F.R. §§ 122.4(d), 122.44. From a practical perspective, this language removes incentives for JBLM to actively seek funding; if the Army knows from the start that it will face no consequences from failure to actively seek funding for retrofits, there is no apparent reason why it would even seek funding, nor any incentive for Army leadership or Congress to provide it. Allowing such a precedent in a municipal permit threatens to undermine the entire system of MS4 regulation. EPA should delete this proposed text from II.C.2.

Response #25: See Response to Comment #4. With regard to the initiation of retrofit projects in Part II.C.2.h, the phrase “subject to availability of funds” merely acknowledges Permit Part II.G (*SWMP Resources*). EPA agrees with the commenter that this phrase, as proposed, can be construed to provide the Permittee with broader discretion than originally provided by Part II.G.

Therefore, EPA elects to revise Part II.C.2.h as follows:

Consistent with Part II.G-Subject to the availability of funds and prior to the expiration date of this permit, the Permittee must initiate at least one retrofit project identified in the report and based on the evaluation cited in Part II.C.2.e above. Said retrofit project may be satisfied in connection with a redevelopment project as defined in Part II.B.5 of this permit.

Part II.G remains unchanged, but is included here for clarity:

Part II.G. SWMP Resources. *The Permittee must provide adequate finances, staff, equipment and other support capabilities to implement the SWMP actions and activities outlined in this permit. Consistent with Part II.A.4.a, the Permittee must provide a summary of estimated SWMP implementation costs in each Annual Report. Provisions herein should not be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.*

- 26. (E):** The proposed language in Part II.C.2.h would eliminate the performance criteria that the current Permit establishes for the one retrofit project that JBLM is required to “initiate.” EPA proposes to delete the requirement that JBLM’s retrofit project be “sufficient to disconnect and infiltrate discharges from effective impervious surfaces equal to five (5) acres of cumulative area,” leaving no performance metrics whatsoever for the project. Removing this provision and substituting no alternative metrics contradicts EPA’s own statements that MS4 permit provisions should be “clear, specific, measurable, and enforceable,” should “incorporate clear performance standards,” and should “include measurable goals or quantifiable targets for implementation.” EPA, *MS4 Permit Improvement Guide* at 5. It would also leave EPA unable to determine whether JBLM’s retrofit project has satisfied the obligation to reduce pollution discharges to the maximum extent practicable.

Response #26: EPA disagrees, and believes this provision of the Permit Modification provides sufficiently clear, specific, and measurable targets for implementation of this required activity. Part II.C, as modified, now focuses JBLM’s resources on one watershed, rather than within multiple watersheds throughout the installation. Clover Creek is a priority water body, based upon its impairment status and as EFH for coho salmon. By focusing increased assessment activity on this watershed, the Permit affords JBLM the ability to work contemporaneously and cooperatively with neighboring MS4 jurisdictions to collect data and evaluate retrofit alternatives, work with the Department of Ecology during the development of a Total Maximum Daily Load analysis (if applicable during the permit term), and select at least one retrofit project within this permit term of appropriate type and scale for implementation.

Comments Regarding Part IV (Monitoring, Recordkeeping & Reporting)

- 27. (PC)** Pierce County strongly supports the revised language in Parts IV.A.2 (*Monitoring Objectives*); IV.A.5 (*Stormwater Discharge Monitoring*), and IV.A.9 (*Optional Participation in the Puget Sound Regional Stormwater Monitoring Program Status and Trends Monitoring*). The commenter also notes that there are typographical errors in the original 2013 Permit text in Part IV.A.9.a refers to “Part IV.B.5” and Part IV.B7,” while paragraph 9.c refers to “Parts IV.A.5 and IV.A.7.” The commenter suggests that Part IV.A.9 should be deleted in its entirety, because the Permit Modification would enable JBLM to pay into the RSMP in lieu of conducting four benthic macroinvertebrate samples, which, in the commenter’s view, is unlikely considering the Regional Stormwater Monitoring Program cost share JBLM would be required to contribute.

