



Fact Sheet for Revised Text in Three (3)

National Pollutant Discharge Elimination System (NPDES) Permits for Municipal Stormwater Discharges to Surface Waters Located on Tribal Trust Lands within the 1873 Survey Area of the Puyallup Reservation:

<u>Facility</u>	<u>Permit Number</u>
City of Tacoma	WAS026689
Pierce County	WAS026875
Washington State Department of Transportation	WAS026743

Public Comment Start Date: July 20, 2022
 Public Comment Expiration Date: September 19, 2022
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EPA PROPOSES TO ISSUE NPDES PERMITS

EPA Region 10 proposes to issue three (3) NPDES Permits for the entities referenced above. The draft permits authorize the discharge of stormwater from all municipal separate storm sewer system (MS4) outfalls owned and/or operated by the entities listed above to surface waters located on Tribal Trust Lands within the 1873 Survey Area of the Puyallup Reservation in Washington. Permit requirements are based on Section 402(p) of the Clean Water Act (CWA), 33 U.S.C. § 1342(p), and EPA regulations for permitting municipal stormwater discharges (40 CFR §§ 122.26, 122.30-35, and 123.35; see also 64 FR 68722 [December 8, 1999] and 81 FR 89320 [December 9, 2016]).

This Fact Sheet includes:

- information on procedures for public comment, public hearing, and appeal; and
- explanation of revised permit terms and conditions.

CWA SECTION 401 CERTIFICATION FROM THE PUYALLUP TRIBE OF INDIANS

Section 401 of the CWA, 33 U.S.C. § 1341, requires EPA to seek certification from the Puyallup Tribe of Indians (Tribe) before issuing the final permits. On March 31, 2021, EPA requested final CWA Section 401 certification of each permit from the Tribe. In response to requests to extend the deadline for public comment, EPA also extended the Tribe's deadline for submitting its final certifications.

On December 15, 2021, the Tribe transmitted to EPA final CWA Section 401 certifications for each permit. Each certification contained conditions that EPA has now included in each respective permit, pursuant to CWA section 401(d), 33 U.S.C. § 1341(d).

In each permit, EPA identifies revised text reflecting certification conditions using footnotes. Discussion of the Tribe's certification conditions in each permit is provided in Appendix 1, Section 2 of this Fact Sheet.

CWA SECTION 401(A)(2) REVIEW FROM WASHINGTON DEPARTMENT OF ECOLOGY

CWA Section 401(a)(2), 33 U.S.C. § 1341(a)(2), requires that EPA notify a neighboring State or Tribe when EPA determines that the discharge may affect the quality of the neighboring State/Tribe's waters.

On March 30, 2021, EPA notified the Washington Department of Ecology (WDOE) that issuance of these permits may affect the quality of waters of the State of Washington and provided the draft permits for WDOE review.

On May 28, 2021, WDOE responded with a list of issues and comments that, if addressed, would assure that these MS4 discharges comply with the surface water quality standards and sediment management standards in Washington Administrative Code Chapters 173-201A and 173-204, respectively.

EPA has addressed WDOE's issues and comments and revised each permit where necessary. See EPA responses to WDOE in Appendix 1, Sections 3, 4, 18, 20-22, 24, 30 and 35 of this Fact Sheet. Since EPA has addressed WDOE's issues and comments, EPA has complied with CWA Section 401(a)(2).

PUBLIC COMMENT

EPA originally proposed three draft permits for public comment on April 1, 2021. In response to requests for comment period extensions, EPA ultimately extended the deadline for public comment to October 27, 2021.

EPA received extensive comments on each permit. In response, EPA has substantively revised the text in each permit. Therefore, EPA is now seeking public review and comment on the draft permits.

Since EPA received extensive comments during the last comment period and EPA is using the responses to those comments as the bases for the significant revisions in these draft permits,

EPA is seeking public review and comment on the draft permits as a whole. Prior to issuing final permits, EPA will consider and respond to the comments received during this comment period.

Persons wishing to comment on or request a Public Hearing for the draft permit(s) for these entities may do so in writing by the expiration date of the public comment period. A request for a Public Hearing must state the nature of the issues to be raised as well as the requester's name, address and telephone number. All comments and requests for Public Hearings must be in writing and should be submitted to the EPA as described in the Public Comments Section of the attached Public Notice.

After the Public Notice expires, and all comments have been considered, EPA's regional Director for the Water Division will make a final decision regarding permit issuance. If no substantive comments are received, the tentative conditions in the draft permits will become final, and the permits will become effective upon issuance. If substantive comments are received, EPA will address the comments and issue the permits. The permits will become effective no less than 30 days after the issuance date, unless an appeal is submitted to the Environmental Appeals Board within 30 days pursuant to 40 CFR 124.19.

DOCUMENTS ARE AVAILABLE FOR REVIEW

The draft permits, this Fact Sheet and the Public Notice can be found by visiting the Region 10 website at <https://www.epa.gov/npdes-permits/about-region-10s-npdes-permit-program>.

The Administrative Record(s) or documents from the administrative record are available electronically upon request by contacting Misha Vakoc.

For technical questions regarding the Fact Sheet, contact Misha Vakoc at 206-553-6650 or vakoc.misha@epa.gov. Services can be made available to persons with disabilities by contacting Audrey Washington at (206) 553-0523.

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Acronyms

AKART	All Known Available and Reasonable Methods of Prevention, Control and Treatment
BMP	Best Management Practice
CFR	Code of Federal Regulations
CGP	Construction General Permit
CSTW	Constructed Stormwater Treatment Wetland
CSWGP	Construction Stormwater General Permit
CWA	Clean Water Act
EPA	U.S. Environmental Protection Agency, Region 10
FTP	File Transfer Protocol
HRM	Highway Runoff Manual
IDDE	Illicit Discharge Detection and Elimination
IGA	Intergovernmental Agreement
ISGP	Industrial Stormwater General Permit
LCSA	Land Claims Settlement Agreement (1988)
MBAS	Methylene blue activating substances
MEP	Maximum extent practicable
ML	Minimum Level
MS4	Municipal separate storm sewer system
MSGP	Multi-Sector General Permit for Stormwater Associated with Industrial Activities
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NPDES	National Pollutant Discharge Elimination System
O&M	Operations and Maintenance
PAHs	Polycyclic Aromatic Hydrocarbons
QAPP	Quality Assurance Project Plan
RCW	Revised Code of Washington
SWMP	Stormwater Management Program
SWMMWW	<i>Stormwater Management Manual for Western Washington</i>
TAPE	Technology Assessment Protocol – Ecology
TAS	Treatment as a State
TMDL	Total Maximum Daily Load
UIC	Underground Injection Control
USC	United States Code
WAC	Washington Administrative Code
WDOE	Washington Department of Ecology
WSDOT	Washington State Department of Transportation
WQS	Water Quality Standards

I. BACKGROUND INFORMATION

This fact sheet provides information on the draft National Pollutant Discharge Elimination System (NPDES) permits for three operators of regulated municipal stormwater discharges to surface waters of the Puyallup Tribe: City of Tacoma, Pierce County and Washington Department of Transportation.

EPA proposed the three draft permits for public comment on April 1, 2021. EPA's Fact Sheet, dated April 1, 2021, provides general information on each of the permittees, information on the receiving waters, applicable water quality standards, permit history, permit area, and the rationale for the proposed permit terms and conditions.

In response to requests for comment period extensions, EPA extended the deadline for public comment to October 27, 2021. EPA received multiple comments on each permit and has responded to those comments as outlined in Appendix 1 of this document. The comments that were received resulted in numerous substantive changes to the permits which require EPA to provide for another public comment period on the three permits. Appendix 1 provides the basis for the changes to the permits.

EPA also revised each permit in response to the Puyallup Tribe of Indians' (Tribe) Final CWA §401 Certifications. See Appendix 1 - Section 2 of this document.

Substantive edits have been made to the following provisions of each permit:

- Part 1.1 (*Permit Area*)
- Part 1.3 (*Compliance with WQ Standards*)
- New Part 2.4 (*Changes in Ownership, Operational Authority, or Responsibility for SWMP Implementation*)
- New Part 2.5 (*Annual Meeting*) - Tacoma MS4 Permit only
- Part 3 (*Stormwater Management Control Measures*)
- New Part 3.8 (*Total Maximum Daily Loads*)
- Part 5 (*Monitoring*)
- Part 6 (*Reporting Requirements*)
- Part 9 (*Definitions*)
- Appendix A - *Annual Report Template*
- Appendix C – *Minimum Technical Requirements*
- New Appendix F - *Permit Area Map*
- New Appendix G - *Outfalls Existing on Permit Effective Date*

Since the permits were changed extensively as a result of the comments received during the initial public comment period, EPA is providing public notice of each permit and will be accepting comment on the entire text of each permit instead of the edited portions of the permit. As such, this will constitute a new public comment period on all three permits. The

previous fact sheet and Appendix 1 to this fact sheet provide the basis for the provisions in the permits.

II. ENDANGERED SPECIES ACT CONSULTATION

The Endangered Species Act Section 7(a)(2) requires federal agencies to consult with the National Oceanic and Atmospheric Administration (NOAA) Fisheries (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species and/or their designated critical habitat.

EPA is preparing to submit to the NOAA-NMFS and USFWS (collectively, the Services) a Biological Evaluation for Endangered Species Act Section 7 Consultation on the NPDES Municipal Stormwater Permits for City of Tacoma, Pierce County and Washington State Department of Transportation (the BE). EPA is evaluating how the MS4 discharges to surface waters of the Puyallup Tribe may affect Chinook Salmon, Steelhead, Bocaccio Rockfish, Yelloweye Rockfish, Humpback Whale, Killer Whale, Bull Trout, and Marbled Murrelet. EPA continues to work cooperatively with the Services and will submit the BE to request their concurrence of EPA's determinations of effects.

EPA intends to conclude consultation with the Services prior to issuing these permits. When the Services provide their Biological Opinions, and those Opinions contain reasonable and prudent measures indicating the need for additional permit requirements, EPA will incorporate those measures into the permits.

III. ESSENTIAL FISH HABITAT

Essential Fish Habitat (EFH) is the waters and substrate (sediments, etc.) necessary for fish to spawn, breed, feed, or grow to maturity. The Magnuson-Stevens Fishery Conservation and Management Act (January 21, 1999) requires EPA to consult with NMFS when a proposed discharge has the potential to adversely affect EFH (i.e., reduce quality and/or quantity of EFH). A review of the Essential Fish Habitat documents shows that there are EFH present for the following species: Groundfish, Pink Salmon, Coho Salmon, and Chinook Salmon.

The EFH regulations define an *adverse effect* as any impact which reduces quality and/or quantity of EFH and may include direct (e.g. contamination or physical disruption), indirect (e.g. loss of prey, reduction in species' fecundity), site specific, or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. EPA is preparing an EFH assessment as part of the BE.

EPA will provide NMFS with copies of the draft permits and this Fact Sheet during the public notice period. Any comments received from NMFS regarding EFH will be considered prior to issuance of the permits.

IV. ANTIDegradation

The Tribe completed their antidegradation review as part of the CWA §401 certification for these Permits. EPA will review this antidegradation analysis and make a determination whether it is consistent with the Tribe's Water Quality Standards and the Tribe's antidegradation implementation procedures.

V. PERMIT EXPIRATION

Each permit will expire five years from the respective effective date.

VI. REFERENCES

2021. Puyallup Tribe. *Final §401 Water Quality Certification for the Pierce County Municipal Separate Storm Sewer System NPDES Permit #WAS026875*, dated December 15, 2021.

2021. Puyallup Tribe. *Final §401 Water Quality Certification for the WSDOT Municipal Separate Storm Sewer System NPDES Permit #WAS026743*, dated December 15, 2021.

2021. Puyallup Tribe. *Final §401 Water Quality Certification for the City of Tacoma Municipal Separate Storm Sewer System NPDES Permit #WAS026689*, dated December 15, 2021.

**APPENDIX 1 - RESPONSE TO COMMENTS RESULTING IN REVISED DRAFT NPDES PERMIT NOS.
WAS026689, WAS026875, AND WAS026743**

EPA's Response to Comments

Resulting in Revisions to

Three (3) National Pollutant Discharge Elimination System (NPDES) Permits for

Municipal Stormwater Discharges to Surface Waters Located

on Trust Lands within the 1873 Survey Area of the Puyallup Reservation:

City of Tacoma – NPDES #WAS026689

Pierce County - NPDES #WAS026875

Washington State Department of Transportation – NPDES #WAS026743

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1. Introduction

On April 1, 2021, the U.S. Environmental Protection Agency Region 10 (EPA) issued a public notice for the proposed issuance of three National Pollutant Discharge Elimination System (NPDES) Permits authorizing the discharge of stormwater from all municipal separate storm sewer system (MS4) outfalls owned and/or operated by the City of Tacoma, Pierce County, and Washington State Department of Transportation, respectively, to surface waters located on Trust Lands within the 1873 Survey Area of the Puyallup Reservation in Washington.

The public comment period was extended three times and closed on October 27, 2021. EPA received comments from:

- City of Tacoma (Tacoma)
- Pierce County (Pierce)
- Washington Department of Ecology (WDOE)
- Washington State Department of Transportation (WSDOT)
- Chambers-Clover Creek Watershed Council (*pertaining to Pierce County MS4 Permit only*)

This Appendix presents comments received and corresponding EPA responses. Changes to permit language are indicated in the response, with new/ revised text reflected by **bold**/~~strikeout~~.

In general, EPA made editorial changes throughout each Permit for clarity, grammar, and/or as noted by individual commenters. When appropriate, EPA changed text in all three permits.

EPA also revised each permit in response to the Puyallup Tribe of Indians' (Tribe) Final Clean Water Act (CWA) §401 Certifications, as summarized in Section 2 of this Appendix.

Major edits have been made to the following parts of each permit:

- Part 1.1 (*Permit Area*)
- Part 1.3 (*Compliance with WQ Standards*)
- New Part 2.4 (*Changes in Ownership, Operational Authority, or Responsibility for SWMP Implementation*)
- New Part 2.5 (*Annual Meeting*) - Tacoma MS4 Permit only
- Part 3 (*Stormwater Management Control Measures*)
- New Part 3.8 (*Total Maximum Daily Loads*)
- Part 5 (*Monitoring*)
- Part 6 (*Reporting Requirements*)
- Part 9 (*Definitions*)
- Appendix A- *Annual Report Template*
- Appendix C – *Minimum Technical Requirements*
- New Appendix F - *Permit Area Map*
- New Appendix G - *Outfalls Existing on Permit Effective Date.*

2. Changes in Response to Puyallup Tribe of Indians Final Clean Water Act §401 Certifications

The Tribe transmitted to EPA final CWA §401 certifications for each of the permits on December 15, 2021. The Tribe's certifications contained conditions which EPA has included in the respective permit(s) pursuant to CWA section 401(d), 33 U.S.C. § 1341(d). Each Administrative Record contains the relevant CWA §401 certification. In each permit, EPA identifies the certification conditions using footnotes. The following list summarizes how EPA reflects each CWA §401 certification condition in the specific permit.

1. **Cover pages:** EPA added new text to the permit Cover Pages for the Pierce County and WSDOT Permits, consistent with the following conditions in the individual §401 Water Quality Certification:
 - Condition 7 of the *Puyallup Tribes Final §401 Water Quality Certification for the Pierce County Municipal Separate Storm Sewer System NPDES Permit #WAS026875*, dated December 15, 2021 (Pierce County CWA §401 Certification)
 - Condition 10 of the *Puyallup Tribe's Final §401 Water Quality Certification for the WSDOT Municipal Separate Storm Sewer System NPDES Permit #WAS026743*, dated December 15, 2021 (WSDOT CWA §401 Certification)

This new text also refers to the Permittee's existing MS4 outfall locations in new Permit Appendix G (see Response 9-F-1) and the notification requirements in Permit Part 7.7.

Revised Pierce County Permit reads as follows:

The conditions and requirements of this permit apply to existing MS4 outfalls identified in Appendix G on the effective date of this permit. For discharges from MS4 outfalls constructed after the effective date of this permit, the Permittee must secure all applicable tribal, federal, state and/or local permits, easements, and use authorizations, and must comply with the notification requirements in Part 7.7 (Planned Changes).

Revised WSDOT Permit reads as follows:

The conditions and requirements of this permit apply to existing MS4 outfalls identified in Appendix G on the effective date of this permit. For discharges from MS4 outfalls constructed after the effective date of this permit, the Permittee must secure all applicable tribal, federal, state and/or local permits, easements, and use authorizations; must comply with applicable environmental review procedures; and must comply with the notification requirements in Part 7.7 (Planned Changes).

2. **WSDOT Permit Part 1.2.1.6:** EPA added Part 1.2.16 to the WSDOT Permit consistent with Condition 5 of the WSDOT CWA §401 Certification.

1.2.1.6 There shall be no allowable non-stormwater discharges to the MS4 in the Permit Area defined by Part 1.1 except those listed in Part 3.3.3.3 and Part 3.3.3.4 without the approval of the Puyallup Tribe of Indians.

3. **WSDOT Permit Part 2.2:** EPA revised WSDOT Permit Part 2.2, 1st paragraph, to reflect Condition 1 of the WSDOT CWA §401 Certification and in response to public comment. New text reads as follows:

Within the limitations of State and federal law, the Permittee must demonstrate that it can operate pursuant to legal authority which authorizes or enables the control of discharges into and from the MS4s owned and operated by the Permittee. Such legal authority may be a combination of statutes, ordinances, permits, contracts, orders, interagency agreements, or similar instruments. The Permittee must maintain relevant ordinances or other regulatory mechanisms sufficient to control pollutant discharges into and from its MS4 to meet the requirements of this permit. The SWMP Document required by Part 2.3.1 (*SWMP Document*) must summarize all the Permittee's legal authorities or regulatory mechanisms that satisfy the seven criteria listed below in Part 2.2.1.

4. **Permit Part 2.2.3:** EPA revised Part 2.2.3 in all three MS4 permits (Tacoma, Pierce County, WSDOT) in response to public comment and consistent with the following conditions in the individual §401 Water Quality Certification:
- Condition 3 of the *Puyallup Tribes Final §401 Water Quality Certification for the City of Tacoma Municipal Separate Storm Sewer System NPDES Permit #WAS026689*, dated December 15, 2021 (Tacoma CWA §401 Certification)
 - Condition 3 of the Pierce County CWA §401 Certification
 - Conditions 1 and 17 of the WSDOT CWA §401 Certification

Part 2.2.3 now reads as follows:

2.2.3 ~~All relevant~~ **Any new** ordinances and other regulatory mechanisms required by this permit **that are not listed in Appendix C** must be submitted to the Environmental Protection Agency (EPA) **Director of Water Division** and Puyallup Tribe of Indians within three (3) months of adoption or completion **as directed by Part 6.1.(Submittal Process)**.

5. **WSDOT Permit Part 2.3.1:** EPA revised WSDOT Permit Part 2.3.1 to incorporate text consistent with Condition 2 of the WSDOT CWA §401 Certification. Revised text now reads as follows:

No later than one year after the permit effective date, ~~t~~The Permittee must work with the Puyallup Tribe of Indians to develop and maintain a written SWMP Document, or documents, that is specific to the Permit Area described in Part 1.1. The WSDOT SWMP Document must ~~to~~ describe in detail how the Permittee complies with the ~~required~~ control measures **required by ~~in~~ this permit.**

The Permittee has an existing SWMP document, **dated October 2020**, as required under Washington Department of Ecology's Washington State Department of Transportation Municipal Stormwater General Permit (WAR043000A). The Permittee may add to ~~and~~ update **and/or modify** their existing SWMP document to meet the requirements of this ~~p~~Permit. **The Permittee must submit a digital copy of the WSDOT SWMP Document.**

6. **Pierce County Permit, Parts 2.3.1 and 2.3.1.4:** EPA revised Pierce County Permit Parts 2.3.1 and 2.3.1.4 to reflect Condition 5 in the Pierce County CWA §401 Certification.

Part 2.3.1 requires the Permittee to maintain a written SWMP Document describing how the SWMP is implemented in the Permit Area. The Puyallup Tribe's certification Condition 5 requires Pierce County to submit their existing SWMP document as approved by WDOE to the Tribe within six months of the permit effective date. EPA has added this requirement to Part 2.3.1, 2nd paragraph; submittal of the WDOE approved SWMP document is in addition to the requirement that Pierce County create a tailored SWMP Document pursuant to Parts 2.3.1.1 through 2.3.1.4 that addresses the Permittee's implementation of SWMP control measures to control pollutants discharged from MS4 outfalls in the Permit Area described in Permit Part 1.1.

7. **Tacoma Permit Parts 2.3.1 and 2.3.1.2:** EPA revised Tacoma Permit Parts 2.3.1 and 2.3.1.2 to reflect Condition 5 of the Tacoma CWA §401 Certification.

Part 2.3.1 requires the Permittee to maintain a written SWMP Document describing how the SWMP is implemented in the Permit Area. The Puyallup Tribe's certification Condition 5 requires Tacoma to submit their existing SWMP document as approved by WDOE to the Tribe within six months of the permit effective date. EPA has added this requirement to Part 2.3.1, 2nd paragraph; submittal of the WDOE-approved SWMP document is in addition to the requirement that Tacoma create a tailored SWMP Document pursuant to Parts 2.3.1.1 through 2.3.1.4 that addresses the Permittee's implementation of SWMP control measures to control pollutants discharged from MS4 outfalls in the Permit Area described in Permit Part 1.1.