Response #27: EPA has revised Permit Part IV.A.9 to correct the editorial errors. EPA declines to revise the Permit further as suggested by the commenter; the provision allowing JBLM’s optional participation in the RSMP was a recommended condition of Ecology’s 2013 Final

Certification of the original 2013 Permit; as such, EPA elects to include the provision as a component of the JBLM monitoring program which will be reconsidered in a subsequent permit term. See Ecology's letter, *Clean Water Act Section 401 Certification for EPA NPDES Permit #WAS026638, JBLM MS4*, dated August 7, 2013.¹⁰

- 28. (DPW):** On Page 19 of 32 of the Fact Sheet [*discussing modifications to Part IV.A.5 (Stormwater Discharge Monitoring)*], EPA proposes to modify the text by including Part IV.A.5.iii, and states that the Permittee must collect automated flow weighted composite samples. Are these samples to be analyzed for the parameters at Table IV.A.ii or are there other water quality parameters for the characterization study?

Response #28: EPA clarifies that all parameters identified in Permit Table IV.A.i (*American Lake MS4 Outfall Monitoring*) and in Permit Table IV.A.ii (*Clover Creek MS4 Outfall Monitoring*) must be analyzed using the automated flow weighted composite sampling, except where noted differently below.

The composite samples must analyzed for the following parameters: Flow; Dissolved Oxygen (via *in situ* probe); pH (via *in situ* probe); Total Nitrogen; Total Phosphorus; Total Suspended Solids; Turbidity (via *in situ* probe); Total and Dissolved Copper; Total and Dissolved Zinc; and Hardness.

Samples for Oil and Grease and Fecal coliform bacteria are excluded from the automated flow weighted composite sampling methods and must be collected early in the storm event using grab sampling methods. In light of the commenter's question, EPA has revised Tables IV.A.i and IV.A.ii by adding another column to each Table which define the appropriate sampling technique for each parameter.

- 29. (DPW)** On Page 20 of 32 Fact Sheet [*which refers to proposed Permit Table*] IV.A.ii, a number of the parameters in Table IV.A.ii are not compatible with flow weighted composite sampling. Department of Ecology's Western Washington Municipal Stormwater permit (as issued August 1, 2013), Appendix 9, states that grab samples are necessary for some parameters, in particular for Fecal Coliform bacteria, Total Petroleum Hydrocarbons (TPH), and Benzene Toluene, Ethylbenzene and Xylene (BTEX). JBLM proposes that grab samples be used for Dissolved Oxygen, pH, and Turbidity for laboratory or field measurement, and that grab samples be collected for laboratory analysis of fecal coliform bacteria and Oil and Grease.

Response #29: EPA disagrees that Dissolved Oxygen, pH, and Turbidity cannot be analyzed from composite sampling of stormwater discharges. See Response to Comment #28.

- 30. (DPW):** Regarding the discussion of [*Permit Table*] IV.A.ii on page 20 of the Permit Modification FS, the commenter requests EPA consider not collecting turbidity data as part of the required monitoring in Part IV.A. If turbidity samples are required, such samples should be

¹⁰ Ecology's certification of the original Permit, dated August 7, 2013, is available in Appendix A of the EPA's *Response to Comments on National Pollutant Discharge Elimination System (NPDES) Permit For Discharges from the Joint Base Lewis-McChord Municipal Separate Storm Sewer System (JBLM MS4) NPDES Permit No. WAS-026638*, dated August 22, 2013, and can be found online at http://www.epa.gov/region10/pdf/permits/npdes/wa/was026638_jblm_ms4_rtc.pdf

grab samples. The U.S. Geological Society's (USGS) Federal Interagency Sedimentation Project (a research project sponsored by the USGS and multiple federal agencies including EPA) has conducted extensive research in methods to measure sediment in surface waters and runoff. In a 2009 paper entitled *Comparisons of Turbidity Data Collected with Different Instruments*, the authors found significant variations (over 80%) in turbidity data collected with 8 commercially available turbidity meters. The commenter notes that turbidity data may have limited value due this issue with available measurement technologies.

Response #30: EPA acknowledges this concern; however, proper care of, and frequent calibration and maintenance of, the nephelometer/turbidometer will ensure it works as designed. All sensors exhibit independent variation in accuracy, and in this instance EPA suggests this variation can be minimized by only using a single sensor for the duration of the characterization sampling. Dependence on sediment type can be minimized by utilizing a sensor that conforms to EPA Method 180.1. As noted in Response to Comment #28, EPA disagrees that turbidity measurements must be collected only through grab samples. For the purpose of this Permit Modification, turbidity measurements must be collected and analyzed by *in situ* probe throughout the composite sampling period.

Appendix A: Department of Ecology's Final Certification under Clean Water Act §401



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-307-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

November 20, 2014

Mr. Michael Lidgard
NPDES Permits Unit Manager
Office of Water and Watersheds
U.S. EPA Region 10
1200 6th Avenue, Suite 900 OW-130
Seattle, WA 98101

Re: Clean Water Act (CWA) Section 401 Conditional Certification for EPA Modifications to National Pollutant Discharge Elimination System (NPDES) Permit No. WAS-026638 Joint Base Lewis-McChord Municipal Separate Storm Sewer System

Dear Mr. Lidgard:

With this 401 Conditional Certification, the Washington State Department of Ecology (Ecology) conditionally certifies the modifications to NPDES Permit No. WAS-026638 (Permit), subject to conditions listed in the attachment. The attached conditions are necessary to assure that discharges from the municipal separate storm sewer system (MS4) of Joint Base Lewis-McChord (JBLM) will comply with Chapter 173-201A (Surface Water Quality Standards) of the Washington Administrative Code (WAC); Groundwater Standards (Chapter 173-200 WAC); Sediment Management Standards (Chapter 173-204 WAC); human health-based criteria in the national Toxics Rule (Federal Register, Vol. 57, No. 246, Dec. 22, 1992, pages 60848-60923); and other appropriate requirements of State law.

If you have any questions or would like to discuss these matters further please contact Bill Moore at (360) 407-6460 or bill.moore@ecy.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Moore".

Bill Moore, P.E., Manager
Program Development Services Section
Water Quality Program

Enclosure

By Certified Mail: 7013 7010 0002 3967 5857

Washington State 401 Conditional Certification for Modification to Permit No. WAS-026638 Joint Base Lewis-McChord Municipal Separate Storm Sewer System

Final 401 certification of the modifications to the permit is conditional upon the final permit meeting the below conditions. No condition may be made less stringent. This 401 conditional certification addresses only the proposed modification to the permit and in no way limits Ecology's August 7, 2013, 401 certification, which is hereby incorporated by reference. The below conditional certification is based upon and in accordance with Chapter 90.48 of the Revised Code of Washington (RCW), under which the discharge of toxicants to waters of the State of Washington which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria is prohibited. RCW 90.48 requires the permittee to use all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent and control pollution of waters of the state of Washington. Additionally, CWA § 402(p)(3)(B)(iii) requires the permittee to reduce the discharge of pollutants to the maximum extent practicable (MEP).¹ Conditional certification of the Permit does not authorize JBLM's MS4 discharges to cause or contribute to a violation of applicable State water quality standards (Surface Water Quality Standards Chapter 173-201A WAC); Groundwater Standards (Chapter 173-200 WAC); Sediment Management Standards (Chapter 173-204 WAC); and human health-based criteria in the national Toxics Rule (Federal Register, Vol.57, No. 246, Dec. 22, 1992, pages 60848-60923); and other appropriate requirements of State law. Furthermore, nothing in this conditional certification absolves or releases JBLM from liability for contamination or any subsequent cleanup of surface waters, ground waters, or sediments resulting from discharges from JBLM's MS4.

1. All references in the Permit to the *Stormwater Management Manual for Western Washington* (2012 SWMMWW) and the *Low Impact Development Technical Guidance Manual for the Puget Sound* must cite to the 2012 versions of those documents. The preliminary draft permit dated October 2, 2014 meets this condition.
2. Certification of Part II.A.7 (Equivalent Documents, Plans or Programs) as proposed August 6, 2014 is denied. As written, Part II.A.7 allows for EPA to review a permittee-submitted document, plan or program for equivalency with the required Stormwater Management Program (SWMP) components. If EPA determines the submission to be equivalent to the SWMP component(s) then it may be substituted for any part of the SWMP, the heart of the permit. While Ecology can review the SWMP components in the Draft Permit for meeting Washington State water quality standards, Ecology cannot review a hypothetical, yet to be written alternative plan and thus has no basis to judge whether it would meet Washington State water quality standards. Additionally, a substitution for one or more SWMP components could constitute a modification of the permit because it has the potential to change substantive requirements. Such a substantive change must have a guarantee of public notice, comment and appeal period and a new 401