8. **Part 2.4:** In all three MS4 permits (Tacoma, Pierce County and WSDOT), EPA added Part 2.4 to reflect the following certification conditions:

- Condition 3 of the Tacoma CWA §401 Certification
- Condition 4 of the Pierce County CWA §401 Certification
- Condition 4 of the WSDOT CWA §401 Certification

These conditions require Permittees to notify the Puyallup Tribe in writing when areas are annexed into or transferred from the Permittee's authority. In order to both respond to public comment and to incorporate these conditions, EPA revised text in each permit's draft Part 2.3.4 to create Part 2.4 (*Changes in Ownership, Operational Authority, or Responsibility for SWMP Implementation*). See Response Section 17-N for full detail of text in Part 2.4.

9. **Tacoma Permit Part 2.5:** EPA added Part 2.5 in Tacoma Permit to require the Permittee to schedule an annual coordination meeting with the Puyallup Tribe, consistent with Condition 11 of the Tacoma CWA §401 Certification.

The purpose of the meeting is to maintain regular interaction between the Tribe and Permittee to discuss, share and exchange information related to SWMP implementation within the Permit Area. Such sharing and exchange would include information related maps, MS4 outfall locations, pending structural or other source controls, stormwater monitoring, etc.). Although there are no comparable conditions in the CWA §401 certifications for Pierce County or WSDOT, EPA also includes here the opportunity for this Annual Meeting to become a joint forum for the mutual exchange of information between Permittees and Puyallup Tribe. Tacoma Permit Part 2.5 reads as follows:

2.5 Annual Meeting

At least once per calendar year, the Permittee must schedule and meet in-person with the Water Manager of the Puyallup Tribe of Indians. The purpose of this meeting is to mutually share information, coordinate, and consult on MS4 outfall locations, planned structural control projects as listed in Part 3.5.3, priorities, and other stormwater management activities to be conducted in compliance with this permit.

At a minimum, beginning no later than six months after the effective date of this permit, the Permittee must contact Puyallup Tribe and schedule the inaugural in-person meeting to occur within the following six-month period. Subsequent meetings must be held at regular annual intervals at times and locations mutually agreed upon by the Permittee and the Water Manager of the Puyallup Tribe.

The Permittee may invite representatives of other MS4 permittees in the Permit Area (Pierce County and Washington State Department of Transportation) to share information, coordinate, and consult on stormwater management issues of mutual interest.

10. **Part 3.3.2:** In all three MS4 permits (Tacoma, Pierce County and WSDOT), EPA has significantly revised Part 3.3.2 to incorporate the following final CWA Section 401 certification conditions, and in response to public comment:

- Condition 7 of the Tacoma CWA §401 Certification
- Condition 6 of the Pierce County CWA §401 Certification
- Conditions 4 and 12 of the WSDOT CWA §401 Certification

Part 3.3.2 in each of the three MS4 permits contains new text in 1st paragraph to identify deadlines for submitting updated MS4 maps. See Response 20-U-2 for full detail of all subsequent revisions to Parts 3.3.2.1 through 3.3.2.11.

Revised Tacoma Permit Part 3.3.2, 1st paragraph, reads as follows:

No later than 1 year after the permit effective date, the Permittee **must develop an updated map of the MS4 in the Permit Area defined by Part 1.1. The Permittee must submit an electronic file via ARCGIS or other shared compatible format, to the Puyallup Tribe as indicated in Part 6.1 (Submittal Process). The Permittee must update and maintain current MS4 map(s) throughout the permit term and submit any updates upon completion with the subsequent Annual Report.** of the MS4 located within the Permit Area. At a minimum, the MS4 map must include the following information:

Revised Pierce County Permit Part 3.3.2, 1st paragraph, reads as follows:

No later than 1 year after the permit effective date, the Permittee **must submit to the Puyallup Tribe an updated map of the MS4 in the Permit Area defined by Part 1.1. The Permittee must submit a hard copy of the map sufficient to update each party's land use maps at an appropriate scale for review, and electronic shape files via ARCGIS or other shared compatible format, to the Puyallup Tribe as indicated in Part 6.1 (Submittal Process). The Permittee must maintain current update and maintain maps of the MS4 map(s) throughout the permit term and submit any updates upon completion with the subsequent Annual Report.** located within the Permit Area. At a minimum, the MS4 map must include the following information:

Revised WSDOT Permit Part 3.3.2, 1st paragraph, reads as follows:

No later than 1 year after the permit effective date, **and annually thereafter**, the Permittee **must submit to the Puyallup Tribe of Indians updated** ~~update and maintain~~ maps of the MS4s **that discharge to waters overlying Trust lands within the 1873 Survey Area of the Puyallup Reservation. The Permittee must provide electronic copies of the MS4 map that are appropriately scaled to discern detail and reference locations as well as the GIS shapefiles of the mapped MS4 (via ARC GIS compatible format) as directed by Part 6.1 (Submittal Process). The Permittee must maintain updated maps throughout the permit term and submit any updates upon completion with the subsequent Annual Report.** ~~located within the Permit Area.~~ At a minimum, the WSDOT MS4 maps must include the following information:

11. **Tacoma Permit Part 3.4.3.1.1:** EPA added Part 3.4.3.1.1 to the Tacoma Permit, consistent with Condition 6 of the Tacoma CWA §401 Certification. The text now reads as follows:

3.4.3.1.1 The Permittee must preferentially choose to infiltrate stormwater runoff from hard surfaces and converted vegetated areas where site soils are suitable; flow control requirements may be waived for sites that will reliably infiltrate all runoff from hard surfaces and converted vegetation areas.

12. **WSDOT Permit Part 3.3.4.3.5:** EPA added Part 3.3.4.3.5 to the WSDOT Permit to reflect Condition 6 of the WSDOT CWA §401 Certification. EPA also made other revisions to WSDOT Permit Part 3.3.4 in response to public comments – See Response 20-X-1 for full detail of all revisions. Part 3.3.4.3.5 reads as follows:

The Permittee must identify and resolve all illicit connections into their MS4 outfalls located in the Permit Area within four years of the permit effective date.

13. **WSDOT Permit Part 3.4.3.4:** EPA revised Part 3.4.3.4 of the WSDOT Permit to add text consistent with Condition 8 of the WSDOT CWA §401 Certification. Original text of Part 3.4.3.4 as drafted was deleted and consolidated into Part 2.2.2. Part 3.4.3.4 now reads as follows:

3.4.3.4 Whenever possible, the Permittee must choose infiltration as the preferred method of flow control, if site soils are suitable. Required flow control for new development or redevelopment projects may also be achieved through regional stormwater facilities. ~~No later than 30 months after the effective date of the permit, the Permittee must adopt or amend an ordinance or other regulatory mechanism to comply with the Permit.~~

14. **Pierce County and Tacoma Permits Part 3.5:** Part 3.5 in both the Pierce County and Tacoma Permits details requirements for the Permittee's structural control program in the Permit Area. As revised in response to public comment, Parts 3.5 are consistent with Condition 11 in both the Tacoma CWA §401 Certification and in the Pierce County CWA §401 Certification, respectively. See also Responses EE-1 through EE-3.
15. **WSDOT Permit Part 3.5:** WSDOT Permit Part 3.5 details the requirements for WSDOT's structural control program in the Permit Area. As revised in response to public comment, WSDOT Part 3.5 reflects Condition 16 of the WSDOT CWA §401 Certification. See Response 22-EE-4 for revised text in its entirety.
16. **Pierce County Permit Parts 3.6.3.1 and 3.6.7:** EPA revised Parts 3.6.3.1 and 3.6.7 of the Pierce County Permit to reflect Condition 11 of the Pierce County CWA §401 Certification. These provisions require the Permittee to use source control best management practices (BMPs) identified in the 2019 *Stormwater Management Manual for Western Washington* or in the Permittee's equivalent documents named in Appendix C.
- These provisions also require the Permittee to use structural controls if stormwater discharges from existing development are not adequately controlled using operational source controls or other SWMP activities. See also Responses FF-4 and FF-10.
17. **WSDOT Permit Part 3.7.2:** EPA revised Part 3.7.2 of the WSDOT Permit to be consistent with Condition 17 of the WSDOT CWA §401 Certification. Revised Part 3.7.2, 1st and 2nd paragraphs, now reads as follows:

3.7.2 Maintenance Standards

The Permittee must establish maintenance standards that are as protective, or more protective, of facility function than those specified in the ~~SWMMM~~ **2019 WSDOT Highway Runoff Manual** or those found in the most up to date version of the documents listed in Appendix C.

The Permittee must also follow the Regional Road Maintenance Endangered Species Act Program Guidelines for road maintenance operations for roads discharging runoff into WSDOT's MS4; for bridge maintenance; and for maintenance of stormwater treatment Best Management Practices (BMPs) or facilities; and for maintenance of flow control BMPs or facilities....

18. **WSDOT Permit Part 3.7.9:** EPA added Part 3.7.9 to the WSDOT Permit consistent with Condition 18 of the WSDOT CWA §401 Certification. Part 3.7.9 reads as follows:

3.7.9 Vegetation Management Plan

The Permittee must submit the Vegetation Management Plan used by local WSDOT crews as part of each Annual Report.

19. **Permit Part 3.8:** EPA has added Part 3.8 in all three MS4 permits (Tacoma, Pierce County, WSDOT) to reflect the following conditions, related to compliance with applicable Total Maximum Daily Load Requirements related to established waste load allocations for point sources related to the discharge of biochemical oxygen demand, ammonia, and chlorine in the Puyallup River basin:
- Condition 12 of the Tacoma CWA §401 Certification

- Condition 12 of the Pierce County CWA §401 Certification
- Condition 19 of the WSDOT CWA §401 Certification

EPA determines that each Permittee's compliance with the monitoring and other requirement of their respective Permit will be fully consistent with the currently applicable TMDL for the Puyallup River. Part 3.8 in each permit now reads as follows:

3.8 Total Maximum Daily Load Requirements

Compliance with this permit constitutes compliance with the Total Maximum Daily Load (TMDL) approved by EPA in 1994 for dissolved oxygen, biological oxygen demand, and ammonia in the Puyallup River basin. After the effective date of this permit, if EPA approves a TMDL containing wasteload allocations for MS4 discharges to surface waters of the Puyallup Tribe, EPA may modify this permit pursuant to Part 8.13 (Reopener Clause).

20. **WSDOT Permit Part 4:** EPA revised Part 4 (*Adaptive Management Response*) in all three MS4 permits (Tacoma, Pierce, WSDOT) in response to public comments; see Response Section 25-HH.

As revised, WSDOT Permit Part 4 is consistent with Condition 9 of the WSDOT CWA §401 Certification.

21. **Pierce County Permit Part 5.1.1:** EPA revised Pierce County Permit Part 5.1.1 (*Discharge Monitoring Locations*) to be consistent with Condition 9 of the Pierce County CWA §401 Certification. This Part is also revised based on public comment – See Response 26-II-4 for all revisions to this Part. Revised Pierce County Permit Part 5.1.1, reflecting certification Condition 9, reads as follows:

The Permittee must meet the requirements of this section by monitoring **at least one representative stormwater** outfall, within the Permit Area, discharging **at a downstream location or directly** into the Puyallup River.

22. **Permit Part 5.2:** EPA revised Part 5.2 (*Quality Assurance Project Plan*), in all three MS4 permits (Tacoma, Pierce County and WSDOT) in response to public comment and to reflect the following certification conditions requiring Permittees to submit the Quality Assurance Project Plans to the Puyallup Tribe for approval:

- Condition 9 of the Tacoma CWA §401 Certification
- Condition 9 of the Pierce County CWA §401 Certification
- Condition 14 of the WSDOT CWA §401 Certification

See also responses to public comment in Responses II-22, JJ-10 and JJ-11.

Revised Permit Part 5.2 now reads as follows:

5.2 Quality Assurance Project Plan

The Permittee must develop a Quality Assurance Project Plan (QAPP) for all monitoring required by this ~~Part~~ permit. Any existing QAPPs may be modified to meet the requirements of this section.

No later than **six months from the effective date of this permit, the Permittee must submit a draft QAPP for review and approval to the Puyallup Tribe of Indians at the address provided in Part 6.1.1.**

The Puyallup Tribe of Indians may consider deviations from the requirements of Part 5.1 when approving the QAPP, provided that all Permittee-requested deviations are evidence based and discussed with the Puyallup Tribe of Indians during the Tribe's review of the draft QAPP. A final QAPP must be submitted to Puyallup Tribe for approval as soon as possible following finalization and before one year from the effective date of this permit, or within 60 days of receiving Puyallup Tribe of Indians comments on the draft QAPP (whichever is later).

The file name of the electronic QAPP must be as follows: YYYY_MM_DD_«Permit Number»_QAPP <draft or final>, where YYYY_MM_DD is the date that the Permittee submits the document, and <draft or final> represents the iterative version of the document.

Monitoring activities must begin within 30 days of receiving the Puyallup Tribe's approval of the final QAPP. ~~1 year from the effective date of this permit, the Permittee must submit written notice to EPA and Puyallup Tribe of Indians that the QAPP has been developed and implemented. The QAPP is subject to approval by EPA and Puyallup Tribe of Indians. The QAPP must meet the following requirements:~~

23. **Permit Part 6.1:** EPA revised Part 6.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) in response to public comment and to reflect the following certification conditions pertaining to the submittal of documents to the Puyallup Tribe:
- Condition 2 of the Tacoma CWA §401 Certification
 - Condition 2 of the Pierce County CWA §401 Certification
 - Condition 11 of the WSDOT CWA §401 Certification

See also Response Section 29-LL. Revised Part 6.1 now reads as follows:

6.1 ~~Submittal~~ Process

The Permittee must submit ~~reports and/or~~ documents required by this permit to EPA and the Puyallup Tribe of Indians ~~at in an electronic~~ **the addresses identified below. Documents required by this permit include, but are not limited to, SWMP documents, agreements, notifications, maps, adaptive management reports, quality assurance plans, annual reports, stormwater monitoring reports, and permit renewal applications.**

Electronic or digital format documents are required. Submittals must be provided either via e-mail or secure file transfer service, such as a file transfer protocol (FTP) software. File attachments cannot exceed 20MB total per email and may not include Zip files. If e-mail size is greater than 20MB, then submittals must be sent by secure file transfer service. ~~portable document format (PDF) that is saved and stored on a compact disc or other portable electronic storage device. Any monitoring results must be submitted as an attachment to the corresponding Annual Report.~~

The Permittee must sign and certify all ~~electronic~~ submittals as required by Part 8.5 (Signatory Requirements).

6.1.1 Addresses

The Permittee must submit documents required by this permit to the specified EPA office and/or the Puyallup Tribe using the email addresses listed below. Emails to submit documents must use the following email subject line:

CWA NPDES «Permit Number» «Report or Document TypeName»

Addressee	Electronic Mail Address
<p align="center">U.S. EPA Region 10 Director, Water Division</p>	<p align="center">[To Be Determined]</p>
<p align="center">U.S. EPA Region 10 Director, Enforcement & Compliance Assurance Division</p>	<p align="center">R10enforcement@epa.gov</p>
<p align="center">Puyallup Tribe of Indians Water Manager, Environmental Department</p>	<p align="center">char.naylor@puyalluptribe-nsn.gov</p>

All documents, including but not limited to, plans, agreements, notifications, annual reports, monitoring reports, compliance reports, monitoring data, and renewal applications must be mailed to:

~~U.S. EPA Region 10
Enforcement & Compliance Assurance Division
1200 6th Avenue, Suite 155
Mail Code 20 C04
Seattle, WA 98101~~

All documents, including but not limited to, plans, agreements, notifications, annual reports, monitoring reports, compliance reports, monitoring data, and renewal applications must be provided to Char Naylor at the Puyallup Tribe of Indians. Digital copies are preferred and sent to char.naylor@puyalluptribe-nsn.gov or:

~~Puyallup Tribe, c/o Char Naylor, Environmental
3009 East Portland Avenue
Tacoma, WA 98404~~

6.1.2 Electronic Document Submittal using an EPA Web Portal ~~NetDMR~~

~~Prior to the Permit expiration date, EPA may provide the Permittee with instructions for submitting electronic or digital format documents required by this permit to EPA using a dedicated EPA Web Portal for the MS4 Permit program. The Permittee may then use that portal after requesting and receiving permission from EPA. Upon use of the dedicated EPA Web Portal, the Permittee is no longer required to submit documents to EPA via email. Prior to the Permit expiration date, EPA may provide the Permittees with instructions for submitting required Annual Reports and/or other documents electronically using NetDMR. The Permittees may then use NetDMR for this Permit only after requesting and receiving permission from EPA Region 10. After the Permittee begins using NetDMR, the Permittee is no longer required to submit such materials to EPA and the Puyallup Tribe of Indians via paper submittal.~~

24. **Permit Part 6.3 and Appendix B:** EPA revised Part 6.3 and made minor editorial corrections to Appendix B (regarding Stormwater Monitoring Reports) in all three MS4 permits (Pierce County, Tacoma, WSDOT), both in response to public comment and to reflect the following certification conditions:

- Condition 10 of the Pierce County CWA §401 Certification
- Condition 10 of the Tacoma CWA §401 Certification
- Condition 15 of the WSDOT CWA §401 Certification

Revised Part 6.3 (Stormwater Monitoring Reports) now reads as follows:

An “Annual Stormwater Monitoring Report” must be submitted **as an attachment** with each Annual Report beginning in ~~2023~~2024.

Each report must summarize all monitoring data collected during the preceding water year (October 1 – September 30). The first annual monitoring report submitted ~~will~~**may** include data from a partial water year, **if available, and should document Permittee accomplishments to date regarding the initiation of the monitoring activities required by Part 5.** Each **subsequent** report must integrate data from earlier years into the analysis of results, as appropriate. See Appendix B for required information to be included in each report.

The file name of the electronic Stormwater Monitoring Report must be as follows: YYYY_MM_DD_«Permit Number»_SW Monitoring WYXXXX, where YYYY_MM_DD is the date that the Permittee submits the report and XXXX is the Water Year represented in the report.

25. **Permit Part 8.13:** EPA revised Part 8.13 in all three MS4 permits (Tacoma, Pierce County, WSDOT) as requested by Puyallup Tribe in its email to EPA dated 3/15/2022 (asking that EPA express its intention to modify each permit in a timely manner upon receipt of a final Biological Opinion resulting from Endangered Species Act consultation with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration). During EPA's permit modification process, the Puyallup Tribe may also choose to amend their Final CWA §401 Water Quality Certification conditions for each permit. Revised Part 8.13 (below) acknowledges EPA's intent to modify these permits when necessary, and is consistent with specific conditions in the current §401 Water Quality Certifications identified below:

- Condition 8 of the Pierce County CWA §401 Certification
- Condition 8 of the Tacoma CWA §401 Certification
- Condition 13 of the WSDOT CWA §401 Certification

Revised Part 8.13 (Reopener Clause) in each permit now reads as follows:

This permit is subject to modification, revocation and reissuance, or termination at the request of any interested person (including the Permittee) or upon EPA initiative. However, a permit may only be modified, revoked or reissued, or terminated for the reasons specified in 40 CFR §§122.62 or 122.64, and 40 CFR §124.5. This includes new information which was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance, including but not limited to **any Reasonable and Prudent Alternatives or Reasonable and Prudent Measures developed through Endangered Species Act consultation, and/or** future monitoring results. All requests for permit modification must be addressed to **the EPA Director of the Water Division** EPA in writing **as directed in Part 6.1.1 (Addresses)** and **must shall** contain facts or reasons supporting the request. See also Part 8.1 (*Permit Actions*).

26. **Permit Appendix C:** EPA revised Appendix C in all three MS4 permits (Pierce County, Tacoma, WSDOT) to identify the entity's specific and current document(s) that reflect WDOE's determination of equivalency with the 2019 *Stormwater Management Manual for Western Washington* consistent with the specific condition in the individual CWA §401 Water Quality Certification identified below:

- Condition 1 of the Tacoma CWA §401 Certification
- Condition 1 of the Pierce County CWA §401 Certification
- Condition 7 of the WSDOT CWA §401 Certification

3. Response to Comments

The following sections 4 through 37 are broadly organized by topic and Permit Part. In general, EPA summarizes each comment as accurately as possible, and modified from the original electronic format to remove footnotes and attachments. Where appropriate for clarity, EPA grouped similar comments together. In some cases, EPA includes the comment verbatim. When converting formats to organize this document, minor errors may have occurred. Each Administrative Record contains the original comment letters and attachments as received.

Many comments reference the Phase I Municipal Stormwater Permit as issued by WDOE on July 1, 2019, and modified October 20, 2021; EPA refers to this permit as the *WDOE Phase I Permit*.

Other comments reference the WSDOT National Pollutant Discharge Elimination System and State Waste Discharge Municipal Stormwater General Permit as issued by WDOE on March 6, 2019; EPA refers to this permit as the *WDOE WSDOT Permit*.

As previously noted, changes to permit language are indicated in the response, with new/revised text reflected by **bold**/~~strikeout~~.

Given the similarities among all three MS4 permits, EPA used its discretion to revise relevant permit text. In some cases, one, two, or all three permits have been changed in response to editorial and consistency issues suggested through comments. Where necessary, EPA acknowledges revised text in the individual or multiple respective permit(s).

4. General Comments Regarding Permits & Fact Sheet

A-1-WDOE: The MS4 permits for Pierce County & Tacoma align well with WDOE Phase I Permit. EPA response to comments below will ensure discharges will meet WA Water Quality Standards (WQS) as downstream state/jurisdiction under CWA Section 401(a)(2) and provide consistency with Stormwater Management Program (SWMP) requirements in WDOE's Phase I Permit.

Response: Noted. No change was made to the Pierce County or Tacoma MS4 Permits in response to this comment.

A-2-WDOE: Revise the EPA Fact Sheet: Pierce County & WSDOT Maps are both labeled A-4 and are unreadable. WSDOT MS4 Map should be labelled A-5 not A-4. Tacoma Map (A-1) contains 2 subbasins labeled LP-04 - one is incorrectly labeled.

Response: The Fact Sheet is a final document that explains the conditions in the draft permit. If clarification of the Fact Sheet text is needed, EPA provides such clarification in the response to comments document. See responses in Response Section 20-U regarding Part 3.3.2 – IDDE – MS4 Map. EPA has not edited the Fact Sheet.

A-3-Tacoma: Revise EPA Fact Sheet, Page 15, E.2 Paragraph 2, second sentence, add “and conditional” after word allowable.

Response: EPA's Fact Sheet is a final document that explains the conditions in the draft permit. If clarification of the Fact Sheet text is needed, EPA would provide such clarification in the response to comments document. EPA has not edited the Fact Sheet and does not believe that further clarification is necessary.

A-4-WDOE: EPA permits should retain SWMP Control Measures as proposed with edits as included in [this WDOE letter.]

Response: Noted. EPA has revised text in each permit to reflect WDOE's comments, as indicated elsewhere in this document.

A-5-WDOE: Work with Permittees to move up implementation deadlines (e.g, earlier than “30 months from Permit effective date”); permittees have SWMPs in accordance with Phase I Permit that extend to the Permit Area.

Response: EPA has not changed any of the deadlines in the permits in response to this comment; however, some of the permit deadlines have been changed as noted in the responses below.

A-6 -Tacoma: Provide additional time for compliance with EPA Permit. Some sections provide compliance dates, others don't. With new requirements, and no ramp up period, Tacoma will be non-compliant on Permit effective date.

Response: Where necessary, EPA carefully considered the implementation deadlines established in each permit. For example, clarified deadlines are established for completion of updated MS4 maps in Part 3.3.2, and development of Quality Assurance Project Plans in Part 5.2. See Response 20-U-2, CWA §401 Certification Summary Section 2-10, and Response JJ-10 & 11, and CWA §401 Certification Summary Section 2-22, respectively. Commenter does not provide specific examples of where Tacoma would be in immediate non-compliance on the effective date of the Permit. No specific change was made in response to this comment.

A-7-Tacoma: EPA and WDOE should coordinate on both Permit content and issuance/expiration dates to ensure that Tacoma can efficiently maintain simultaneous compliance.

Response: During the development of the permits, EPA has coordinated with WDOE to ensure that these permits are consistent with WDOE's MS4 permits. EPA will continue to coordinate with WDOE and Puyallup Tribe to address issues related to all aspects of these three MS4 permits. No change was made in response to this comment.

A-8-Tacoma: Re: Training: Revise to allow 'one year from Permit effective date' to train existing employees who will implement this Permit. Several Sections (e.g, Part 3.3.6) outline training requirements for new employees; Clarify training requirements for current employees. Clarify report format for training requirements; must staff names be submitted? To minimize administrative burden, revise permit text to require "*Records of type/subject of training provided and verification that the appropriate staff members have received training.*" (e.g, Part 3.3.7.6 & AR question 18 appears to require staff names attending training.)

Response: EPA has revised the permit to clarify the expectations for training existing staff in all three MS4 permits. Each draft permit contains training requirements, specifically in Parts 3.3.6, 3.4.5, 3.6.9 and 3.7.9. EPA has revised text in each of these parts to consistently refer to training existing staff and new staff responsible for implementing a specific SWMP control measure, and to allow one year from the Permit effective date, as requested.

See Responses 20-Z-1, 21-DD-7, 23-FF-13, and 24-GG-20.

EPA does not expect staff names to be submitted as part of the Annual Report. EPA has revised appropriate text in each control measure, where necessary, to consistently refer to information related to staff training in the Annual Report.

Parts 3.3.7.6, 3.6.6.4, 3.6.10 and 3.7.10.6 are revised and now read as follows:

Records of relevant training provided or obtained, verification that appropriate staff members received training and the number of staff members trained.

A-9-WDOE: WSDOT permit doesn't align with WDOE WSDOT Permit. Reference the updated 2019 *Highway Runoff Manual* for road projects and guidance for stormwater management and design in specific circumstances.

Response: EPA has revised the WSDOT permit to remove text that conflicts with the WDOE WSDOT Permit where identified. Specific edits are described in other responses below. EPA also revised the WSDOT Permit to reference the *2019 Highway Runoff Manual* in all cases throughout the document.

A-10-Chambers-Clover Creek Watershed Council: "Elimination" in NPDES seems to be a misnomer. Will [EPA] ever adopt an "elimination" provision? Nothing in draft County permit requires the eventual "elimination" of stormwater flow to the public's water. We want to see eventual "elimination" of all untreated stormwater from entering lakes and streams. Rules allow filtering stormwater based on 2 to 3-year storm and let overflow pass to water bodies. County releases stormwater directly to Clover Creek without filtration; they say it's too expensive to ensure all stormwater is cleaned before released. "End of pipe" applications to stormwater should be retrofitted to infiltration methods prior to reaching water bodies. Given new information that tire particles kills Coho Salmon, "elimination" of untreated flows of stormwater to water bodies should be the goal of the NPDES.

Response: The goal of the NPDES program under the CWA is to eliminate pollutant discharges to waters of the U.S. To move towards that goal, the CWA requires point source dischargers to obtain NPDES permits. For MS4 discharges, the CWA requires that the MS4 operators reduce pollutants in discharges to the maximum extent practicable consistent with the requirements established by the NPDES permitting authority. The Pierce County MS4 permit sufficiently requires the Permittee to seek opportunities to eliminate stormwater flows through increased use of infiltration practices; see, for example, the requirements for structural controls in Permit Part 3.5.

EPA notes that Clover Creek is not a receiving water named in this Permit. Therefore, discharges to Clover Creek are not authorized by the Permit. No change was made in response to this comment.

A-11-Pierce: Revise permit text so its structure follows WDOE Phase I Permit to make EPA and WDOE Permit terms substantially similar. Significant differences between EPA & WDOE permits require too much effort/resources to implement. WDOE's Permit is programmatic, reflected by its structure. EPA permit is an individual permit, and its provisions are entirely different than WDOE Phase I Permit. Examples include MS4 mapping details; detailed information for reporting; sampling that requires storm chasing; lack of allowing regional programs specific for education and outreach; level of detail to include in the annual report; and use of absolute language such as "all" and "every," which create very real risks of permit non-compliance.

Response: Commenter correctly identifies that there are differences between the individual MS4 permit proposed by EPA for Pierce County, and the general NPDES permit issued by WDOE (referred to herein as the Phase I Permit) that broadly applies to multiple Western Washington permittees including Pierce County.

Different types of NPDES permits are organized in different ways. EPA is not required to reproduce WDOE's permit text, or organizational style, in its MS4 permit(s).

However, to reduce Permittee confusion, increase clarity, and encourage consistent and uninterrupted program implementation, EPA has revised the Pierce County MS4 permit as indicated in responses to comments below.

No specific change was made in response to this comment.

A-12-Tacoma: Tacoma submits comments and edits addressing significant problems in EPA permit that affect Tacoma's SWMP implementation and need resolution. Correct issues through significant text revisions and provide an additional public comment period. Tacoma may have additional comments on revised permit text and definitions.

Response: EPA has revised the Tacoma MS4 permit as indicated below in response to comments. Since EPA is providing a second comment period on the three MS4 permits, Tacoma can provide additional comments on the revised draft documents.

No specific change was made in response to this comment.

A-13-Tacoma: Significant differences between EPA & WDOE permits require Tacoma to expend too much additional effort and resources to implement. Suggested edit: Include clear statement in Permit Part 7: *"Compliance with the Ecology Permit within the EPA Permit Area and requirements of Section 5 Monitoring of the EPA Permit shall constitute full compliance with the EPA Permit."*

Overlapping requirements between the EPA -WDOE permits is inconsistent with the CWA. It is confusing about what regulatory requirements apply and may cause Tacoma unnecessary duplication regarding which/where programmatic and reporting requirements apply. Revise EPA's program and reporting requirements to be consistent with current and future WDOE Phase 1 permits. Use consistent terminology, program and reporting requirements to reduce confusion and uncertainty. Tacoma recognizes Part 5 Monitoring requirements would still apply as part of compliance with the EPA Permit.

Response: EPA has revised each draft permit to better align the EPA permit with identified requirements of the WDOE Phase I Permit. EPA declines to add text to Part 7 as suggested by the commenter. No specific change was made in response to this comment.

A-14-Tacoma: When will Tacoma be notified who EPA permit manager or contact person is for questions regarding Permit and its requirements? What is the effective date for this Permit?

Response: EPA will provide contact information at the time of permit issuance. The Permit effective date for each permit is determined after all public comments have been considered, and appropriate changes have been made to the permit text. No specific change was made in response to this comment.

A-15-Tacoma: Use language consistent with the WDOE Phase I Permit in the EPA Permit; specifically, use consistent terminology and definitions where possible. Many undefined terms throughout EPA Permit; some are defined in WDOE Phase I Permit. As example, AKART is mentioned in Fact Sheet but not included or defined in the Permit, and it should be because WDOE Phase I Permit includes AKART.

Response: EPA has incorporated relevant changes to specific terminology and definitions as described in responses below. EPA has not included a definition of the acronym AKART in the permit text because the phrase "all known, available and reasonable technology" is not used in the EPA permit text. No specific change was made in response to this comment.

A-16-Tacoma: Revise Permit consistent with WDOE Phase I Permit Section S2.A.1, to clarify whether Underground Injection Control (UIC) wells are covered. WDOE Phase I Permit Section S2.A.1 explicitly states that UICs are not authorized under that Permit.

Response: It is unnecessary to revise permit text as requested. NPDES permits only authorize the discharge of pollutants to waters of the U.S.; they do not authorize discharges to UIC wells. Under federal environmental law, discharges to UIC wells are allowed pursuant to the Safe Drinking Water Act.

EPA further clarifies that the WDOE Phase I Permit includes provision S2.A.1 because WDOE's Phase I permit is both a NPDES permit under federal Clean Water Act and a State Waste Discharge General Permit under WA state regulations. Therefore, the WDOE Phase I Permit covers discharges to waters of the U.S. as well as state only waters, which includes groundwater.

No change has been made in response to this comment.

A-17-Pierce: For clarity, consistency with WDOE Phase I Permit and to eliminate redundancy – Delete multiple "legal authority" sections and replace with one section at the beginning of the permit. If a specific section requires code review or update during the permit cycle, include within that section.

Response: EPA declines to consolidate all provisions referring to legal authority into a single provision. Instead, EPA has consolidated code review and submittal requirements into Part 2.2 and has revised other relevant text throughout each permit to acknowledge the limitations on the Permittee's legal authority. See Response Section 15-L (regarding Part 2.2). See also Response Section 5-B-1 (regarding legal authority).

5. Regarding Legal Authority over Tribal Trust Properties

B-1-Pierce, Tacoma: Washington has not assumed civil regulatory jurisdiction or criminal jurisdiction over acts of "Indians" on trust land within reservation boundaries. Federal P.L. 280 (19 U.S.C. 1162 et. seq.), RCW 37.12.010. WA State, and by implication its political subdivisions, are not authorized to regulate the use of property held in trust "*in any manner inconsistent with any ... agreement...*" or "*.... deprive any Indian or any Indian tribe...of any right, privilege or immunity afforded under.... agreement.... or the control, licensing, or regulation thereof...*" RCW 37.12.060.

Under these statutes, Tacoma [& Pierce County] have no authority or jurisdiction to enforce their SWMPs against the Puyallup Tribe or tribal members on Trust land with the 1873 Survey Area or in a manner inconsistent with an agreement. The U.S. Government, WA State, Tacoma and Pierce County all approved the August 27, 1988 agreement resolving land claims and other issues amongst the signatories and entitled "*Agreement between the Puyallup Tribe of Indians, local Governments of Pierce County, the State of Washington, the United States of America, and certain private property owners,*" (hereinafter referred to as 1988 LCSA) with the Puyallup Tribe. See, Public Law 101-41 (103 STAT. 83), the Puyallup Tribe of Indians Land Claims Settlement Act of 1989, 25 U.S.C. § 1773 (1989) and Chapter 4, Section 1, Laws of 1989, 1st Ex Sess. (SHB 1788).

1988 LCSA at Article VIII, Sec.A.3 states that federal, state and local governments retain jurisdiction over environmental laws on non-Trust lands within the 1873 Survey Area, and federal and Tribal governments have "exclusive" jurisdiction of federal and Tribal laws on trust lands within the 1873 Survey Area. The LCSA further provides that any delegation under the federal environmental laws within 1873 Survey Area for non-trust lands will be solely to WA State or its political subdivisions, and for Trust land within the 1873 Survey Area it will be solely to the Puyallup Tribe. This leads Tacoma and Pierce County to understand that they have no direct authority to enforce their SWMP within Tribal Trust lands.

Provide clear statement in the Permit(s) that Tacoma and Pierce County do not have enforcement authority over Tribal trust lands.

Revise all Permit text that would require Tacoma and County to obtain legal authority and enforce Permit terms on Tribal trust lands.

Acknowledge that the Permit does not impose obligation or requirement for Tacoma or County to regulate or enforce the permit's terms on Tribal trust land.

EPA's Permit requires Tacoma to enforce SWMP control measures/requirements on Tribal Trust land where it has no jurisdiction, but it does not provide a mechanism for enforcement. EPA Permit and Fact Sheet do not acknowledge the roles of the Federal and Tribal governments in enforcing environmental regulations on Tribal Trust land, and Tacoma's lack of such authority. This is particularly problematic because this Permit Area is limited to that part of the MS4 that discharges to outfalls located on Trust land. Permit Part 3 (*SWMP Control Measures*) contains no limiting language and imposes obligations on Tacoma that it cannot comply with due to no enforcement authority on Tribal Trust land. The Permit doesn't explain how conditions will be enforced on Trust land, resulting in an enforcement gap.

Provide clear statement of how enforcement will properly occur. Will Tacoma be out of compliance with this Permit if the Puyallup Tribe does not choose to voluntarily allow Tacoma to conduct certain activities required by Permit?

Suggested edit: Add text to Permit Part 7 that the Permittee's obligation under each and every requirement of the Permit is limited by what is allowable pursuant to the authority granted to the Permittee under applicable law, and that Pierce County and Tacoma have no authority to enforce with respect to activities of the Puyallup Tribe and Tribal members upon land held in trust for the Puyallup Tribe or a member of the Puyallup Tribe.

[Commenters repeated this concern over legal authority in comments regarding Permit Part 2.3; Parts 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7; Part 4; Part 7; Parts 8.9, 8.10; and Appendix A.]

Response: EPA acknowledges that Pierce County and Tacoma have limited ability to enforce their SWMPs in Indian Country/on Tribal Trust land within the 1973 Survey Area.

As the commenters identify in subsequent comments, each party maintains some limited easements or other operational agreements with the Tribe for the maintenance and operation of the drainage infrastructure on Tribal Trust land.

However, through conversations with Pierce County, Tacoma and the Tribe, EPA understands that if there are stormwater problems originating on Tribal Trust land, Pierce County and Tacoma routinely work directly with the Tribe to address the problem. In addition, EPA understands that the 1988 LCSA at Article VIII, Sec.A.3 also commits Pierce County, Tacoma, WA State and the Tribe to work cooperatively when carrying their respective environmental authorities within the 1873 Survey Area: "...In carrying out such delegated authority, the State, local and Tribal governments agree to involve each other in a consultative manner and to work cooperatively where practicable."

As discussed in Response Section 15-L, EPA has revised all three MS4 permits (Pierce County, Tacoma, WSDOT) at Part 2.2 and Part 2.2.1 to state:

To the extent allowable, pursuant to the respective authority granted the Permittee under applicable State law, the Permittee must maintain relevant ordinances or other regulatory mechanisms sufficient to control pollutant discharges into and from its MS4 to meet the requirements of this permit.

EPA has not revised Permit Part 7 to add text as suggested by the commenters.

EPA notes that Pierce County, Tacoma and WSDOT each notified EPA that they owned and/or operated MS4s that discharge through outfalls that discharge to the portion of the Puyallup River subject to the Tribe's water quality standards. Each party subsequently submitted applications to

EPA to obtain MS4 discharge permits. EPA, in coordination with the Puyallup Tribe, drafted MS4 permit terms and conditions in response to these applications. Each permit authorizes MS4 discharges from these outfalls and, pursuant to EPA's NPDES MS4 stormwater regulations, requires the ongoing implementation of a comprehensive SWMP to reduce pollutants to the maximum extent practicable (MEP), protect water quality, and comply with other provisions of the CWA.

As described elsewhere in this response document, EPA has revised the permit provisions to better align requirements with the SWMP actions the Permittees currently implement in adjacent areas subject to the WDOE Phase I Permit (and WDOE WSDOT Permit). EPA recognizes that Tacoma, Pierce County and WSDOT already implement SWMPs in compliance with the respective WDOE permits. Here, EPA's permits require implementation of that same basic SWMP with some minor differences; however, these differences don't result in vastly different actions. Therefore, Tacoma, Pierce County and WSDOT will each be implementing consistent stormwater control measures in both WDOE and EPA jurisdictions.

EPA's MS4 permits do not require Tacoma, Pierce County or WSDOT to obtain additional legal authorities that conflict with state law or with the 1988 LCSA, nor do the permits require Tacoma, Pierce County, or WSDOT to regulate or impose their stormwater requirements on Tribal Trust land.

To the extent allowable pursuant to authority granted the Permittee under applicable State law, and through close cooperation with the Puyallup Tribe where its jurisdiction may be limited, the Permittee's implementation of its SWMP activities on lands draining to the MS4 outfalls discharging to the portion of the Puyallup River and other surface water within the 1873 Survey Area will reduce pollutants in MS4 discharges to the MEP.

Whether those SWMP activities are conducted under the auspices of the WDOE Phase I Permit, the WDOE WSDOT Permit, or in compliance with its respective EPA-issued permit, each Permittee's actions result in the continued improvement of water quality in the portion of the Puyallup River and other surface water within the 1873 Survey Area.

6. Regarding Indian Country

C-1-Pierce: The EPA Fact Sheet at Section E.1 indicates that EPA's permit applies to municipal stormwater discharges to receiving waters located on Trust lands within the 1873 Survey Area: *"The Permits only apply to discharges from MS4s to surface waters located on trust lands of the Puyallup Tribe of Indians within the 1873 Survey Area. (Permit Area)."*

However, the 2018 Memorandum of Understanding (MOU) between EPA & WDOE governing WDOE's authority to administer the NPDES program expressly provides that EPA retains authority, unless the State is expressly approved, for all NPDES activity in Indian Country. See, MOU Section V.1 a1 *"The State must: a. Assume permitting, compliance, and enforcement obligations for facilities, in its jurisdiction with the exception of Indian Country."*

Indian Country is defined in the CWA regulations in pertinent part as follows: *"1. Indian country means: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation."* 40 CFR §122.2.

The term *Indian Country* includes all lands within the 1873 Survey Area and not just those lands held in trust for the Puyallup Tribe of Indians or Tribal members. Accordingly, the Permit coverage area would be much larger than the area covered by Puyallup Tribal Trust Lands alone.

Response: As correctly noted by the commentor, *Indian Country* is defined in 40 CFR § 122.2; this definition is also included in draft Permit Part 9.

For the Puyallup Tribe, Indian Country is defined through the 1988 *Land Claims Settlement Agreement* (1988 LCSA) and the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. § 1773 (1989 Act). Specifically, Indian Country within the 1873 Survey Area are lands held in trust by the federal government for the Puyallup Tribe, other federally recognized tribe or individual tribal member, and expressly includes the portion of the mainstem Puyallup River channel (below the mean highwater mark) within the 1873 Survey Area.

With regard to the federal definition of Indian Country, the 1988 LCSA states:

- At 1988 LCSA Section I.A (*Settlement Lands - Property Conveyed Other Than Current Riverbed*), pages 2-3: *The parties agree that lands conveyed by this Agreement will be placed in trust with on-reservation status by federal legislation enacting this Agreement..... However, nothing in that designation shall be construed as a precedent for or against the granting of on-reservation status to other lands interior or exterior to the 1873 Survey Area*

-At 1988 LCSA Section I.B (*Settlement Lands -Current Riverbed*), pages 3-6: ...*The non-Indian parties will convey any right, title or interest they have in the submerged lands in the Puyallup River within the 1873 Survey Area below the mean high water line to the United States in trust for the Tribe....*

-At 1988 LCSA Section VIII.A (*Future Governmental Authority, Responsibility, And Cooperation-Governmental Jurisdiction and Authority*), pages 18 -19: *The 1873 Survey Area shall not be used as basis for asserting Tribal jurisdiction or governmental authority over non-Indians; except as specifically provided by this agreement. The Federal definitions of "Indian country", "Indian lands", and/or "Indian reservation" shall not be used by the Tribe or the United States as a basis for asserting Tribal control over non-trust lands either inside or outside the 1873 Survey Area, or the activities conducted on those lands, except as provided by the Agreement, or as otherwise agreed to between the Tribe and State, and/or local governments. (Emphasis added)*

"Trust land" or "land in trust status" means land or any interest in land the title to which is held in trust by the United States for an individual Indian or Tribe; "restricted land" or "land in restricted status" means land the title to which is held by an individual Indian or a Tribe and which can be alienated or encumbered by the owner only with the approval of the Secretary of the Interior, because of limitations contained in the conveyance instrument pursuant to federal law or because of a federal law directly imposing limitations. Whenever the term "trust land" is referred to in this agreement, it shall be deemed to include both trust and restricted lands..... The jurisdiction of the Puyallup Indian Tribe shall extend to existing and future restricted and trust lands. The extent of the Tribe's jurisdiction shall be determined as provided by federal law

-At 1988 LCSA Section VIII.B (*Future Governmental Authority, Responsibility, And Cooperation-Future Trust Lands*), page 22: ...*For placing new land in trust, the parties, including the Secretary of Interior, shall abide by 25 CFR (Code of Federal Regulations) Part 151 -- Land Acquisitions, as all of those standards now exist or as they may be amended in the future....*

In 1997, to provide further clarity regarding the implementation of environmental regulation within the 1873 Survey Area, the Puyallup Tribe, EPA and WDOE entered into a series of agreements:

- 1) The *Intergovernmental Agreement between Puyallup Tribe of Indians, EPA, and the Washington Department of Ecology* (1997 IGA), signed by each party in December 1996 and January 1997 as a mutual agreement to coordinate and cooperate with regard to all activities under the respective laws of the Parties relating to environmental regulation and management of air and water resources, and the management, disposal and cleanup of hazardous wastes; and
- 2) The *Memorandum of Agreement Among the U.S. Environmental Protection Agency, the Washington Department of Ecology and the Puyallup Tribe of Indians* (1997 MOA), signed by each party in July and August 1997 as a subsequent formal agreement under the 1997 IGA to implement the government-to-government relationship by defining the respective roles and responsibilities of each party as they relate to the administration of the NPDES Permits Program under the CWA for point source discharges on trust lands within the exterior boundaries of the Puyallup Indian Reservation.