¹ The Washington State Pollution Control Hearings Board has ruled on a number of issues relevant to this conditional certification, including MEP and AKART requirements, aggressive use of LID, where feasible, as necessary to meet the MEP standard and AKART requirements, and public notice and comment requirements for substantive permit changes. See *Puget Soundkeeper Alliance v. Dept. of Ecology*, PCHB No. 07-021 *et seq.* (Aug. 7, 2008) and *Puget Soundkeeper Alliance v. Dept. of Ecology*, PCHB No. 07-021 *et seq.* (April 8, 2008).

certification from Ecology. SWMP requirements, in the aggregate, represent the Maximum Extent Practicable (MEP) standard. Permittees who implement all of the program requirements in combination with one another are considered by Ecology to be reducing pollutants to the MEP. Changing a SWMP component after issuance of the permit risks impermissibly compromising that aggregate approach to meeting the MEP standard. A permit modification process for the Part II.A.7 equivalent document, plan or program as outlined in 40 C.F.R. § 122.62 or § 124.5 would remedy this defect. The preliminary draft permit dated October 2, 2014 meets this condition.

3. Part II.B.5.b (Preparation of a Stormwater Site Plan) as proposed August 6, 2014 must require stormwater site plans be prepared consistent with *Chapter 3, Volume 1 Minimum Technical Requirements and Site Planning* of the *2012 SWMMWW*, with the exception of sites within Airport Operations Areas (AOA), where stormwater site plans must be prepared consistent with the *Aviation Stormwater Design Manual (2008)*. The *Low Impact Development Technical Guidance Manual for the Puget Sound* may be referenced. The preliminary draft permit dated October 2, 2014 meets this condition.
4. Certification of Appendix C.6 as proposed August 6, 2014 (Exemptions from the Hydrologic Performance Standard under Part II.B.5.e.iii) is denied. As written, Appendix C.6 allows the permittee to opt out of any hydrologic performance standard for onsite stormwater management in Part II.B.5.e.iii if the permittee determines compliance is “not practicable.” This would exempt the permittee from MEP/AKART standards required to meet State Water Quality Standards, reducing requirements to what the permittee deems is “practicable.” Both Appendix C.6 and Part II.B.5 have statements with the phrase “to the maximum extent practicable.” However, simply prefacing a section or ending a sentence with “to the MEP” does not necessarily meet the MEP standard and in some circumstances it could create ambiguity and difficulty in implementation or enforcement. The modifications to Part II.B.5 and Appendix C.6 have “to the MEP” replacing technical feasibility language—e.g. “maximum extent technically feasible,” “maximum extent feasible” and “technically feasible”—all technical feasibility statements that Ecology previously certified in its original August 7, 2013 401 certification. The deletion of the technical basis reduces clarity and complicates implementation or enforcement. Additionally, the Appendix C.6 Exemption, as proposed in the August 6, 2014, section conflicts with Ecology’s own LID Performance Standard requirements, which has no exemptions, and with Ecology’s “list approach” to satisfying Minimum Requirement #5 which has its own infeasibility criteria. The preliminary draft permit dated October 2, 2014 partially addressed this condition. Rather than create an appendix to deal with exemptions to the hydrologic performance standard, EPA must modify Part II.B.5.e.iii. See below.
5. Part II.B.5.e.iii (Hydrologic Performance Requirement for On-site Stormwater Management) must be modified to refer to the *2012 SWMMWW Volume 1 Minimum Technical Requirements*, allowing the permittee to choose between the List Approach #2 or using the LID Performance Standard under Minimum Requirement #5. (The preliminary draft permit dated October 2, 2014 partially addresses this condition, however the final permit must also include the List Approach #2.) For the alternative performance

standard (retain on-site the “95th percentile rainfall event”) feasibility must be determined by evaluation against:

- a. design criteria, limitations, and infeasibility criteria identified for each BMP in the *2012 SWMMWW* starting with the BMP list hierarchy in List Approach #2; and
 - b. Competing Needs Criteria listed in Chapter 5 of Volume V of the *2012 SWMMWW*;
6. Part II.B.5.f (Hydrologic Performance Requirement for Flow Control) as proposed August 6, 2014 must incorporate Minimum Requirement #7 of the *2012 SWMMWW Volume I Minimum Technical Requirements*. The preliminary draft permit dated Oct 2, 2014 meets this condition.