The 1997 MOA specifically states:

“EPA retains primary environmental regulatory authority for managing federal programs on Indian reservations under the CWA except where a State has an express grant of jurisdiction from Congress sufficient to support delegation, or EPA has authorized the Tribal Government to administer the program. The Puyallup Land Claims Settlement Agreement has further clarified the jurisdictional issues within the Puyallup Indian Reservation by providing that the Tribe and EPA have exclusive jurisdiction for administration and implementation of environmental laws on trust lands within the 1873 Survey Area of the Reservation. EPA and the State have exclusive jurisdiction for administration and implementation of environmental laws on non-trust lands within the 1873 Survey Area of the Reservation. For purposes of determining jurisdiction over NPDES permitted dischargers, it is the location of the discharge outfall, not the location of the activity producing the discharge, that determines which governmental entity has jurisdiction.” (Emphasis added)

Here, the outfalls being permitted are located on Tribal Trust land and, thus, EPA is the NPDES permitting authority for those outfalls. As described in Response F-1, to provide additional clarity, EPA revised Part 1.1. in all three MS4 permits (Tacoma, Pierce WSDOT) to appropriately define the Permit Area, and added new Appendices F (*Permit Area Map*) and G (*Outfalls Existing on Permit Effective Date*). The Permit Area defined in revised Permit Part 1.1 now states:

This permit covers all land held in trust by the federal government within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington (the Permit Area).

As defined in the 1988 Puyallup Lands Claims Settlement Agreement and the Puyallup Tribe of Indians Settlement Act of 1989, 25 u.s.c. § 1773 (b)(1), the Permit Area within the 1873 Survey Area includes the Puyallup River bedlands below the ordinary highwater mark, the mouth of Hylebos Creek intertidal areas below the high tide line, and all land held in trust by the federal government for a federally recognized tribe or individual tribal member. See Appendix F (*Permit Area Map*) and Appendix G (*Outfalls Existing on Permit Effective Date*).

As discussed above, EPA and Puyallup Tribe administer CWA authorized and delegated programs on Trust land within the 1873 Survey Area of the Puyallup Reservation, including CWA Section 303(c) (Water quality standards), and Section 401 (Water quality certifications). WDOE administers all Clean Water Act delegated and authorized programs on non-Trust lands (including lands that are not subject to a restriction on alienation) within the 1873 Survey Area of the Puyallup Reservation.

Thus, the Permit Area is accurately defined in Permit Part 1.1. See also Responses B-1, F-1, and OO-13.

7. Regarding Permit Area & Jurisdiction

D-1-Pierce: Clarify how EPA's Permit can be implemented for discharges from County's MS4 comprised of water from non-tribal land over which EPA has no jurisdiction. Some County's outfalls discharge just at the tribal boundary, though none of the discharge is generated from tribal land. For these outfalls, revise permit with suggested edit: "For discharges to tribal land that are comprised of water that originates on non-tribal land, compliance with the terms of the Washington State Department of Ecology's Phase I Municipal Stormwater Permit constitutes compliance with the terms of this EPA Municipal Stormwater Permit." This approach makes sense and is consistent with EPA's prior statements that it understands County has no jurisdiction over land that is under WDOE jurisdiction.

Although EPA says it does not have regulatory authority over land regulated by WDOE Phase I Permit, the EPA Permit imposes obligations for County actions on land regulated by WDOE. E.g., some County outfalls discharge at the tribal boundary and none of that municipal stormwater is generated on tribal land; instead, the SW discharge is generated on land regulated by the WDOE Phase I Permit. If a discharge from these outfalls results in triggering an adaptive management requirement EPA Permit Part 4, all actions would take place on land subject to regulation under the WDOE Phase I Permit. Revise the EPA Permit to account for this situation and acknowledge that County complies with its regulatory obligations under EPA Permit by complying with its WDOE Phase I Permit.

Response: As explained in Response C-1, the EPA permit authorizes the discharge of municipal stormwater from outfalls that are located on Tribal land. EPA understands that some stormwater that flows through the MS4 comes from stormwater originating on non-Tribal land. EPA does not have jurisdiction over portions of the MS4 that are located on non-Tribal land; however, as noted by the commentor, the Permittee is already required to implement a SWMP on those non-Tribal land areas. As previously explained, EPA's permit applies to Puyallup Tribal Trust land and authorizes discharges from outfalls located on Trust land that discharge to tribal waters. For areas located in the Permit Area described in EPA's permit, the Permittees are required to implement a SWMP pursuant to EPA's permit. The permit allows the Permittee to update or otherwise use their existing SWMP that they have pursuant to the WDOE Phase I Permit as a basis for the SWMP that will meet the requirements in EPA's permit. This is because the Permittee's existing SWMP complies with EPA's permit and will reduce pollutants discharging through the MS4 outfalls in the Permit Area to the MEP. See Response 5-B-1 re: legal authority. No change was made as a result of these comments.

D-2-Tacoma: Regarding Permit Coverage for Areas Upstream of Tribal Trust Land Within the Watershed: Draft permit does not clearly state that it covers discharges in areas upstream of tribal trust lands that drain into tribal waters. An MS4 permit must assure upstream control programs to maintain water quality standards at the point of discharge into tribal waters. The Permit needs a clear statement that it covers areas upstream of tribal trust lands draining into Tacoma-owned outfalls on tribal trust land, not just discharges on tribal trust land, to be consistent with the CWA. EPA should administer the MS4 program for the entire area contributory to the covered outfalls.

Clarify that the Permit Area includes the upstream areas within Tacoma outside of trust lands that drain to outfalls that discharge into surface waters located on Trust Lands of the Puyallup Tribe of Indians. If not, the permit will be inconsistent with the CWA and EPA's regulations regarding MS4 permits.

Response: See Response 6-C-1 re: Indian Country, and Response 7-D-1. As previously explained, these permits cover Tribal trust land within the 1873 Survey Area and authorize discharges from outfalls located on Tribal trust land. The portions of the MS4s that are located upstream of Tribal trust land are covered under WDOE's MS4 permit and are interconnected with the portions of the MS4 located on Tribal trust land. No change was made in response to this comment.

D-3-Tacoma: Tacoma submits two graphics to approximate EPA Permit Coverage Areas:

Figure 1-EPA Permit Area based on MS4 contributory areas to outfalls or discharges to or on Tribal Trust Parcels and Figure 2 –EPA Permit Area based on Tribal Trust Parcels.

Tacoma believes Figure 1 is proper reading of EPA's Permit, Fact Sheet and relevant documents dealing with EPA and WDOE authorities. Tacoma believes CWA regulations require the Permit Coverage Area to include areas upstream of tribal trust lands that drain into tribal waters.

Figure 2 is based on Tacoma's conversations with EPA Staff. Figure 2 area is inconsistent with CWA regulations and leads to a largely hollow permit; comments based on this Permit Coverage Area are provided based on conversations with EPA staff. Neither Figure is exact or complete. EPA, Tribe and Permittees must work together for accurate maps. If Permit Area differs from these Figures, Tacoma may have additional comments.

Response: Figure 2, illustrating Tribal Trust Parcels, is the proper representation of the Permit Area defined by revised EPA Permit Part 1.1. See new Appendix F in the revised draft permits and Responses 6-C-1, 7-D-1 and D-2, and 9-F-1. EPA encourages the Permittee to continue working with Puyallup Tribe on details associated with obtaining up-to-date maps of Tribal trust land; see Response 8-E-1. No change was made in response to this comment.

D-4-Tacoma: To illustrate the lack of clarity of Permit coverage area, see attached Figure 1 and Figure 2. Tacoma requests a shapefile or surveyed boundary. Permit coverage area may be influenced by Tacoma's existing stormwater conveyance system and other built features. Tacoma requests a joint meeting of EPA, the Puyallup Tribe and WDOE to review the figures and determine which figure in general represents the Permit Coverage Area that is intended for this Permit. Once the general representation has been determined, Tacoma would supply information on its stormwater conveyance system to assist in generating the requested shapefile or surveyed boundary of the Permit coverage area.

Response: See Response Section 8-E regarding maps. EPA met with Tacoma, Pierce County, Puyallup Tribe and WDOE on numerous occasions during the comment period to clarify the Permit coverage area. As explained in Response 7-D-3, Figure 2 is the proper representation of the Permit Area. As

such, additional joint meetings are unnecessary. No change was made as a result of this comment. See Responses 6-C-1, 7-D-1, D-2, and D-3.

D-5-Tacoma: If Permit Area is similar to Figure 2 (i.e, only includes Tribal Trust parcels), Tacoma will have very limited responsibility under this Permit. Tacoma has several easements on Tribal Trust parcels and will comply with the Permit fully within any such easements. For Tribal Trust parcels that Tacoma doesn't have easements or other operational agreements, Tacoma lacks authority to compel Tribe to comply with this Permit, nor can Tacoma access these parcels for inspections of businesses, private stormwater facilities or any of the other activities in the Permit. Under this interpretation of Permit Area, the majority of Tacoma's MS4, which discharges into the outfalls located on Tribal Trust Parcels, will be unregulated and not subject to the requirements of this Permit.

Response: See Responses 6-C-1, 7-D-1, D-2, and D-3. No change was made as a result of this comment. EPA's permit authorizes the Permittee's MS4 discharges through outfalls that discharge to a portion of the Puyallup River within the 1873 Survey Area. The Permittee's implementation of its SWMP, in compliance with the WDOE Phase I Permit and EPA's Permit, reduces pollutants in MS4 discharges to the MEP and is presumed to comply with the Water Quality Standards of the Puyallup Tribe, protect water quality, and comply with other provisions of the CWA.

D-6-Tacoma: Clarify and revise the Permit and EPA Fact Sheet for consistency; Fact Sheet text limits the Permit Area differently than Permit Part 1.1. Fact Sheet Page 6, I.B states *"The Puyallup Tribe was granted Treatment as a State (TAS) by EPA under Section 518(e) of the CWA, 33 U.S.C. § 1377(e), to carry out the Water Quality Standards (WQS) Program under Section 303 of the CWA, 33 U.S.C. § 1313, on trust lands within the Permit Area, which includes the mainstem Puyallup River channel (below the mean high water mark)."*

Fact Sheet Page 8, IV.A, 1st para: *"EPA intends to issue the Permits authorizing stormwater discharges from the MS4s owned and/or operated by the Permittees to surface waters located in the Permit Area. These receiving waters include the Puyallup River from the mouth of the river to the boundary of the Permit Area, and segments of the Blair and Hylebos Waterways."*

Clarify whether EPA Permit coverage area could change while per the WDOE Permit the tribal exclusion area remains static.

Response: There is no inconsistency between the Permit and the Fact Sheet. Fact Sheet pages 6 and 8 merely use different descriptions to highlight the surface waters included in the Permit Area. See Responses 6-C-1, 7-D-1, D-2, and D-3, and 9-F-1.

It is possible that the Permit Area will change during the permit term. When land parcels within the 1873 Survey Area are transferred to "trust" status and held by the federal government for a federally recognized tribe or individual tribal member, that new parcel of Tribal trust land will be covered by EPA's permit instead of the WDOE Phase I Permit.

No change has been made in response to this comment.

D-7-Tacoma: Clarify and make language consistent in Permit and Fact Sheet regarding regulating discharges vs. regulating the MS4. Permit Part 1.1 states it covers "MS4s" that discharge to receiving waters within the 1873 Survey Area; Part 1.2 authorizes "discharges" of stormwater. Permit Cover Page says "is authorized to discharge from all municipal separate storm sewer system outfalls in the Permit Area described in Part 1.1..." EPA has stated that "the permit covers discharges", however that statement does not appear to be reflected in the actual EPA permit language of Section 1.1

Response: No change has been made in response to this comment. However, EPA has revised Permit Part 1.1 in all three MS4 permits (Pierce County, Tacoma and WSDOT) in response to a different comment that was received. See Response 9-F-1.

D-8-Pierce: Provide a legally defensible Permit Area description that addresses the different language used to describe permitting authority within tribal trust lands, Indian County, as defined by federal law 40 CFR §122.2, and Puyallup's 1873 Survey Area.

County can't accurately evaluate permit's scope or the level of effort needed for compliance without a clear understanding of the permit boundary and our authority within that boundary. This uncertainty complicates County's ability to review the other provisions of the Permit. Without a clear, unambiguous permit coverage area, it is difficult to compile comments.

Response: See Responses 7-D-1, D-2, and D-3; 6-C-1 regarding Indian Country, and 9-F-1 regarding revised text in Permit Part 1.1 (*Permit Area*).

8. Regarding Requests for Maps of Tribal Trust Land and Waters Subject to Puyallup Tribe's Water Quality Standards

E-1-Tacoma, Pierce County, WSDOT:

Provide a shapefile or an official inventory of Tribal Trust parcels that define and clarify the Permit Area.

Provide a shapefile or surveyed map showing where the Puyallup Tribal Water Quality Standards apply.

Provide a detailed map to allow us to see the storm drainage infrastructure in the permit boundaries.

Provide an official process in the Permit to obtain official inventory of tribal trust properties.

Tacoma requests an inventory of Tribal Trust Parcels updated each January based on an official notification process. Annual inventory would be added to Permit Area for following year and compliance for a given year be based upon the Annual update.

Response: See Response 9-F-1 regarding Permit Area. No change was made in response to these comments.

The *Water Quality Standards for Surface Waters of the Puyallup Tribe* apply to the Puyallup River bedlands below the ordinary highwater mark, the mouth of Hylebos Creek intertidal areas below the high tide line and "all surface waters overlying Tribal trust properties, up to the ordinary highwater mark." (Communication with Puyallup Tribe, 3/15/2022). There is no available map of waters where the *Water Quality Standards for Surface Waters of the Puyallup Tribe* apply.

Regarding the request for a map of storm drainage infrastructure in the Permit Area, in all three MS4 permits, Part 3.3.2 requires the Permittee to maintain a map of their MS4 in the Permit Area. EPA is not responsible for providing a map of storm drainage infrastructure in the Permit Area.

A procedure for requesting current boundary maps of Tribal trust property parcels, and for clarifying applicability of the Tribe's water quality standards to overlying surface waters, should be discussed directly with the Puyallup Tribe Water Quality Manager. (Communication with Puyallup Tribe, 3/15/2022).

The Permittees have successfully worked with the Puyallup Tribe to obtain information in the past in order to submit their MS4 permit applications. EPA suggests the Permittee submit to the Puyallup Tribe Water Quality Manager a list of verified MS4 outfall locations (by latitude/longitude), and formally request that the Tribe produce a GIS map representing both specific outfall locations and the Tribal trust property boundaries. Future requests during the permit term can be negotiated between the Permittee and Puyallup Tribe. As a further example, Tacoma may use the Annual Meeting now required in Tacoma Permit Part 2.5 as a regular opportunity to exchange information with the Puyallup Tribe. (Communication with Puyallup Tribe, 3/15/2022). See CWA §401 Cert Summary Section 2-9 in this Appendix.

9. Regarding Part 1.1 - Permit Area

F-1-Pierce, Tacoma, WSDOT: Provide clear definition of the Permit Area. MS4s outside the tribal trust lands are covered by the WDOE Phase I Permit. Edit permit text to clearly separate areas covered by the two permits. Commenter suggested edits to support these comments.

Clarify the areas considered "MS4s owned and/or operated by the Permittee that discharge to receiving waters located in Puyallup Tribal trust lands within the 1873 Survey Area of the Puyallup Reservation."

As drafted permit text does not provide sufficient clarity as to the outfalls covered by the permit. Various agreements regarding Tribal trust land are confusing and do not consistently describe the jurisdiction of EPA and WDOE over these lands.

Clarify the permit coverage area and include a map. If not, WSDOT & Pierce County requests additional time (up to 2 years from the effective date of the permit) to work with the Puyallup Tribe of Indians and others to determine outfall locations in the applicable coverage area.

Response: To better identify the geographic Permit Area in all three MS4 permits (Tacoma, Pierce County, WSDOT), EPA revised Part 1.1 regarding Permit Area, added a map as new Permit Appendix F, and added a table as new Appendix G to identify the locations of each Permittee's currently known MS4 outfalls in the Permit Area.

The purpose of new Permit Appendix F is to provide a publicly available map produced by the Puyallup Tribe of Indians titled "*Tribal [sic] Properties on or near the Puyallup Indian Reservation,*" updated 8-19-20. The map illustrates the different categories of land held in trust by the federal government within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington (the Permit Area). See also Response C-1 regarding the discussion of Indian Country.

The purpose of new Permit Appendix G is to explicitly name all known MS4 outfalls that the Permittee identified to EPA in their respective MS4 permit applications.

Regarding commenters' request for additional maps from the Puyallup Tribe pertaining to Tribal trust land and surface waters of the Puyallup Tribe, see Response Section 8-E.

EPA declines to extend the timeframe for mapping MS4 outfalls in the Permit Area defined by revised Part 1.1. The Permittee identified their known MS4 outfalls in their MS4 permit applications; if the Permittee finds additional outfalls after the permit effective date, new Permit Part 2.4

describes both a notification procedure and timeline for updating the Permittee's MS4 map and associated SWMP documentation. See Response Section 17-N.

Revised Permit Part 1.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) now reads as follows:

1.1 Permit Area

This permit covers ~~the municipal separate storm sewer systems (MS4s) owned and/or operated by the Permittee that discharge to receiving waters located in Puyallup Tribal trust lands within the 1873 survey area of the Puyallup Reservation (the Permit Area)~~ **all land held in trust by the federal government within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington (the Permit Area).**

As defined in the 1988 Puyallup Lands Claims Settlement Agreement and the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C § 1773 (b)(1), the Permit Area within the 1873 Survey Area includes the Puyallup River bedlands below the ordinary highwater mark, the mouth of Hylebos Creek intertidal areas below the high tide line, and all land held in trust by the federal government for a federally recognized tribe or individual tribal member. See Appendix F (Permit Area Map) and Appendix G (Outfalls Existing on Permit Effective Date).

F-2-Tacoma: Part 1.1 uses the term "*receiving waters*" and Part 1.2 uses the term "*waters of the United States*." Verify proper term and use in both sections. Perhaps appropriate to use "*waters of the Tribe*" and/or "*receiving waters*" in both sections?

Response: See Response 9-F-1.

Part 1.2 appropriately authorizes MS4 discharges to waters of the United States, which includes receiving waters. No specific change was made in response to this comment. See Response 32-OO-17 regarding the term *receiving waters* and Response 32-OO-14 regarding the term *Waters of the Tribe*.

10. Regarding Part 1.2 - Authorized Discharges

G-1-Pierce: Re: Part 1.2 - Commenter suggests multiple edits to Part 1.2. Although Permit defines "Waters of the Tribe," clarify where Permit alludes to Water of the State. Will we need to determine the potential differences when applying the limits as defined by the "current" Waters of the U.S./Waters of the Tribe determination/delineation criteria?

Response: In all three MS4 permits (Pierce County, Tacoma, WSDOT), EPA deleted the definition of Waters of the Tribe from Part 9, and all associated references. See Response 32-OO-14. EPA's permit does not reference Waters of the State.

The Permittee must consult with the Puyallup Tribe Water Quality Manager regarding specific questions related to identification of surface waters overlying Tribal trust properties. See also Response OO-4. No change was made in response to this comment.

G-2-Pierce: Re: Part 1.2 - Is EPA's intent that Part 1.2 implies that if we follow WDOE Phase I Permit, we are in compliance with EPA's permit for discharges from areas covered by the state permit?

Response: EPA's Permit does not authorize MS4 discharges from areas covered by WDOE Phase I Permit. Instead, the Permit authorizes MS4 discharges to waters of the U.S. in the Permit Area, as

defined in revised Part 1.1. See Response 5-B-1. As such, the permittees are required to comply with EPA's permit in the Permit Area and are required to comply with the WDOE Phase I Permit in areas that are under the State's jurisdiction. No change was made in response to this comment.

G-3 Pierce: Re: Part 1.2.1.1 - Suggested edit: *The non-stormwater discharges is authorized by a ~~are in compliance with a separate National Pollutant Discharge Elimination System (NPDES) permit;~~*

Question: Does this need to be an [industrial stormwater general permit] issued by EPA, or are WDOE-issued NPDES Industrial Stormwater General Permit (ISGP) sites covered?

Response: EPA declines to edit the permit(s) as suggested by the commenter. Instead, EPA has revised Part 1.2.1.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) consistent with other EPA-issued MS4 permits, as follows:

1.2.1.1 The non-stormwater discharges ~~are in compliance~~ **comply** with a separate National Pollutant Discharge Elimination System (NPDES) permit;

In response to commenter's question: Both the EPA and WDOE industrial stormwater general permits apply to the discharge of industrial *stormwater*. Permit Part 1.2 addresses *non-stormwater* discharges. Permit Part 1.2.1.1. is describing a situation where an industrial facility is discharging process wastewater into the MS4. In that situation, if the facility has an NPDES permit for the discharge of that process wastewater, then that is an allowable non-stormwater discharge.

Permit Part 1.5 addresses NPDES-regulated stormwater discharges from industrial or construction activities into the MS4. See Response 13-J-2.

G-4-Pierce, Tacoma: Re: Part 1.2.1.2 – Suggested edit: *The non-stormwater discharges originate is from emergency firefighting activities during the emergency only, not the subsequent clean-up;*

Comment: Define "end of emergency." Is it the initial response until the situation is under control? By this definition, there may be some clean up involved. This section is inconsistent with Part 9 Definition #21 Illicit Discharge, which indicates that "fire-fighting activities" is not an illicit discharge without limitations on the type and timing of fire-fighting activities. Remove the words "not the subsequent clean-up" from this section.

Response: EPA has revised Part 1.2.1.2 in all three MS4 permits (Tacoma, Pierce County and WSDOT) using phrasing consistent with EPA-issued MS4 permits for U.S. Navy facilities in Western Washington, to clarify "end of the emergency" as follows:

The ~~non-stormwater~~ discharges originate from emergency firefighting activities during the emergency only, not the ~~subsequent clean-up~~ **after the emergency has ceased.**
Determination of cessation of the emergency is at the discretion of the emergency on-scene coordinator. During cleanup, non-stormwater discharges to the MS4 are prohibited;

See: EPA Region 10 *Response to Comments for Naval Station Everett MS4 Permit, #WAS026620*, November 2020; and Permit #WAS026620, Part 1.3.4.2.

EPA's permit authorizes discharges into the MS4 only while emergency fire-fighting activities are underway. Discharges occurring during cleanup activities, after the emergency phase is finished, are not authorized.

The revised permit condition is comparable and has the same interpretation as WDOE's Phase I MS4 Permit. See: WDOE *Fact Sheet for the Draft Phase I Municipal Stormwater Permit, November 4,*

2011, page 28. Note that EPA's definition of "illicit discharge" in the permit and at 40 CFR §122.26(b)(2) refers to firefighting activities without qualifier. However, in subsequently issued EPA permits (such as the EPA Multi Sector General Permit for Stormwater Associated with Industrial Activities (MSGP), Construction General Permit (CGP), and other MS4 permits), this terminology has been interpreted to mean only discharges from unplanned emergency firefighting activities are allowable.

G-5-Pierce: Re: Part 1.2.1.3 – the term "reasonable and prudent" may leave room for interpretation. Would EPA review and approve a spill response plan? Suggested edit: ".... respond in accordance to the spill response plan approved by EPA for this permit"

Response: No change was made in response to this comment. EPA will not review or approve a spill response plan as part of the administration of this permit. Consistent with other EPA Region 10-issued MS4 permits, the Pierce County, Tacoma and WSDOT MS4 permits do not authorize discharges of material resulting from a spill. Part 1.2.1.3 clarifies that if discharges from a spill are necessary to prevent imminent threat to human life, personal injury, or severe property damage, the permittee(s) are responsible for conducting (or ensuring that the responsible party conducts) reasonable and prudent measures to minimize the impact of such discharges on human health and the environment.

G-6-Pierce, Tacoma: Re: Part 1.2.1.4 –

Comment: This provision is not listed in the WDOE Phase I Permit. It reads: *The non-stormwater discharges result from a spill and consist of emergency discharges required to prevent imminent threat to human health or severe property damage, provided that reasonable and prudent measures have been taken to minimize the impact of such discharges; or ...*

Comment: Clarify why there needs to be a spill in addition to emergency discharge to be an authorized discharge. Remove spill or substitute "and/or" for "or" following spill in this Section.

Response: No change was made in response to these comments. Part 1.2.1 defines allowable non-stormwater discharges into the Permittee's MS4 under five specific conditions.

EPA is not required to match the WDOE Phase I Permit in every respect.

The Pierce County, Tacoma and WSDOT MS4 Permits do not authorize discharges from the MS4(s) of material resulting from a spill unless reasonable and prudent measures have been taken to prevent and minimize the impact of such discharges. The discharges may result from a spill due to "unusual and severe weather" as in Part 1.2.1.3, or the discharges may result from the actions meant to respond to the spill, such as the dispersal of surfactants, as in Part 1.2.1.4.

G-7-Pierce: Re: Part 1.2.1.5 – Suggested edit: *The discharges are from another illicit or non-stormwater discharge that is managed by the Permittee as provided in Part 3.3 (Illicit Discharge Detection and Elimination).*

Response: EPA revised all three MS4 permits (Pierce County, Tacoma and WSDOT) as suggested.

11. Regarding Part 1.3 - Discharges Threatening Water Quality

H-1-Pierce: Re: Part 1.3 - If the intent is to regulate groundwater and sediment in this permit, please address it in Part 1.3. Stormwater is required by WDOE Phase I Permit to meet Groundwater and Sediment Management standards for discharge, but not in this section of EPA permit. Later in EPA permit, sediment sampling is required, and groundwater is cited for compliance. This aligns with the order of requirements in our state permit.

Response: It is not EPA's intent, nor is it within EPA's authority, to regulate groundwater or sediment through these MS4 permits. The Pierce County, Tacoma & WSDOT MS4 permits authorize MS4 discharges to waters of the United States within the Permit Area defined in revised Part 1.1. EPA's permit is written to ensure compliance with the CWA and its implementing regulations which requires that the permits ensure that the discharges meet the *Water Quality Standards for Surface Waters of the Puyallup Tribe* (1994). Unlike Washington's water quality standards, the Tribe's water quality standards do not include groundwater and sediment management standards.

Sampling of stormwater solids is required in EPA Permit Part 5 (and Permit Appendix E) as a characterization of stormwater discharge quality, not to demonstrate compliance with WA sediment management standards. There is no requirement to sample groundwater. No change was made in response to this comment.

H-2-Pierce, Tacoma: Re: Part 1.3 –

Suggested additional text: *The permit does not authorize a discharge which would be a violation of WA State Surface Water Quality Standards (Chapter 173-201A WAC), Groundwater Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), or human health-based criteria in the National Toxics Rule (40 CFR 131.45).*

Alternative Edit: Revise Part 1.3 to be consistent with WDOE Phase I Permit Section S4.B: *"The Permit does not authorize a discharge which will be a violation of the applicable water quality standards within the receiving waters."*

Name the applicable Water Quality Standards that this permit requires compliance with. WA publishes standards, the Tribe also has standards. In some cases, EPA has standards. If we are in compliance with this permit by being in compliance with our State issued Phase I permit, we are potentially applying two very different water quality standards to these waters.

Define "reasonable potential" in context of this provision or remove phrase; this is typically related to a standard calculation procedure for exceedances of Water Quality Standards in receiving water.

Response: EPA declines to revise text as suggested but agrees that additional clarity is needed. Since these permits authorize the discharge to tribal waters, the Pierce County, Tacoma & WSDOT MS4 permits do not authorize discharges to waters subject to Washington State Surface Water Quality Standards (Chapter 173-201A WAC), Groundwater Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), or human health-based criteria in the National Toxics Rule (40 CFR §131.45).

EPA disagrees that compliance with the WDOE Phase I and WSDOT MS4 permit is inconsistent with compliance with the *Water Quality Standards for Surface Waters of the Puyallup Tribe*. See: discussion in EPA Fact Sheet, pages 12-15; Puyallup Tribe Final CWA Sec. 401 Certifications dated 12/15/2021, respectively.

EPA has revised Part 1.3, consistent with other EPA-issued MS4 permits in Western Washington for the U.S. Navy and U.S. Army, to specify the *Water Quality Standards for Surface Waters of the Puyallup Tribe*, and to explicitly state that compliance with the permit terms and conditions is presumed to comply with these standards. Part 1.3 is revised in all three MS4 permits (Pierce County, Tacoma & WSDOT) as follows:

1.3 ~~Discharges Threatening Water Quality~~ **Compliance with Water Quality Standards**

~~The Permittee is not authorized to discharge stormwater that will cause, or have the reasonable potential to cause or contribute to, an exceedance above the applicable water quality standards. The required response to such exceedances of these standards is defined in Part 4 (ADAPTIVE MANAGEMENT RESPONSE).~~ **If the Permittee complies with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an exceedance above the *Water Quality Standards for Surface Waters of the Puyallup Tribe*. If the Permittee finds that there has been a discharge that causes, or has the potential to cause or contribute to, an exceedance above the *Water Quality Standards for Surface Waters of the Puyallup Tribe*, the required response by the Permittee is set forth in Part 4 (Adaptive Management Response).**

12. Regarding Part 1.4 – Snow Disposal

I-1-Pierce, Tacoma: Re: Part 1.4 –

Text appears to effectively prohibit Permittees from keeping roads safe to travel during cold weather or storm events. Snow melt from roads treated with salt/brine drains to roadway, curb and gutters that are part of the MS4. The permit as written does not allow plowing or melting snow into MS4 but instead requires collection & treatment, which is unreasonable. Commenter suggests edits for consistency with WDOE Phase I Permit re: Maintenance and Operations activities to reduce pollutants to the maximum extent practicable.

Text references Part 3.7, which then references stormwater facilities that may or may not be present in areas where snow is melting; refer to other BMPs that allow County to maintain safe driving conditions.

If this is for snow physically in a parking lot or containment area, make that clear. Clarify whether we can move snow to a parking lot or other storage area where to melt and flow to the MS4. Clarify expectations and requirements of Part 1.4. Tacoma follows BMPs equivalent to WDOE's and the Regional Road Maintenance Program.

Why is Part 1.4 contained in Part 1 Applicability? Remove Part 1.4; should be covered more appropriately in Part 3.7.7. Part 1.4 appears to say that plowing snow to the road (curb or gutter) is prohibited as snow melt would occur at this location. Tacoma has infrequent large snow events and no snow disposal facility. Typically, snow is plowed to the road edge and melts there. Part 1.4 makes this an unauthorized discharge, but then references Part 3.7. Snow and ice control is addressed in Section 3.7.7.6.

Response: No change was made in response to these comments. The purpose of Part 1.4 is to explicitly prohibit dumping excess snow collected from urban areas directly to waters of the United States. Nothing in Part 1.4 restricts the Permittee from actions necessary to provide safe transportation during cold weather through activities such as plowing snow from brine/salt treated roadways into the MS4 roadside ditches.

Part 1.4 recognizes the Permittee's use of appropriate BMPs (such as proper material application rates, brine formulas, etc. associated with the Permittees' snow management practices) to conditionally limit pollutants in snow melt. The permit authorizes all such discharges when Permittees use the appropriate snow management practices through its operation and maintenance program required by Permit Part 3.7.2 (*Maintenance Standards*) and specified through the ordinances and manuals in Permit Appendix C (*Minimum Technical Requirements*).

Commenters describe practices that don't appear to be a situation where they dump snow directly into the water; instead, they plow the snow to the side and follow BMPs set forth in the SWMP. Such actions are all consistent with the permit. In short, the Permittees' ongoing snow management activities, conducted in compliance with ordinances and manuals deemed equivalent to the 2019 *Stormwater Management Manual for Western Washington (SWMMWW)*, would be in compliance with Permit Part. 1.4 by reducing pollutants in stormwater discharges to the maximum extent practicable, to comply with the *Water Quality Standards for Surface Waters of the Puyallup Tribe (1994)*.

I-2-Tacoma: Re: Part 1.4 –Tacoma is not authorized to manage snow disposal sites on Tribal Properties. Provide exclusionary language to ensure Tacoma can remain in compliance when Permit sections might relate to Tribal Trust Lands.

Response: This provision addresses the Permittee's management of snowmelt through the MS4 to waters of the United States in the Permit Area. See Response 12-I-1 above. EPA recognizes that the Permittee's snow management does not involve operations on Tribal Trust properties. If snow management on trust properties negatively affects discharge quality through the Permittee's MS4, the Permittee must work with Puyallup Tribe to resolve the matter. See Response 5-B-1. No change was made in response to this comment.

13. Regarding Part 1.5 – Stormwater Discharges Associated with Industrial/Construction Activity

J-1-Pierce: Commenter suggests edits to last phrase of 1.5: *...., unless such discharges are otherwise authorized under another state, federal or municipal appropriate NPDES permit.*

Response: No change was made to the permit. Under the CWA and federal regulations, authority to issue NPDES permits remains with EPA unless delegated to an authorized state agency. Therefore, the reference to "another appropriate NPDES permit" means a NPDES permit issued by either EPA or WDOE. NPDES permitting authority is not delegated to a municipality.

J-2- Tacoma: Tacoma is not authorized to ensure that appropriate Permits are obtained on Tribal Trust parcels. Provide exclusionary language to ensure Tacoma is in compliance when Permit sections might relate to Tribal Trust lands. This section prohibits discharge of stormwater from facilities that meet EPA or WDOE's criteria to obtain a Construction Stormwater General Permit (CSWGP) or Industrial Stormwater General Permit (ISGP). Tacoma is not in control of EPA's or WDOE's NPDES permitting program and prohibiting the discharge from facilities that EPA or WDOE has not permitted puts Tacoma in a position of Permit noncompliance Permit that it cannot resolve. Tacoma can't legally ensure that sites obtain appropriate CSWGP or ISGP Permits as those Permits are not issued by Tacoma.

Response: Certain stormwater discharges are required to obtain NPDES permits pursuant to federal NPDES program regulations: stormwater discharge associated with industrial activity as described in 40 CFR §122.26(b)(14), [this definition also provides for construction activity disturbing greater than

1 acre at 40 CFR §122.26(b)(14)(x)]; and stormwater discharge associated with small construction activity as defined in 40 CFR §122.26(b)(15).

Part 1.5 requires these NPDES-regulated stormwater discharges into/through the Permittee's MS4 to be authorized by an appropriate NPDES permit. If such discharges are not appropriately subject to a NPDES permit, it would be an uncontrolled, unauthorized discharge into the Permittee's MS4.

EPA and Puyallup Tribe recognize that the Permittee does not have enforcement authority over discharges from Tribal Trust Land within the 1873 Survey Area. See Response 5-B-1. However, the Permittee is responsible for improving the quality of the water discharging from its MS4. EPA expects the Permittee to work cooperatively with Puyallup Tribe and EPA, in collaborative ways, to educate, inform, and ultimately direct the operator to apply for discharge authorization under the appropriate NPDES permit or to cease the discharge.

The Permittee's compliance with this provision would be determined by evidence of the Permittee's communication with the operator, Puyallup Tribe, and EPA to indicate that the operator is obligated to obtain discharge authorization under the appropriate NPDES permit. Subsequent enforcement of that operator's permit obligation remains with EPA and Puyallup Tribe.

EPA has revised Part 1.5 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to include proper reference to NPDES regulatory definitions for *stormwater discharge associated with industrial activity* and *stormwater discharge associated with small construction activity*; See also Response OO-20.

14. Regarding Part 2.1 - Permittee Responsibilities -Shared Implementation with Outside Entities

K-1-Pierce: Add a reference to this section to WDOE Phase I Permit Section S.3. Other suggested edits: *Permittee remains responsible for compliance with the permit obligations if the other entity fails to implement ~~the control measure(s) (or component thereof)~~ the permit conditions.* In Part 2.2.1.2: Delete "*or component thereof*" In Part 2.1.4.3: delete whole word Stormwater Management Program.

Response: EPA declines to reference WDOE Phase I Permit Section S3.B as suggested but agrees Part 2.1 is comparable to that provision.

EPA agrees to delete references to control measure "*components,*" but for consistency with other MS4 permits issued by EPA Region 10 and with the federal stormwater terminology, EPA elects to retain the term "*control measures.*" EPA retains whole word *Stormwater Management Program* as the first usage of the term and acronym in the body of the permit. See also responses to comments regarding Part 2.3 in Response Section 16-M.

K-2-Tacoma: Re: Part 2.1.4.1 - Use the term *entity* instead of organization for consistency.

Response: EPA revised all three MS4 permits (Tacoma, Pierce County & WSDOT) as suggested.

15. Regarding Part 2.2 - Maintain Adequate Legal Authority

L-1-Tacoma: Revise 1st sentence Part 2.2; as written, it exposes Tacoma to enforcement and third-party lawsuits by imposing an obligation on Tacoma to control pollutant discharges into MS4 from Tribal Trust land. Where Part 2.2.1, as drafted, sufficiently recognizes Tacoma's limitations to enforce environmental regulations on trust land as provided by state law, without similar text in Part 2.2 EPA imposes an obligation that Tacoma has no authority to control or regulate.

Response: EPA revised all three MS4 permits (Tacoma, Pierce County & WSDOT), first sentence of Part 2.2, to add the phrase ***"To the extent allowable, pursuant to the respective authority granted the Permittee under applicable State law,"***.

EPA also revised Part 2.2.1 to clarify its reference to applicable ***State*** law.

L-2-Pierce, Tacoma: Re: Part 2.2 - Add reference to S4.C.1 from WDOE Phase I Permit. Commenters suggest multiple edits to align EPA text with WDOE Phase I Permit Section S5.C.1. Edits to individual subparts are detailed as separate comments below.

Response: EPA declines to add reference to WDOE Phase I Permit Section S4.C.1 as suggested. EPA Permit Part 2.2 is comparable to WDOE Phase I Permit Section S5.C.1. In both permits, text is derived from 40 CFR §122.26(d)(2)(i). Both EPA and WDOE texts vary from the regulation in minor ways.

Upon consideration, EPA has revised Part 2.2 as suggested by individual comments below to better reflect the federal regulation and WDOE Phase I Permit Section S5.C.1.

EPA revised Part 2.2 in both Pierce County and Tacoma MS4 permits as suggested by commenters. See Responses 15-L-4 and L-5. Where appropriate, EPA also revised Part 2.2 in the WSDOT MS4 permit, however, as drafted EPA's WSDOT permit text regarding available legal mechanisms is comparable to WDOE's WSDOT MS4 Permit at Section S5.C.1.

L-3-Pierce, Tacoma: Re 2.2.1: As written, text requires County to obtain legal authority over tribal trust lands. We don't believe Puyallup Tribe would agree; County works hard to respect Tribal authority over their lands.

Provide exclusionary language to ensure Tacoma can remain in compliance when Permit Parts might relate to Tribal Trust Lands. Tacoma can't ensure that appropriate legal authority is obtained for Permit compliance associated with Tribal Trust properties.

Response: Tacoma Permit Part 2.2.1 does not require Permittees to obtain legal authority over Tribal Trust properties. EPA and Puyallup Tribe recognize that the Permittees do not have legal authority on Tribal Trust properties. See Response 5-B-1.

As noted in Response J-2, Permittees remain responsible for reducing pollutants in MS4 discharges in the Permit Area defined in revised Part 1.1. Permittees are expected to use all available legal and cooperative mechanisms to require controls that reduce pollutants discharged from their MS4 to the MEP.

No change was made to the permit as a result of this comment.

L-4-Pierce: Re: Part 2.2.1.1 – Ensure text only requires County to enforce its programs and regulations. WDOE Phase I Permit acknowledges that the State is responsible for issuing and ensuring compliance with the state NPDES permits. Permit text makes County responsible for ensuring that industries comply with a permit that we do not issue and do not have authority over.

Response: See edits to 1st sentence Part 2.2, Response L-1 above. EPA clarifies that “stormwater discharge associated with industrial activity” is a unique term in the NPDES program referring to the categories of stormwater discharge that must be managed under an NPDES permit. See also Response J-2 (re: Part 1.5).

Part 2.2.1.1 is derived from 40 CFR §122.26(d)(2)(i)(A). EPA agrees to make commenter’s suggested edits in the Pierce County and Tacoma MS4 permits as follows:

Control through ~~statute, ordinance, policy, permit, contract, court or administrative order,~~ or other similar means, the contribution of pollutants to MS4s owned and/or operated by the Permittee from stormwater discharges associated with industrial activity, and control the quality of stormwater discharged from sites of industrial activity; ...

L-5-Pierce: Re: Part 2.2.1.2 – Commenter suggested edits to better match WDOE permit language.

Response: Part 2.2.1.2 is derived from 40 CFR §122.26(d)(2)(i)(B). EPA agrees to make commenter’s suggested edits in the Pierce County, Tacoma and WSDOT MS4 permits as follows:

Prohibit **through ordinance, order or similar means** and ~~eliminate, through statute, ordinance, policy, permit, contract, court or administrative order, or other similar means,~~ illicit discharges to the MS4 **owned or operated by the Permittee;**

L-6-Pierce: Re: Part 2.2.1.3 – Suggested edits to better match WDOE permit language.

Response: Part 2.2.1.3 is derived from 40 CFR §122.26(d)(2)(i)(C). EPA agrees to revise the Pierce County, Tacoma and WSDOT MS4 permits as follows:

Control, ~~through statute, ordinance, policy, permit, contract, court or administrative order,~~ or ~~other~~ similar means, the discharge ~~to the MS4~~ of spills, dumping, or disposal of materials other than stormwater **to the MS4s owned and/or operated by the Permittee**, pursuant to Part 3.3 (Illicit Discharge Detection and Elimination);

L-7-Pierce: Delete Part 2.2.1.4. It is repeated in Part 3.4, for new/redevelopment requirements.