YOUR RIGHT TO APPEAL

You have a right to appeal this 401 Conditional Certification to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of 401 Conditional Certification. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of 401 Conditional Certification:

- File your appeal and a copy of this 401 Conditional Certification with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this 401 Conditional Certification on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p>
<p>Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501</p>	<p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

Appendix B: Summary of Revisions to the Final Permit Modification

Tables B-1, B-2 and B-3 summarize all revisions in the final Permit Modification

Table B-1. Summary of Revisions to the Final Permit Modification Based on Ecology's Final §401 Certification¹¹

Permit Part	<i>Edits</i>	<i>Certification Condition/ Response to Comment # X</i>
Part II.A.7 (<i>Equivalent Documents, Plans or Programs</i>)	<ul style="list-style-type: none"> Part II.A.7 is revised to remove references to EPA's approval of submitted documents, and refer to permit modification procedures in 40 CFR §§122.62 and 124.5 	See: Appendix A, <i>Final §401 Certification</i> , Condition #2 See also: Response to Comment #9
Part II.B.5 (<i>Stormwater Management for Areas of New Development & Redevelopment</i>)	<ul style="list-style-type: none"> Revised final text to delete first sentence of Part II.B.5 stating that the Permittee "<i>must manage stormwater in a manner that maintains the sites predevelopment runoff conditions to the maximum extent practicable and prevents or minimizes water quality impacts...</i>" Parts II.B.5.d and II.B.5.e.ii are revised to replace proposed references to "<i>to maximum extent practicable</i>" with "<i>to the extent feasible</i>" Part II.B.5.e.iii is renumbered and revised to require the Permittee to use one of three options to control post-development stormwater discharge flows from sites creating/replacing 5,000 sq. feet or more of hard surfaces: <ul style="list-style-type: none"> New Part II.B.5.e.iii(1) requires such controls to be designed to match the identified range of peak flows as calculated using the Western Washington Hydrology Model; or New Part II.B.5.e.iii(2) is added to require use of the onsite Best Management Practices (BMPs) cited in List #2 of Minimum Requirement #5 in Volume 1 of the 2012 <i>Stormwater Management Manual for Western Washington</i>, and to include record keeping requirements regarding feasibility determinations; or New Part II.B.5.e.iii(3) requires controls to be designed to retain onsite the volume of stormwater produced from the 95th percentile rainfall event. 	See: Appendix A, <i>Final §401 Certification</i> , Condition #4; See also: Response to Comments #11, 12 See: Appendix A, <i>Final §401 Certification</i> , Condition #4 See also: Response to Comment #13 See: Appendix A, <i>Final §401 Certification</i> , Condition #5; See also Response to Comment #15, and #16
Appendix C-6 (<i>Exemptions from New Development & Redevelopment Requirements of Part II.B.5.e</i>), as proposed	<ul style="list-style-type: none"> Deleted Appendix C-6 as proposed on August 6, 2014, and renumbered remaining text (entitled: <i>Exemptions from Hydrologic Performance Requirement for Flow Control [Part II.B.5.f]</i>) as new Appendix C-6 Added newly renumbered Parts II.B.5.e.iii(3)(a) and (b) to refer to available exemptions from the optional requirement to retain onsite the volume of stormwater produced from the 95th percentile rainfall; such exemptions must be determined using e stormwater BMP feasibility and competing needs criteria as found in appropriate 	See: Appendix A, <i>Final §401 Certification</i> , Conditions #4 & #5 See also Response to Comment #15 and 16

¹¹ See: Final §401 Certification, dated November 20, 2014, in Appendix A of this document.

	<p>sections of the 2012 <i>Stormwater Management Manual for Western Washington</i> [as specified in new Part II.B.5.e.iii(3)(a)]; and to reference mandatory reporting requirements for any exemptions from retaining 100% of the calculated runoff volume of stormwater produced from the 95th percentile rainfall [see new Part II.B.5.e.iii(3)(b)];</p> <ul style="list-style-type: none"> Deleted references to Appendix C-6 as appropriate in Table III 	
--	--	--