Response: As drafted, Part 2.2.1.4 does not match the NPDES regulation and is adequately addressed in Part 2.2.1.1. EPA agrees to delete this Part 2.2.1.4 in all three MS4 permits (Pierce County, Tacoma, WSDOT), and has renumbered the remaining subparts accordingly.

L-8-Pierce: Re: Part 2.2.1.5 – Suggested edits to better match state permit language

Response: Part 2.2.1.5, as drafted, is derived from 40 CFR §122.26(d)(2)(i)(D). EPA agrees to revise and renumber the Pierce County, Tacoma and WSDOT MS4 permits as follows:

2.2.1.4 Control through interagency agreements ~~as necessary or appropriate,~~ the contribution of pollutants from one **portion of the MS4** to another interconnected MS4;

L-9-Pierce, Tacoma: Re: Part 2.2.1.7 - Add "*within the limitations of state law*" at the beginning of 1st sentence. Add "*and compliance with local ordinances*" at end of the sentence. We are bound by state law, which impose high standards through lawsuits prohibiting us from infringe on anyone's rights to do a variety of activities normally considered polluting to land and waters.

Response: Part 2.2.1.7, as drafted, is derived from 40 CFR §122.26(d)(2)(i)(F). Commenters' suggested edits are directly comparable to WDOE Phase 1 MS4 Permit Section S5.C.1.b.vi. EPA agrees to make appropriate edits in all three MS4 permits (Tacoma, Pierce County and WSDOT) as follows:

2.2.1.6 Within the limitations of state law, Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with these permit conditions, including the prohibition of illicit discharges to the MS4 **and compliance with local ordinances.**

L-10-Pierce: Revise Part 2.2.2 to limit interpretation to what is legal and feasible. Suggested edit: *If existing legal authority is not sufficient to meet the criteria listed in 2.2.1, the Permittee must adopt...*

Response: Part 2.2.2 is revised in all three MS4 permits (Tacoma, Pierce County and WSDOT) as suggested.

16. Regarding Part 2.3 - Stormwater Management Program

M-1-Pierce: Clarify how we meet the intent of the EPA permit conditions in one SWMP document.

EPA committed to making its permit requirements similar to the WDOE Phase I Permit, but it is not similar; differences between the two imply different criteria. Commenter states its evaluation of new/additional requirements beyond WDOE Phase I Permit is difficult because the two permits do not align, and believes misalignment impedes consistent reporting – WDOE Phase I Permit requires annual reports that follow that permit's order, and EPA should do the same. As written, it's difficult to have one consistent SWMP document. Clarify whether we can submit our entire SWMP that addresses State and Federal permit programs and actions to meet these permit requirements. Are you allowing one report? When language is inconsistent with WDOE Phase I permit, does it need to be reported separately? Will each section of our stormwater management plan require an additional section specifically for the area that is covered under this permit?

Response: The EPA MS4 permit is not significantly different than WDOE Phase I Permit. To provide additional consistency, EPA has added the following introductory sentences to Tacoma and Pierce County permits Part 2.3 which are similar to WDOE Phase I Permit Sections S5.A. and S5.C regarding the SWMP implementation:

The Permittee must implement a Stormwater Management Program (SWMP) during the term of this Permit. The SWMP is the set of actions and activities comprising the control measure components in Part 3 (*Stormwater Management Program Control Measures*) and additional actions in Part 5 (*Monitoring Requirements*). To the extent allowable under state and federal law, all SWMP requirements are mandatory.

The Permittees may not use the same SWMP document developed in compliance with the WDOE Phase I Permit to meet the conditions of the EPA permit. Permit Part 2.3 states that the Permittee may, for example, add to their existing SWMP document [e.g., through properly named Appendix or other means so as not to confuse the public]. However, since the Tribe has included a condition in

the 401 certification which requires the Permittees to have a separate stand-alone SWMP document, EPA was required to include that condition in the Permit(s) pursuant to CWA Section 401(d). See also Response S-2.

EPA declines to reorganize the EPA MS4 permit(s) to match the structure of the WDOE Phase I Permit or the WDOE WSDOT Permit. However, EPA recognizes the commenter's opinion and wants to minimize future confusion. Therefore, prior to issuance of the final permit(s) EPA will provide an example SWMP Document template as a stand-alone compliance assistance tool in support of these permits. EPA will draft the SWMP template to provide a suggested organization that is more compatible with the WDOE format with which the commenter is more familiar. Specifically, WDOE specifies in the Phase I Permit that the SWMP Plan Document must be organized by the sections as listed in the permit as follows: *Legal Authority; MS4 Mapping; Coordination – shared implementation, etc; Public Involvement & Participation; Controlling Runoff from New/Redevelopment & Construction; Stormwater Planning; Structural Stormwater Controls; Source Control Program for Existing Development; Illicit Connections & Illicit Discharge Detection and Elimination; Operation & Maintenance; Education and Outreach*. EPA will structure its templates in this manner.

EPA notes that its draft MS4 permit requires all the same identified control measure sections as the WDOE Phase I Permit, with the exception of *Stormwater Planning*.

EPA also intends to provide a revised *Appendix A - Annual Report template*; See Response Section 33-PP. The Puyallup Tribe will provide input to EPA on the content of both templates. With these compliance assistance materials, the Permittee should have minimal difficulty compiling and submitting the necessary documents as required by their respective permit.

M-2-Pierce: Regarding Part 2.3.1 –Suggested edits: *The Permittee must maintain a written SWMP Document, or documents, to describe in enough detail to determine compliance, how the Permittee complies with the required control measures in this permit....The Permittee has an existing SWMP document as required under Washington Department of Ecology's Phase I Municipal Stormwater General Permit (WAR044002). All relevant new ordinances and other new regulatory mechanisms, not already in effect, that are required~~The Permittee may add to and update their existing SWMP document to meet the requirements of this Permit.~~*

Response: EPA declines to revise Part 2.3.1 as suggested by the commenter. See CWA §401 Certification Summary Section 2-6 in this Appendix.

M-3-Pierce: Pierce County will comply with this requirement. Recommend Puyallup Tribe and EPA download our SWMP and annual report from website to save paper, mailing costs and potential confusion in reporting deadlines by. Consider revising EPA Annual Report requirements to do so.

Response: The Permittee must submit the Annual Report and SWMP documents to EPA and Puyallup Tribe as directed by Part 6.1. See also Response S-6. No change was made as a result of this comment.

M-4-Tacoma: Regarding Part 2.3 – Tacoma is not authorized to ensure that the SWMP components are met on Tribal Trust properties. Provide exclusionary language to ensure Tacoma remains in compliance when Permit relates to Tribal Trust lands. If the Permit Area includes Tribal Trust properties only, Tacoma would only include those small number of parcels that are Tribal Trust and locations with Tacoma easements or operational agreements. No Tacoma right of ways would be included in the SWMP.

Response: See Response 5-B-1 re: legal authority, and Response Section 7-D. No change was made in response to this comment.

M-5-Tacoma: Regarding Part 2.3.1 - Permit requires more SWMP information than WDOE Permit requires. Clarify why EPA Permit doesn't mirror WDOE's SWMP requirements, as stated in Fact Sheet Page 15: *"EPA expects that the Permittees will implement essentially the same SWMP that they implement in Washington."* EPA permit text does not reflect this. Part 2.3.1 last sentence states, *"The Permittee may add to and update their existing SWMP document to meet the requirements of this Permit."*

Response: EPA has redrafted text regarding expected SWMP content in both Pierce County and Tacoma permits Parts 2.3.1 and Part 3 to improve consistency between EPA and WDOE permits. See Response 16-M-1.

See also: Response 5.B-1 re: legal authority, Response Section 7-D.1 regarding Permit Area; and CWA §401 Certification Summary Section 2-7 in this Appendix regarding the certification condition related to Tacoma Permit Parts 2.3.1 and 2.3.1.2.

M-6-Pierce: Regarding Part 2.3.1.2 - Throughout EPA Permit, replace *"Control Measure"* and *"Control Measure Component"* with **BMP**. WDOE has no definition for control measure but it does for BMP. Both State and Federal definitions of BMP appear adequate to cover all intended practices, structures or "measures" making the use of "Control Measures" redundant and confusing. Suggested edit: 2.3.1.2:.... *for implementation of any ~~control measure components~~ **BMP** to be developed and accomplished during the term of this permit.*

Response: No change was made in response to this comment. As previously noted, EPA is not required to follow WDOE's MS4 permits in every respect. "Control measure" is a term consistently used by EPA in its MS4 permit guidance materials to refer to the actions/activities that comprise a Stormwater Management Program; further, EPA defines control measure in Permit Part 9.7 as *"...any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States..."* See also Response K-1.

M-7-Pierce: WDOE Permit does not require submittal of SWMP with permit renewal application.

Response: No change was made in response to this comment. EPA is not required to follow WDOE's MS4 permits in every respect. EPA will require submittal of the most current version of the Permittee's SWMP document as part of the permit renewal process in order to assist EPA draft the next permit.

M-8-Pierce: Regarding Part 2.3.2 – The title, *SWMP Information and Statistics*, implies metrics for every action, resulting in a statistic to be reported. Recommend edits to clarify not all actions have metric or statistic associated with success. Also delete redundant AR reference.

Suggested edit: *The Permittee must maintain a method of gathering, tracking, and using SWMP information to set priorities and assess permit compliance. Permittees must track activities and document program outcomes as stipulated by the respective SWMP control measure program and where a metric is required or statistical analysis is relevant and feasible, must cite relevant information and statistics, reflecting the specific reporting period, in each Annual Report.*

Response: EPA agrees to revise Part 2.3.2 in the Pierce County and Tacoma MS4 permits consistent with this comment, by changing the title and providing examples of the type of information expected to be included in the Annual Reports; this revision is comparable to WDOE Phase I Permit Section S5.A.3. Revised text now reads as follows:

2.3.2 SWMP Information and ~~Statistics~~ **Metrics**

The Permittee must maintain a method of gathering, tracking, and using SWMP information to set priorities and assess permit compliance. The Permittees must track activities and document program outcomes as stipulated by the respective SWMP control measure, **(e.g., the number of inspections, official enforcement actions, and/or types of public education actions, etc.)**, and **must** cite relevant information and statistics, reflecting the specific reporting period, in each **include this information in the** Annual Report.

M-9-WSDOT: Regarding WSDOT Permit Part 2.3.2 *SWMP Info & Statistics* – Revise for consistency with WDOE WSDOT Permit (Sections S5.A.1.a.iv, and S8.A). The SWMP describes WSDOT programs and planned upcoming actions to meet permit requirements, whereas the Annual Report is a compliance report tracking information and documenting actions taken during the reporting period. As written EPA permit requires information related to tracking and compliance be included in the SWMP. Revise text so this information included in the Annual Report instead, - existing language in the Annual Report Parts 3.1.6, 3.2.4, 3.3.7, 3.4.6, 3.5.4, 3.6.10, and 3.7.10 already require this.

Response: Commenter misconstrues the purpose of Part 2.3.2. In Part 2.3.1, EPA describes the required content of the SWMP Document. In Part 2.3.2, EPA requires WSDOT to have ways to track SWMP activities to document permit compliance; EPA does not intend for such tracking information to be included in the SWMP Document, but rather in the Annual Report(s). EPA believes this provision is fully consistent with WDOE WSDOT Permit Sections S5.A.1.a.iv and S8.A.

To provide additional clarity, EPA revised WSDOT Permit Part 2.3.2 consistent with Tacoma & County text revisions described in Response M-8, as follows:

2.3.2 SWMP Information and ~~Statistics~~ **Metrics**

The Permittee must maintain a method of gathering, tracking, and using SWMP information to set priorities and assess permit compliance. **The** Permittees must track activities and document program outcomes as stipulated by the respective SWMP control measure, **(e.g., the number of inspections, official enforcement actions, and/or types of public education actions, etc.)**, and **must** cite relevant information and statistics, reflecting the specific reporting period, in each **include this information in the** Annual Report.

M-10-WSDOT: Delete Part 2.3.2 SWMP Information and Statistics. Revise other Permit Parts as follows:

3.1.1 SWMP Document – The Permittee must describe the education and outreach program and its goals in the SWMP Document.

3.2.1 SWMP Document – The Permittee must describe the public involvement and participation program and its goals in the SWMP Document.

3.3.1 SWMP Document – The Permittee must describe the IDDE program and its goals in the SWMP Document.

3.7.1 SWMP Document – The Permittee must include a written description of the O&M Program including maintenance schedules in the SWMP Document.

Response: EPA declines to delete WSDOT Permit Part 2.3.2 as requested.

EPA agrees to revise text in WSDOT Permit Parts 3.1.1, 3.2.1, 3.3.1, and 3.7.1 consistent with commenter's suggested clarifications. EPA further clarifies that the SWMP document describes the program goals and activities, and the Annual Reports document program accomplishments and lessons learned.

As such, for consistency, EPA has also made the same revisions in Parts 3.1.1, 3.2.1, and 3.3.1 in both the Pierce County and Tacoma permits.

Note that Part 3.7.1 in the Pierce County and Tacoma permits is not revised in response to this comment. Instead, see Responses 24-GG-2 and GG-3.

M-11-Pierce: Regarding Part 2.3.3 - For consistency with WDOE permit, revise to require cost tracking without an annual requirement to submit it and publish it with our SWMP.

Suggested addition/edit: Each permittee shall track the cost or estimated cost of development and implementation of each component of the SWMP. This information shall be provided to EPA upon request.

Response: EPA agrees; Part 2.3.3 in both Pierce County and Tacoma MS4 permits are revised by deleting 2.3.3.1 and new text reads as follows:

2.3.3 SWMP Resources

The Permittee must provide adequate finances, staff, equipment and other support capabilities to implement the SWMP actions and activities and other requirements outlined in this permit. **The Permittee must track the cost or estimated cost of development and implementation of each component of the SWMP. This information shall be provided to EPA and the Puyallup Tribe upon request.**

~~2.3.3.1 — Consistent with Part 2.3.2 (SWMP Information and Statistics), the Permittee must summarize estimated SWMP implementation costs over the relevant reporting period in each Annual Report.~~

M-12-WSDOT: Regarding Part 2.3.3 - Revise for consistency with WDOE WSDOT Permit requirements (Sections S5.A.2) and consider how WSDOT is funded, (via legislative appropriation) Suggested edit: Replace language from Parts 2.3.3 and 2.3.3.1 with **WSDOT shall request adequate resources to maintain compliance with this permit and implement its SWMP in its proposed budget submittals to the Governor's Office. WSDOT shall track the estimated cost of permit implementation. This information shall be provided to EPA and the Puyallup Tribe of Indians upon request.**

Response: EPA agrees; in WSDOT permit only, Part 2.3.3.1 has been deleted and new text added to read as follows:

2.3.3 SWMP Resources

The Permittee must provide adequate finances, staff, equipment and other support capabilities to implement the SWMP actions and activities and other requirements outlined in this permit. **WSDOT must request adequate resources in its proposed budget submittals to the Governor's Office to maintain compliance with this permit and implement its SWMP. WSDOT must track the estimated cost of permit implementation. This information must be provided to EPA and the Puyallup Tribe upon request.**

~~**2.3.3.1 — Consistent with Part 2.3.2 (SWMP Information and Statistics), the Permittee must summarize estimated SWMP implementation costs over the relevant reporting period in each Annual Report.**~~

M-13-Tacoma: Regarding Part 2.3.3.1: Tacoma will need to adjust its cost tracking and estimation systems in order to comply with this request. Tacoma requests a ramp up period of two years after the Permit Effective Date to begin reporting for this Part on the Annual Report.

Response: EPA revised Part 2.3.3 to require information to be provided upon request; thus, the Permittees are no longer required to include the information as part of the Annual Report. See Response 16-M-11. No change was made in response to this comment.

17. Regarding Part 2.3.4 and New Part 2.4

N-1 through N-5-Tacoma, Pierce: Re: Schedule Page 5 of 75, Revise Due Date for item 2 *“Notification of Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation Notification”* to *“Within 90 days of any transfer or change or official notification of a new Tribal Trust Parcel that will affect SWMP implementation.”*

Part 2.3.4 of the Permit, to the extent it applies to Tribal Trust land, requires Tacoma to implement required control measures in areas where it has no authority. Tacoma doesn't know when a parcel becomes Tribal Trust. Clarify how Tacoma will be notified when parcels transfer to tribal trust status. Outline Tacoma's due diligence obligation. If Permit Area is based on tribal trust parcels that contain outfalls or other discharges that Tacoma owns or has contributory area discharging through those points, the Permit Area will change if a parcel that contains discharge points becomes Tribal Trust. To comply, Tacoma must receive official notification for all new Tribal Trust parcels. Tacoma requests EPA include a ramp up period for compliance related to new Tribal Trust parcels and recommends that each January the inventory of Tribal Trust parcels be determined and used for compliance for that calendar year.

Clarify “schedules of implementation”? Recommend using the language from Part 2.3.4 which refers to “*transfer of ownership, operational authority, or responsibility*”

How will County become aware of new Tribal trust lands? Will Tribe provide information in a certain timeframe, or is County required to determine information from tax rolls? Suggested edit: ...”*the Permittee must implement the required control measures of this permit in all new areas annexed into or out of County jurisdiction to the Permittee’s MS4 (or for which a Permittee becomes responsible for implementation of stormwater quality controls).*”

County experiences transfers out of our Permit Area as they are incorporated by growing cities, and requests EPA add text to address areas transferred out of County responsibility. Suggest adding new subparts as follows:

2.3.4.3 Within the first permit term the permittee and the Tribe will provide notification of an annexations, incorporations, or jurisdictional boundary changes resulting in an increase or decrease in the permittees geographic are of permit coverage.

2.3.4.4 The permittee will not be responsible for implementing permit conditions and will not be out of compliance for the failure to do so on lands newly designated Tribal Trust Lands for which no notice was given.

Response: Regarding legal authority, see Response 5-B-1.

As originally drafted, Part 2.3.4 required the Permittee to notify EPA and the Puyallup Tribe of their land transfers or annexations occurring in the Permit Area. As noted by commenters, EPA and the Puyallup Tribe should also outline how future changes in trust status for individual properties will be *communicated* to the Permittees. Regarding Permittee requests for maps and future notification regarding changes in trust status for properties within the 1873 Survey Area, see Response Section 8-E.

EPA revised Part 1.1 (*Permit Area*) in all three MS4 permits (Pierce County, Tacoma, WSDOT) to include new Permit Appendix G listing all known Permittee outfalls discharging to surface waters of the Puyallup Tribe within the 1873 Survey Area. See Response 9-F-1.

Other situations may occur during the permit term which could alter the Permittee’s SWMP responsibilities, such as: the Permittee may find they own/operate other MS4 outfalls discharging in the Permit Area that were not previously inventoried; or the Permittee could transfer away or annex new responsibility for areas draining to their individual MS4 outfalls discharging in the Permit Area. Both scenarios are relevant to the ongoing implementation of the Permittee’s SWMP and both scenarios require notification to EPA and the Puyallup Tribe.

Therefore, EPA revised and renumbered Part 2.3.4 as new Part 2.4 to specify the notification procedure and expected content of the Permittee’s notification. EPA has not revised text as suggested by the commenters; however, in each permit, EPA revised text in a manner that also incorporates the Puyallup Tribe’s respective CWA Section 401 certification condition(s) into that permit. (See CWA §401 Certification Summary Section 2-8 in this Appendix). In all three MS4 permits (Pierce County, Tacoma, WSDOT), new Part 2.4 now reads as follows:

~~2.3.4~~ ~~Transfer of~~ **2.4 Changes in Ownership, Operational Authority, or Responsibility for SWMP Implementation**

No later than one year after the transfer of ownership, operational authority, or responsibility, the Permittee must implement the required control measures of this permit in all new areas added or transferred to the Permittee's MS4 (or for which a Permittee becomes responsible for implementation of stormwater quality controls).

2.3.4.1 EPA and Puyallup Tribe of Indians must be notified in writing of any additions and schedules of implementation within 90 days of the transfer.

2.3.4.2 Any additions and schedules for implementation must be documented in the next SWMP Document update and Annual Report following the transfer.

2.4.1 The Permittee must notify EPA Director of the Water Division and Puyallup Tribe of Indians, in writing at the addresses listed in Part 6.1.1, within 90 days whenever:

2.4.1.1 The Permittee identifies that it owns and/or operates an MS4 outfall that is not specifically identified in Appendix G of this permit and that discharges to surface waters of the Puyallup Tribe; or

2.4.1.2 The Permittee accepts operational responsibility or ownership of any area draining to the MS4 outfalls identified in Appendix G of this permit; or

2.4.1.3 The Permittee transfers to another entity its operational responsibility or ownership of any area draining to the MS4 outfalls identified in Appendix G of this permit.

2.4.2 Written notification provided under this Part must summarize the pertinent circumstances of the change in ownership, operational authority, or responsibility for SWMP implementation.

2.4.3 Written notification regarding additional MS4 outfalls that discharge to surface waters of the Puyallup Tribe identified after the permit effective date that discharge to surface waters of the Puyallup Tribe must identify the physical location of the MS4 outfall, including latitude/longitude and a general location map, and provide all known and available information as required by Part 3.3.2.

2.4.4. A summary of the written notification provided under this Part must be included in the subsequent Annual Report.

2.4.5 No later than one year after the Permittee's written notification provided under this Part, the Permittee must update its MS4 map(s) required by Part 3.3.2 and reflect all changes in the subsequent SWMP Document.

18. Regarding Part 3.1 - Public Education & Outreach

P-1-WDOE: Re: Part 3.1 - Consider including a clear performance measure for the general awareness.

Response: Part 3.1.2 through 3.1.4 mirrors the performance measure for general awareness in WDOE Phase I Permit Section S5.C.11.a.i. No change was made in response to this comment.

P-2-Pierce: Re: Part 3.1 – Clarify: Can County conduct activities as part of regional group? WDOE Phase I S5.C.11 allows Permittees to choose between implementing education and outreach program individually or as part of a regional group to collaborate on consistent messaging and outreach strategies/programs (like the STORM committee and Puget Sound Starts Here).

Are there specific requirements when working as a member of a regional group? Will County work done under WDOE Phase I permit with a regional group meet this requirement? Provide examples of allowable stewardship activities. Can we partner with organizations that offer stewardship activities, and encourage residents to participate in those?

Clarify where to conduct the program: Given there are only 2-3 small Tribal Trust Lands parcels within the area we understand to be under coverage, does County target Education and Outreach behavior change initiatives on these few, small (and not under our jurisdiction) parcels?

Response: A permittee can conduct SWMP activities as part of a regional group. EPA encourages a permittee to partner with organizations that offer stewardship activities such as stream teams, storm drain marking, volunteer monitoring, riparian plantings, and education activities. Conditions associated with shared SWMP implementation is outlined in Permit Part 2.1.

The permittee should conduct such education and outreach activities where pollutant prevention will help reduce pollutants in MS4 discharges occurring in the Area defined by Part 1.1.

No change was made in response to this comment.

P-3-Pierce: Re: Part 3.1.1 - Some activities are long term (>one year): Clarify: if implementing program, is it expected to provide annual lessons learned in the SWMP? Suggested edit: *The Permittee must describe the specific education program goals and plans in the SWMP. The permittee must document, lessons learned, and track and maintain records of public education and outreach activities ~~in for the SWMP Document~~ for the annual report.*

Response: EPA has revised Part 3.1.1 and clarifies that iterative “lessons learned” should be identified in Annual Reports. See Response 16-M-10.

P-4-Pierce: Re: Part 3.1.2 - Define "area served by MS4". A map highlighting areas where County should focus education and outreach programs would be helpful. If the only discharge point on Trust land, County does not have jurisdictional or regulatory authority over that land. This is a very small area with possibly very small or no population.

Revise text to recognize existing County work under WDOE Phase I Permit. We are willing to work with the Puyallup Tribe to develop a common education and outreach program for both our jurisdictions. It'd be more effective for us to partner with Puyallup Tribe to develop a common outreach program/information for one water quality issue in these areas.

Response: The Permittee should conduct such education and outreach activities where pollutant prevention will help to reduce pollutants in MS4 discharges in the Area defined by Permit Part 1.1. EPA encourages the Permittees to work with Puyallup Tribe to develop and implement a compatible

education and outreach program. As written, the permit text is consistent with WDOE Phase I Permit. No change was made as a result of this comment.

P-5-Pierce: Re: Part 3.1.2 - Remove text to report all goals, lessons learned and record of outreach (and other activities throughout this permit) in the SWMP. It creates an unwieldy difficult to read document. To make our SWMP interesting to the public and increase public involvement, please revise to allow attaching reports on specific activities to the SWMP with a program overview, planned actions with interesting information that engages the public. Revise text to require this information in Annual Report, not SWMP. Often the details develop as we undertake the required actions. This is more useful information if detail in Annual Report not SWMP.

Response: EPA did not revise the permit as suggested by the commentor. However, the permit condition, as written, would allow the permittee(s) to attach reports, etc. that set forth the specific activities that will be conducted as part of the SWMP. All that is required is that the SWMP contain the information and reports attached as appendices would be considered to be part of the SWMP. See also Response 16-M-10 and Response Section 33-PP (regarding Annual Reports). No change was made to the permit in response to this comment.

P-6-Pierce: Re: Part 3.1.2 – A one year timeline is unreasonable for a behavior change program. Revise for consistency with WDOE Phase I Permit, which recognizes it takes years to create, implement a behavior change program, and track behavior change in order to create a “lessons learned” report. WDOE Phase I permit allows program updates on a permit cycle rather than annual cycle.

Response: As drafted, Part 3.1.2 does not require a one-year timeframe to demonstrate behavior changes. Instead, Part 3.1.2 defines the scope of the expected education and outreach activities with regard to where the efforts should be targeted, how to select target audience or topic areas, consider delivering in language other than English, and other revisions identified in these comments. No change was made to the permit in response to this comment.

P-7-Tacoma: Re: Part 3.1 - Revise text throughout this section to mirror the WDOE Phase I Permit Section S5.C.11. Add text to clarify if Tacoma may participate in regional programs to meet this provision. Regional programs pool resources to meet education and outreach needs. Creating new programs specific to EPA Permit Coverage Area requires additional resources.

Response: EPA is not required to follow WDOE’s MS4 permits in every respect; however, EPA notes that Parts 3.1 and 3.1.2 are comparable to Section S5.11. The permit allows shared SWMP implementation with other entities. See Response 18-P-2. No change was made to the permit in response to this comment.

P-8-Tacoma: Re: Part 3.1.2 -Add new Part 3.1.2.4 for additional clarity: *“The Permittee must develop a public education and outreach program designed to affect behavior change in one of the listed target audiences on one of the listed stormwater related topics.”* EPA Fact Sheet, Pg 19 states: *“The Permittee must develop a public education and outreach program designed to affect behavior change in one of the listed target audiences on one of the listed stormwater related topics.”* However, this is not reflected in Permit Part 3.1.2.

Response: EPA agrees to add new Part 3.1.2.4 to both the Pierce County and Tacoma MS4 permits. To provide flexibility such that Permittees can either augment existing activities or initiate new activities, new text reads as follows:

3.1.2.4 The Permittee must develop a public education and outreach program designed to increase general awareness and/or affect behavior change in at least one of the listed target audiences regarding at least one of the listed stormwater related topics.

P-9-Tacoma: Re: Part 3.1 – If the Permit Area includes Tribal Trust properties only, Tacoma could attempt to develop and conduct an Education and Outreach Program but could not compel participation on Tribal Trust Parcels or those residents.

Response: See Response 5-B-1. The Permit requires the Permittee to conduct outreach activities; it doesn't require the Permittee to compel participation. No change was made to the permit in response to this comment.

P-10-WSDOT: Re: Part 3.1 - Suggested edits for consistency with WDOE WSDOT Permit Section S5.C.8. As written, EPA text requires unique program. See additional comments below. Replace text with "The Permittee must implement a program designed to educate and involve the public, consultants, contractors, and WSDOT staff to reduce or eliminate behaviors and practices that cause or contribute to adverse stormwater impacts."

Response: EPA agrees to revise WSDOT permit Part 3.1 to read as follows:

The Permittee must implement a program designed to educate and involve the public, consultants, contractors, and WSDOT staff to reduce or eliminate behaviors and practices that cause or contribute to adverse stormwater impacts.

P-11-WSDOT: Re: 3.1.2, 3.1.3 and 3.1.4 - Revise consistent with WDOE WSDOT Permit Section S5.C.8, and WSDOT's existing education, training, and public involvement program. WSDOT has no population or target audience in this Permit Area. Instead, WSDOT population is statewide, using WSDOT's property to travel through the area served by the MS4 covered by this permit. Possible exceptions may be contractors or WSDOT staff who work in this area. Suggested edits: Delete sections 3.1.2.1 and 3.1.2.2. Replace Sections 3.1.3 Target Audiences and 3.1.4 Topics with:

3.1.3 The Permittee must provide the following stormwater-management-related training:

- Illicit Discharge Detection and Elimination training pursuant to section 3.3.6 and 3.6.9.

- Highway Runoff Manual training and Construction Site Erosion and Sediment Control training pursuant to section 3.4.5.

- Road Operation and Maintenance training pursuant to section 3.7.9

Response: EPA agrees to revise WSDOT permit Parts 3.1.2, 3.1.3 and 3.1.4 as suggested. Parts 3.1.2 and 3.1.3 now read as follows:

3.1.2 Program Design

The education and outreach activities must be designed to educate target audiences about stormwater and its impacts and provide specific actions they can follow to minimize those impacts.

The Permittee should consider delivering its selected messages in language(s) other than English, as appropriate for the target audience.

3.1.3 Targeted Training

The Permittee must provide the following stormwater-management-related training:

- **Illicit Discharge Detection and Elimination training pursuant to Parts 3.3.6 and 3.6.9.**
- **Highway Runoff Manual training and Construction Site Erosion and Sediment Control training pursuant to Part 3.4.5. and**
- **Road Operation and Maintenance training pursuant to Part 3.7.9.**

Q-1-Pierce: Re: 3.1.3 – Revise list for consistency. Business owners and managers including home-based and mobile businesses is all inclusive. Calling out landscapers seems unnecessarily detailed. Clarify: Must County reach all audiences each year, or pick a subset/target campaigns for a certain time during the permit? Does EPA expect County to reach all identified audiences, or select a subset to target over permit term?

Response: Target audiences listed in Part 3.1.3 of the Pierce County and Tacoma permits are consistent with WDOE Phase I Permit Sections S5.C.11.a.i. and S5.C.11.a.ii. EPA expects the Permittee will focus its education and outreach efforts on one or more of the audiences listed. EPA revised Part 3.1.3 in both Pierce County and Tacoma permits to read as follows:

The Permittee must target its education and outreach program activities to reach at least one of the following audiences...

Q-2-Pierce, Tacoma: Re: Part 3.1.4 – Clarify number of topics to select, Is there a minimum? Appendix Annual Report, Q. 8 requests information on one target audience and at least one topic.

Response: To clarify, EPA revised introductory paragraph to Part 3.1.4 as follows:

Depending on the target audience selected, the Permittee must select one or more of ~~from~~ the following topics to build general awareness and/or effect behavior change through its education and outreach activities:

Q-3-Pierce: Re: Part 3.1.4 – Edit list re: Yard care for water quality, consistent with Part 3.3.3.3.2, add "discharges of lawn watering and other irrigation runoff" Add new text consistent with 3.3.3.3.4: "street and sidewalk wash water, water used to control dust, and routing external building wash down that does not use detergents"

Response: EPA declines to add text as suggested. No change was made to the permit in response to this comment. Education activities regarding lawn watering, etc, is accommodated by Part 3.1.4.9 *Appropriate yard care techniques for protecting water quality*. Education activities regarding street/sidewalk washwater is generally addressed by Part 3.1.4.17 *Source Control BMPs*.

Q-4-Tacoma: Re Part 3.1.4 – Clarify expectations for general awareness activities. Outreach for general awareness and behavior change are very different, both in development and evaluation. Topics listed in 3.1.4 are not conducive to both general awareness education and behavior change (e.g, topic 3.1.4.1, there is no behavior to change.)

Response: To provide maximum flexibility EPA revised Part 3.1.4 in both the Pierce County and Tacoma MS4 permits to allow the permittees to participate in regional group education/outreach

efforts, and to focus their ongoing efforts on either general awareness activities or behavior change activities. See Responses 18-P-2 and 18-Q-2.

R-1-Pierce: Re: Part 3.1.5 – Clarify expectations for program evaluation. Is County expected to analyze behavior change campaign for the selected topic/audience? Can this requirement be met as part of regional group with permittees and/or non-permittees? Can this requirement be met using the education and outreach program implemented for WDOE Phase I Permit, provided it targets the "area served by the MS4"?

Response: The Permittee is expected to conduct some type of evaluation to gauge effectiveness of their education and outreach activities. The Permittee can meet the program evaluation requirement as part of a regional group and may reference/use the Permittee's existing education and outreach activities, provided those activities include audiences in the Permit Area. See Response 18-P-2.

R-2-Pierce, Tacoma: Re: Part 3.1.5 –

- Add date 3 years from permit issuance to measure/evaluate program effectiveness. It is difficult to measure effectiveness during initial phases of a program; allow programs to be fully implemented with adequate time for behavior change to occur. Suggested Edit: *Throughout the permit term, the Permittee must measure and document the understanding and adoption of the targeted behavior(s) for at least one audience in at least one of the topics listed above by the third year of the permit term.....*
- Clarify. 1st sentence contains phrase "targeted behavior(s)". What are targeted behaviors related to topics in Section 3.1.4? What is a targeted behavior for topic 3.1.4.1?
- Suggested edit: 2nd Sentence, revise "*resulting measurements*" to "results of the evaluation".
- Separate topics and behaviors for clarity. Using terms 'topic and behavior' is confusing; the list in 3.1.4 is a combination of topics and behaviors.
- Clarify when/how often Permittee must "measure and document" understanding and adoption of targeted behaviors. Revise to replace phrase, "*Throughout the permit term*" to "Once per permit term." As written, it seems continuously. Identify timeframe associated with program after which evaluation is completed and future work is planned.

Response: In the Pierce County and Tacoma permits only, EPA agrees to define the performance period and make certain edits to Part 3.1.5 as recommended by the commenters. EPA chooses not to discern between the listed topics in Part 3.1.4. Instead, to allow maximum flexibility and opportunity for Permittees to augment existing programs, EPA revised text to allow Permittee to choose either a "general awareness" effort or a "behavior change" effort [or potentially both]. See also Response Q-2. EPA clarifies that where the Permittee selects a "general awareness" education activity, the goal is to gauge general understanding; where a "behavior change" education activity is selected, the goal is to measure how/whether the appropriate behavior has been adopted by the target audience.

Revised Part 3.1.5 in both Pierce County and Tacoma MS4 permits now reads as follows:

~~Throughout the permit term,~~ **At least once during the permit term,** the Permittee must measure and document the understanding and/or adoption of the ~~targeted~~ **appropriate** behavior(s) for at least one audience in at least one of the topics listed above. **Beginning in Year 3 of the permit term,** ~~The results of the evaluation~~ **ing measurements** must be used

to direct future education and outreach resources most effectively through the remainder of the permit term.

R-3-Tacoma: Re Part 3.1.5 – Provide the metric to be used to measure understanding and adoption for audiences and behaviors. Clarify what Program Evaluation must include.

Response: Program evaluation involves measuring how well the completed activities achieved the stated goals, and where necessary identifies possible implementation changes during future activities in order to meet the stated goals. The metric used to measure understanding and adoption of behaviors may be determined by the Permittee or established by the regional group conducting the activity with whom the Permittee chooses to work.

R-4-WSDOT: Revise Part 3.1.4 through 3.1.6 for consistency with WDOE WSDOT Permit (Sections S5.C.8, S8.F.24, and S8.F.25), and existing education, training, and public involvement program and reporting requirements. As written, EPA requires a unique program, or modifications to existing program, to be developed. Replace existing text with “3.1.5 Program Evaluation and Annual Report – Document the number of training courses WSDOT held and the number of WSDOT staff, consultants, and contractors trained on Illicit Discharge Detection and Elimination, Highway Runoff Manual, Construction Site Erosion and Sediment Control, and Road Operation and Maintenance.”

Response: In the WSDOT permit only, EPA agrees to combine Parts 3.1.4, 3.1.5, and 3.1.6 as suggested by the commenter. New Part 3.1.4 now reads as follows:

3.1.4 Program Evaluation and Annual Report

Throughout the permit term, the Permittee **must document the number of specific WSDOT training courses conducted and the number of WSDOT staff, consultants, and contractors trained on Illicit Discharge Detection and Elimination, Highway Runoff Manual, Construction Site Erosion and Sediment Control, and Road Operation and Maintenance.** ~~must measure and document the understanding and adoption of the targeted behavior(s) for at least one audience in at least one of the topics listed above. The resulting measurements must be used to direct future education and outreach resources most effectively through the remainder of the permit term.~~

Annual Report

~~*In each Annual Report, the Permittee must summarize assessment activities, conducted during the reporting period, resulting in changes in adoption of the targeted behavior(s).”*~~

R-5 Tacoma: Re: Part 3.1.6 - Define assessment activities. Consider using the term “evaluation methods”. Use consistent terms should be used throughout Part 3.1. Clarify this section. How can a Permittee know if assessment activities would result in changes in adoption of the targeted behavior? It’s typically not the intent of an assessment or evaluation of a behavior change program to result in changes in adoption of the targeted behavior. Program is intended to result in behavior changes not assessment or evaluation of the program. Suggested edit for Part 3.1.6: “In each Annual Report, the Permittee must summarize any changes made to the initially selected target behavior, topic or audience and the evaluation methods used to inform that change.”

Response: EPA declines to revise the text as suggested by the commenter. EPA is interested in knowing of positive changes that reduce potential pollutant sources into MS4 discharges as a result of the permittee’s selected education and outreach activity(ies). To better clarify what EPA expects

permittees to document in the Annual Report and in order to use consistent terminology, EPA has revised Part 3.1.6 in both Pierce County and Tacoma permits to read as follows:

3.1.6 Annual Report

In each Annual Report, the Permittee must summarize **evaluation methods** ~~assessment activities~~, conducted during the reporting period, ~~to measure resulting in changes in~~ **awareness and/or behaviors as a result of the education and outreach activities.** ~~adoption of the targeted behavior(s).~~

19. Regarding Part 3.2 - Public Involvement & Participation

S-1-Pierce: Re: Part 3.2 – Clarify what public involvement in SWMP development looks like. County doesn't see public interest in SWMP but wants to meet EPA expectations. Clarify "overburdened communities" via administrative code or other guidance.

Response: The Permittee should continue working closely with Puyallup Tribe to identify opportunities that alert appropriate tribal audiences to Permittee solicitations for public input and participation.

In Fact Sheet Section VII, pg 28-29, EPA discusses environmental justice and the term *overburdened communities*. As noted by WDOE 2019, the term's definition is found in US EPA. 2016. Environmental Justice. EJ 2020 Glossary. 2016. Washington D.C. Available at:

<https://www.epa.gov/environmentaljustice/ej-2020-glossary>

Overburdened Communities means Minority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.

EPA uses the term *overburdened communities* in the same manner as the WDOE Phase I Permit uses it to define the communities that may be most impacted by stormwater impacts. See WDOE 2019 Response to Comments, page 65 and WDOE 2018 Fact Sheet, pg 80. No change was made as a result of this comment.

S-2-Pierce: Re: Part 3.2.1 and the SWMP Document: Clarify if permittees can use SWMP document from WDOE Phase I permit? Having 2 SWMP documents on County website may be confusing to public if it is not clear which areas the documents cover.

Response: Permittees cannot use the same SWMP document from the WDOE Phase I Permit to meet the conditions of their EPA Permit. Permittees may add to their existing SWMP document [e.g., through properly named Appendix or other means so as not to confuse the public.]. However, Puyallup Tribe expects to receive a stand-alone SWMP document describing the Permittee's activities to reduce pollutants in MS4 discharges through the outfalls in the Permit Area described in Part 1.1 into surface waters subject to the *Water Quality Standards for Surface Waters of the Puyallup Tribe*. See also Response M-1 and M-5.

No change was made as a result of this comment.

S-3-Pierce: Re: Part 3.2.1 – Delete text and include it in the Annual Report description. Tracking and maintaining records part of the annual report. This is a redundant effort and inconsistent with WDOE Phase I Permit.

Response: See Response 16-M-10. Part 3.2.1 in all three MS4 permits (Pierce County, Tacoma and WSDOT) has been revised to read as follows:

The Permittee must describe the ~~specific~~ public involvement and participation **program and its activity goals, and track and maintain records of such activities in the SWMP Document.**

S-4-Pierce: Re: Part 3.2.1 – Clarify if EPA intends to make the SWMP and the annual report one document. If so, state as much in and describe how to do that.

Response: EPA does not intend to make the SWMP document and Annual Report one document. They are two separate submittals that are required at different times in the 5-year permit period. No change was made as a result of this comment.

S-5-Pierce, Tacoma: Re: Part 3.2.2.1: Clarify “*Permittee must comply with applicable federal tribal public notice requirements.*” Text is vague & Permit provides no direction where to look for those “requirements.” Who decides what is “required?” How do we meet? No comparable provision in WDOE Phase I Permit. Provide the citations to identify “applicable federal, tribal, state ...public notice requirements.”

Response: EPA revised Part 3.2.2.1 in Pierce and Tacoma permits as follows:

3.2.2.1 The Permittee must comply with applicable ~~federal state, tribal and local~~ public notice requirements when conducting the public involvement and participation activities associated with this permit.

WSDOT permit Part 3.2.2.1 is also revised to read:.... “Permittee must comply with applicable ~~federal state, tribal and local~~ public notice requirements”

S-6-Pierce: Re: Part 3.2.3 - County will comply with this requirement re Website. Recommend that Puyallup Tribe and EPA save paper, mailing costs & potential confusion in deadlines by downloading our SWMP and Annual Report from County website. Revise Annual Report requirements to make this possible.

Response: EPA agrees that electronic versions of required materials will save paper, mailing costs and potential confusion. However, the Permittee must submit their materials as directed by Part 6.1. See Response 16-M-3. No change was made as a result of this comment.

S-7-Tacoma: Re: Part 3.2 - Remove entire Part 3.2. Due to limited scope, the only “public” that is part of this Section would be Tacoma. This is the case if the Permit Area includes Tribal Trust properties only and given prior comment Part 2.3 (Tacoma would only include small number of parcels that are in Tribal Trust and locations where Tacoma has easements or other operational agreements. No Tacoma right of ways would be included in the SWMP.)

Response: EPA disagrees. Permittee should conduct public involvement/participation activities where pollutant prevention will help reduce pollutants in MS4 discharges in the Area defined by Permit Part 1.1. The SWMP document should describe/communicate Tacoma’s available opportunities and how interested parties can participate. No change was made to the permit in response to this comment.