Table B-2. Modified Permit Provisions as proposed

Permit Part	Edits Rationale
Cover page	Added text to the Cover Page footnote clarifying the effective date of December 25, 2013, for all uncontested Permit provisions.
Part II.A.3 (SWMP Document) and Part II.B.2.c (SWMP availability)	Revised compliance dates in both Parts to July 25, 2016; added text to II.A.3 clarifying annual report expectations
Part II.B.3.g (Staff Training-Illicit Discharge Detection & Elimination Program)	Revised the timing of training for new staff to within six months of hiring
Part II.B.4.g (Construction Site Inspection Plan)	Revised compliance date to July 25, 2016
Part II.B.4.h (Staff Training for Construction Site Stormwater Runoff Control)	Revised the timing of training for new staff to within six months of hiring
Part II.B.5 (Stormwater Management for Areas of New Development/Redevelopment)	Included references to procedures outlined in Part II.A.7; citations to 2012 <i>Stormwater Management Manual for Western Washington</i> ; editorial revisions to Parts II.B.5.b, c, d, e, e.(i), e(ii), f, and j; revised deadlines in Part II.B.5.i, and II.B.5.k
Part II.B.6.g (Staff Training for Pollution Prevention and Good Housekeeping for Municipal Operations and Maintenance)	Revised the timing of training for new staff to within six months of hiring
Part II.C, Pertaining to Stormwater Retrofits	Revisions pertaining to water quality characterization of Clover Creek and development of a Retrofit Report, except as noted in Table B-3.
Table III (Schedule for Implementation and Compliance)	Edits as proposed, consistent with changes elsewhere in the final Permit
Part IV (Monitoring, Recordkeeping and Reporting)	EPA revised Part IV.A.2 (<i>Monitoring Objectives</i>), IV.A.5 (<i>Stormwater Discharge Monitoring</i>) and IV.A.8 (<i>Quality Assurance Requirements</i>); included new Tables IV.A.i and VI.A.ii; revised compliance dates for water quality monitoring in Part IV.A.6 to July 25, 2015; and corrected references to deadlines for submittal of stormwater discharge, water quality and biological monitoring reports, and the 5 th Year Annual Report (as cited in Part IV.C.1 and in Table IV.E, respectively.)
Part VII (Definitions and Acronyms)	Deleted definition of “predevelopment hydrologic condition”

Table B-3: Edits to the Final Permit Modification based on Public Comment

Permit Part	Edits	Rationale
Part II.B.5 (<i>Stormwater Management for Areas of New Development & Redevelopment</i>)	<ul style="list-style-type: none"> Revised final text to delete first sentence of Part II.B.5 stating that the Permittee “<i>must manage stormwater in a manner that maintains the sites predevelopment runoff conditions to the maximum extent practicable and prevents or minimizes water quality impacts...</i>” 	See Response to Comment #11 and 12; See also Table B-1
Part II.B.5.f (<i>Hydrologic Performance Requirement for Flow Control</i>)	<ul style="list-style-type: none"> Revised final text in last bullet to replace reference to consideration of “certain BMPs” to consideration of “any BMPs” 	See Response to Comment #20; See also Table B-2
Part II.C.2.b and II.C.2.h , describing expected outcome of the water quality characterization of MS4 Discharges into Clover Creek and the Retrofit Report Table III – summarizing the requirement	<ul style="list-style-type: none"> Revised final text in Part II.C.2.b is revised to replace the phrase “If the” to “To the extent that; ” This subpart now reads: <i>To the extent that information evaluated in Part II.C.2.a indicate that the Permittee’s MS4 discharges impact water quality, including beneficial uses, in Clover Creek, the Permittee must analyze potential location to reduce stormwater pollutant loadings, including sediment loadings and bank scouring caused by MS4 stormwater discharges from cantonment sub-basins draining to Clover Creek.</i> Revised final text in Part II.C.2.h is revised to cite the existing Permit text pertaining to finances, by replacing the phrase “<i>Subject to the availability of funds..</i>” with “<i>Consistent with Part II.G..</i>” 	See Response to Comments #24, 25, 26
Part IV, Tables IV.A.i and IV.A.ii	<ul style="list-style-type: none"> Revised final text to add new columns to each table to define appropriate “Sample Type” for each parameter 	See Response to Comments #28, 29, 30
Part IV.A.9.a (<i>Optional Participation in the Puget Sound Regional Stormwater Monitoring Program Status and Trends Monitoring</i>)	<ul style="list-style-type: none"> Corrected Permit citation to appropriately reference Part IV.A.7 	See Response to Comment #27