S-8-Tacoma: Re: Part 3.2- Provide guidance on setting “specific public involvement and participation activity goals”. What happens if goals are not met? Public participation is changing due to the long-standing health and behavioral awareness from the COVID 19 pandemic, how can that be reflected in this permit requirement? Goals now may need to be much different than in the past, so it will be difficult for permittees to plan for future.

Response: The Permittee is responsible for establishing one or more goals that address the individual SWMP Control Measure outlined in the permit. In general, EPA recommends that activity goals include, where appropriate, three components: The activity/practice to be completed; a schedule or date of completion; and a quantifiable target to measure progress toward achieving the activity or practice. See: EPA Measurable Goals Guidance at https://www.epa.gov/sites/default/files/2015-11/documents/measurablegoals_0.pdf

An example of a goal for the Public Involvement & Participation control measure would be:

Activity or Practice: Coordination meeting

Measurable Goal: Tacoma will annually hold a coordination meeting involving other permittees, the Puyallup Tribe, regulatory agencies, and interested stakeholders to discuss progress of the storm water management program and the next year’s activities.

Justification: Coordination with other jurisdictions, Tribe, regulatory agencies, and citizens helps to identify common goals (such as improving water quality) that are not defined by geographic boundaries. Responsibility for tasks that further these common goals can be divided among these parties to use funding and labor efficiently.

No change was made in response to this comment.

S-9-Tacoma: Re: Part 3.2 – Clarify starting date for this section. Public involvement planning and implementation especially during the COVID 19 pandemic can take significant time. EPA text is more involved than WDOE Phase I Permit Section S5.C.4. Revise compliance date to 2nd Annual Report or minimum 24 months after Permit effective date.

Response: EPA declines to revise Part 3.2 as suggested. Permittee should begin including [Puyallup Tribe] in its engagement activities and may report on its interim and ongoing planning processes in their Annual Report. No change was made in response to this comment.

S-10-Tacoma: Re: Part 3.2.1 - Revise text so Permittee must describe goals and track activities used to meet those goals. Activity goals and activities are two separate things.

Response: See Response 16-M-10.

20. Regarding Part 3.3 – Illicit Discharge Detection and Elimination

T-1-Pierce: Re: Part 3.3 – Revise to use consistent dates – commenter suggests either 180 days before permit expiration date for program implementation and 30 months to update ordinances or delete entire sentence. County has IDDE program that meets WDOE Phase I Permit. Delete 3rd sentence: ~~No later than 180 days prior to the permit expiration date, the Permittee must implement an illicit discharge detection and elimination (IDDE) program which fully addresses each of the following components~~

Response: EPA agrees to delete the 3rd sentence in all three MS4 permits (Pierce County, Tacoma, and WSDOT).

T-2-WSDOT: Revise Part 3.3 for consistency with WDOE WSDOT Permit Section S5.C.4.b. As written, EPA requires a unique program to be developed. See additional comments below. Suggests edits to replace “prevent, detect, characterize, trace, and eliminate” with “*identify and eliminate*.”

Response: EPA declines to revise text in 1st sentence of WSDOT permit Part 3.3 as suggested. A unique program is not necessary. Through implementation of its SWMP program, and working cooperatively with neighboring jurisdictions, EPA expects WSDOT to “prevent, detect, characterize, trace, and eliminate.”

T-3-Tacoma: Re: Part 3.3 – If the Permit Area includes Tribal Trust properties only, Tacoma only includes that small number of parcels that are in Tribal Trust and Tacoma has easements or other operational agreements. No Tacoma MS4 within Tacoma right of ways would be included in the activities outlined in this section. It would only include a very limited number of MS4 elements on those small number of parcels that are in Tribal Trust but have Tacoma easements or other operational agreements.

Response: See Response 5-B-1 re: legal authority. The Permittee should conduct its IDDE activities where efforts to prevent, detect, characterize, trace, and eliminate non-stormwater contributions will help reduce pollutants in MS4 discharges in the Area defined by Permit Part 1.1. The SWMP document should describe such IDDE program activities. No change was made to the permit in response to this comment.

T-4-Pierce: Re: Part 3.3.1 – Clarify if this is required in each Annual Report, or only the final annual report of permit term? Suggested edit: Rename section from ~~SWMP document~~ to Annual Report; The Permittee must describe the specific IDDE program, program goals, lessons learned, and track and maintain records of activities in the ~~final SWMP annual report Document for this permit term~~.

There are other databases to track activity. A SWMP is a summary of activity planned. Shouldn't this report be part of Annual Report, not in the plan? Clarify whether this is a separate database, summarized in SWMP and available to EPA, or potentially submitted as an MS Excel sheet; don't include in the SWMP. Recommend that Permittees be able to use information gathered for WDOE Phase I permit, Appendix 14 to satisfy this EPA requirement.

Response: EPA revised text in Part 3.3.1. See Response 16 M-10. With regard to scope and content, Permittee may discuss the necessary level of detail and content for this control measure with Puyallup Tribe.

T-5-Pierce: Re: Part 3.3.1 – Recommend revising text to require “lessons learned” once per permit term. By conducting program review annually, this is a large effort that most likely will not provide valuable information.

Response: See Response 16-M-10.

U-1-Tacoma: Re: Part 3.3.2 - Due to questions re: Permit Area, Tacoma won't know what to include on maps. Provide a shapefile or surveyed boundary to indicate Permit Area. Tacoma lacks authority to map on Tribal Trust parcels unless an easement or other operational agreement allowing mapping is in place.

Re: 3.3.2.9: Define “jurisdictional boundaries.” Tacoma's boundary? If this includes Tribe's boundary, EPA must provide because Tacoma can't compel Puyallup Tribe to provide it. It's not on a publicly available map known to Tacoma. Due to uncertainty re Permit Area, Tacoma may not know what to include on its maps for this item. Provide a shapefile or surveyed boundary to indicate Permit Area. Tacoma has no authority to map on Tribal Trust parcels unless easement or operational agreement allowing mapping is in place.

Response: Regarding providing Permittees with a detailed map of the Permit Area defined by revised Part 1.1, see Response Section 8-E: *Maps of Tribal Trust Land and Waters Subject to PTOI WQS*.

The purpose of the MS4 map required by Part 3.3.2 is to provide detailed information about the Permittee's individual MS4 outfalls that discharge within the Permit Area defined by revised Part 1.1. The Permittee knows the locations of their own jurisdiction boundaries, and as appropriate should include such information/attributes on the MS4 map. To the extent that the Permittee is unable to map a portion of the MS4 that is located on tribal trust land, the Permittee can indicate this on the map. However, EPA expects that the Permittee will attempt to work with the Tribe to complete such activities as needed. No change was made as result of this comment.

U-2-Pierce, Tacoma, WSDOT: Re: Part 3.3.2 – Revise text for consistency with WDOE Phase I Permit or extend time to complete mapping to the end of the first permit term. Mapping in EPA's permit is significantly different from WDOE Phase I Permit. Revise text to reflect "*all known*" locations for mapping. Terms such as "all" "every" or "100%" puts permittee at risk of non-compliance for unknown conditions. Acknowledge human error, technological issues, etc. may result in discovery at a later date; but this should not result in non-compliance. Also given uncertainty over Permit Area, mapping requirement should provide flexibility. Revising text allows new & redevelopment to be mapped and added to database while remaining compliant with permit conditions. Revising text is also consistent with WDOE Phase I Permit.

Extend deadline for mapping. Suggested edit: *No later than ~~1 year after~~ after the end of this permit term. ~~Effective date~~, the Permittee must update and maintain maps of the MS4 located within the Permit Area.*

Response: EPA has significantly revised Part 3.3.2 in all three MS4 permits after consideration of these comments, and to incorporate the final CWA Section 401 certification conditions provided by Puyallup Tribe for each permit adding deadlines for submitting updated MS4 maps as described in CWA §401 Certification Summary Section 2-10 in this Appendix.

EPA also revised Parts 3.3.2.1 through 3.3.2.8 to address commenters' concerns:

- in the WSDOT permit, to reflect the unique nature of the WSDOT MS4. The permit language now mirrors the required MS4 map elements in the WDOE WSDOT Permit Section S5.C.3.
- in both Pierce County and Tacoma permits, to reflect MS4 map elements required by the WDOE Phase I Permit Section S5.C.2.a.v, adding two elements required by WDOE that were not included in EPA's draft text.
- EPA retains three map elements (jurisdictional boundaries, locations of permittee-owned roads and parking lots, and locations of permittee-owned maintenance yards etc) as necessary elements required by EPA and Puyallup Tribe.

Revised text in Parts 3.3.2.1 – 3.3.2.8 now reads as follows:

...At a minimum, the MS4 map must include the following information:

3.3.2.1 Location of all **known** inlets, catch basins, outfalls, and discharge points;

3.3.2.2 Receiving ~~surface~~ waters;

3.3.2.3 Stormwater treatment **BMPs or facilities** and flow control BMPs ~~or~~ ~~facilities~~ **that are** owned and/or operated by the Permittee, including ~~information about type,~~

~~design capacity,~~ **all connections between these BMPs or facilities and to tributary conveyances (mapped in accordance with this Part),** and all associated emergency overflows;

3.3.2.4 Geographic areas served by the Permittee's MS4 that do not discharge stormwater to ~~surface~~ **receiving** waters;

3.3.2.5 Tributary conveyances for all known MS4 outfalls **and discharge points with a 24-inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems.** The following features or attributes **(or both)** must be mapped ~~for all known features:~~ tributary conveyances (type, material, and size where known), associated drainage areas, and land uses);

3.3.2.6 **Connections between** ~~Points at which the Permittee's MS4 and is interconnected with other municipalities or public entities MS4s or other storm/surface water conveyances;~~

3.3.2.7 All connections to the MS4 authorized or allowed by the Permittee after February 16, 2007;

3.3.2.8 Existing known connections greater than or equal to 8 inches in nominal diameter to tributary conveyances mapped in accordance with Part 3.3.2.5;

~~3.3.2.7~~ 3.3.2.9 **Permittee-owned** and/or operated parking lots and roads located within the Permit Area **defined by Part 1.1;**

~~3.3.2.8~~ 3.3.2.10 Locations of all Permittee owned and/or operated industrial ~~facilities~~ **activities,** maintenance/storage facilities, and snow disposal sites that discharge directly to the Permittee's MS4, and/or to waters of the U.S; and

~~3.3.2.9~~ **3.3.2.11** Jurisdictional boundaries.

U-3-Tacoma: Re 3.3.2.1: Define *inlets, catch basins, and discharge points.*

Response: Regarding the definition of "discharge point", see Response 32-OO-3.

EPA added definitions of inlet and catch basin to Part 9 of each Permit (Pierce County, Tacoma, WSDOT*), as follows:

***Catch basin* means a chamber or well, usually built at the curb line of a street, for the admission of surface water to a sewer or subdrain, having at its base a sediment sump designed to retain grit and detritus below the point of overflow. See 2019 Stormwater Management Manual for Western Washington.**

***Inlet* means a form of connection between surface of the ground and a drain or sewer for the admission of surface and stormwater runoff. See 2019 Stormwater Management Manual for Western Washington.**

*In WSDOT Permit only, last sentence of each definition reads: **See 2019 WSDOT Highway Runoff Manual.**

U-4-WDOE, Tacoma: In all three MS4 permits (Pierce, Tacoma, WSDOT) Part 3.3.2.2 (Map of MS4) requires mapping of "*Receiving surface waters.*" Clarify: Do you mean "surface receiving waters?"

Define "*surface waters*" and/or "*receiving surface waters.*"

Response: EPA added a definition of “receiving water” to each Permit (Pierce County, Tacoma, WSDOT). See Response 32-OO-17.

EPA revised Part 3.3.2.2 and other provisions throughout each permit to refer to **receiving waters**. Because the definition of *receiving waters* includes reference to *surface waters*, and *surface water* is also used within the permit text, EPA has also added the following definition of *surface water* to each permit as follows:

Surface waters and surface waters of the Puyallup Tribe means rivers, ponds, streams, inland waters, wetlands and all other surface waters and water courses on trust land within the 1873 Survey Area described in the Land Claims Settlement Agreement dated August 27, 1988 and ratified by Congress in the Puyallup Land Claim Settlement Act, 25 U.S.C. § 1773(b). See Water Quality Standards for Surface Waters of the Puyallup Tribe (1994), Section 2(27).

See revised Permit Part 9 in all three MS4 permits (Pierce County, Tacoma, WSDOT).

U-5-Pierce: Re: Part 3.3.2.3 – Difficult to obtain design capacity for drainage infrastructure where design info/as-builts are unavailable; we don’t have info, won’t be able to obtain.

Response: EPA revised the text of Part 3.3.2.3, and deleted reference to design capacity. See Response 20-U-2.

U-6-Tacoma: Re: Part 3.3.2.3 - Define *stormwater treatment* and *flow control BMPs/facilities owned and/or operated by the Permittee*. Tacoma recommends using WDOE definition.

Response: See Response 20-U-2 and Response 23-FF-3. EPA has revised Part 3.3.2.3 and Part 9 to add definitions consistent with the 2019 *Western Washington Stormwater Management Manual*. Accordingly, EPA has revised relevant text throughout each permit to refer to ***treatment BMPs or facilities*** and ***flow control BMPs or facilities*** as defined below. The phrase “owned and/or operated by the Permittee” is self-explanatory and requires no separate definition.

Treatment BMP or Facility means a BMP that is intended to remove pollutants from stormwater. A few examples of treatment BMPs are wetponds, oil/water separators, biofiltration swales, and constructed wetlands. See: 2019 Stormwater Management Manual for Western Washington.

Flow control BMP or Facility means a drainage facility designed to mitigate the impacts of increased surface and stormwater runoff flow rates generated by development. Flow control facilities are designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground, or to hold runoff for a short period of time, releasing it to the conveyance system at a controlled rate. See: 2019 Stormwater Management Manual for Western Washington.

{*In WSDOT permit only, last sentence of each definition reads: ***See 2019 WSDOT Highway Runoff Manual.***}

U-7-Tacoma: Re: Part 3.3.2.3: Define *emergency overflows*. Define *design capacity*. How will design capacity be presented in the map? Define *geographic areas served by the Permittee’s MS4 that do not discharge stormwater to surface waters*.

Response: EPA intends the meaning of “emergency overflows” to mean the same as it means in the WDOE Phase I Permit, which follows a standard dictionary definition and/or the context of the permit provision.

EPA has revised text to delete reference to *design capacity* and *geographic areas that don’t discharge to surface waters*. See Response 20-U-2. EPA notes that, pursuant to the federal definition of *municipal separate storm sewer* and MS4 at 40 CFR §122.26(b)(8), (18) and (19), there must be discharge to waters of U.S.

U-8-Tacoma: Re: Part 3.3.2.3: Clarify “information about type.” Does this refer to which Minimum Requirement of the Ecology Permit Appendix 1 the facility meets, or a name of a proprietary device, or something different? For older facilities that may have been designed using previous design criteria, it may be difficult to determine some of the information requested in this section.

Response: See Response 20-U-2. EPA intends for the Permittee to map/document the same MS4 features as required in the WDOE Phase I Permit. No change was made in response to this comment.

U-9-Pierce: Re: Parts 3.3.2.4, 5 & 6: Revise to spread requirement across 2 permit terms, with 1st permit term devoted to identifying information available and planning to gather information we don’t have in 2nd permit term. Re: areas served by MS4, tributary conveyances, interconnection points: County doesn’t have this data for many older systems. This will require mapping, specific measurements, and reverse engineering to determine design capacity, overflow condition - a huge effort.

Response: See Response 20-U-2 above. Deadlines for submitting updated MS4 maps are established pursuant to Puyallup Tribe’s CWA 401 certification conditions. No change was made in response to this comment.

U-10-Tacoma: Re Part 3.3.2.5: Delete phrase “*all known outfalls,*” as it causes confusion regarding if the tributary conveyances are to be mapped or if just the outfalls are to be mapped. Section refers to mapping tributary conveyances, but 2nd sentence states, “*The following attributes must be mapped for all known outfalls:*”

Response: EPA revised Part 3.3.2.5 consistent with WDOE Phase I Permit. See Response 20-U-2. No change was made in response to this comment.

U-11-Tacoma: Re: Part 3.3.2.6: Add “*Known and accessible*” to the start of this Section. Define “*points,*” and “*other storm/surface water conveyances.*” If this refers to connections from Tribal Trust parcels, Tacoma may not have records of these connections if made in the past; Tacoma can’t compel the Tribe to supply this information.

Response: EPA revised Part 3.3.2.6 consistent with WDOE Phase I Permit. See Response 20-U-2. No change was made in response to this comment.

U-12-Pierce, Tacoma: Re: Part 3.3.2.7 - Clarify regarding parking lots. Parking lots owned/ operated by Permittee, or all parking lots? Roads are part of MS4 and will be mapped in Permit Area. Delete Part 3.3.2.7. This information is available publicly via aerial mapping. Clarify purpose for requesting this item. If not deleted, define “parking lots.”

Response: See Response 20-U-2. EPA revised text of new Part 3.3.2.9 to reflect Permittee-owned and/or operated parking lots and roads; EPA believes these terms are self-explanatory. No change was made in response to this comment.

U-13-Tacoma: Re: Part 3.3.2.8 – Delete this section. This is inconsistent with WDOE Phase I Permit. If not deleted, define “industrial facilities,” “maintenance/storage facilities.”

Response: See Response 20-U-2. EPA has revised text of new Part 3.3.2.10 in both Pierce County and Tacoma permits to reflect Permittee-owned industrial **activities** as defined in Part 9. The phrase “*Permittee-owned and or operated.... maintenance/storage facilities*” is self-explanatory.

U-14-WSDOT: Re: Part 3.3.2.8 – Delete phrase “industrial facilities” - WSDOT doesn’t own or operate any facilities characterized as industrial facilities in the Permit Area.

Response: See Response 20-U-2. EPA has revised text of new Part 3.3.2.10 in WSDOT permit to reflect Permittee-owned industrial **activities** as defined in Part 9. The phrase “*Permittee-owned and or operated.... maintenance/storage facilities*” is self-explanatory.

U-15-Pierce: Re: Parts 3.3.2.8 & 9 – Revise to all known Permittee own, and jurisdictional boundaries as currently known, to recognize continuous development, potential closing or removal of such sites. This suggested edit is consistent with WDOE Phase I Permit and allows new areas to be mapped/added to database without non-compliance.

Response: EPA revised Part 3.3.2; See Response 20-U-2. No change was made in response to this comment.

V-1–Pierce: Re: Part 3.3.3 –

Revise, use consistent dates – commenter suggests 180 days before permit expiration date for program implementation and 30 months to update ordinances. Delete text that requires “all” and revise consistent with WDOE Phase I permit. Suggested Edits: *The Permittee must prohibit all known, located or reported illicit discharges into the MS4 through enforcement of an ordinance or other regulatory mechanism under the legal authorities of the Permittee. ~~No later than 30 months after the effective date of the permit, the~~The permittee shall implement ~~Permittee must adopt or amend~~ an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illicit discharges, including spills into the Permittee’s MS4. ~~comply with this Permit.~~*

Revise text to add “Evaluate”; Is this ordinance to comply with entire permit or IDDE component? Suggested Edit: *No later than 30 months after the effective date of the permit, the Permittee must EVALUATE, adopt, or amend an ordinance or other regulatory mechanism to comply with this Permit.*

If permittee has ordinance/regulatory mechanism, it should be reviewed to confirm that it meets permit requirements. If changes need to be made, then amend and adopt said changes.

Response: EPA declines to revise text as suggested by commenter. EPA has deleted the word ‘all’ from the first sentence of Part 3.3 in each of the three MS4 permits (Pierce, Tacoma, WSDOT). This requirement applies to any ordinance required by the Permit. EPA has deleted 2nd sentence in each of the three MS4 permits because the expected timeframe for submitting amended ordinance/legal authority is articulated in Part 2.2.2.

First sentence of Part 3.3.3 in each permit now reads as follows:

The Permittee must prohibit ~~all~~ illicit discharges into the MS4 through enforcement of an ordinance or other regulatory mechanism under the legal authorities of the Permittee. ~~No later than 30 months after the effective date of the permit, the Permittee must adopt or amend an ordinance or other regulatory mechanism to comply with this Permit.~~

V-2-Tacoma: Re: Parts 3.3.3 and 3.3.4 – If the Permit Area includes Tribal Trust properties only, Tacoma would only include the small number of parcels in Tribal Trust and Tacoma has easements or other operational agreements. Tacoma doesn't have regulatory authority to apply this to Tribal Trust parcels.

Response: See Response 5-B-1 regarding legal authority. The Permittee should conduct IDDE activities where investigation of illicit discharges and pollutant prevention will help reduce pollutants in MS4 discharges occurring in the Area defined by Part 1.1. The Permittee should continue to work closely with the Puyallup Tribe to address any future issues that appear to originate from Tribal Trust parcels.

V-3-WSDOT: Re: Part 3.3.3 – Revise text consistent with WDOE WSDOT Permit Section S5.C.1.a, and as follows for internal consistency:

"Within the limitations of state law and federal law, WSDOT shall demonstrate that they can operate pursuant to legal authority which authorizes or enables WSDOT to control discharges to and from MS4s owned or operated by WSDOT. This legal authority may be a combination of statutes, ordinances, permits, contracts, orders, interagency agreements, or similar instruments. If existing legal authority is not sufficient to meet the criteria, the Permittee must adopt new ordinances or regulatory mechanisms no later than 30 months after the effective date of the permit, that provide it with adequate legal authority as allowed and authorized pursuant to applicable law."

Response: EPA agrees to revise the text of WSDOT permit Part 3.3.3 consistent with this comment. EPA notes that the last sentence of this paragraph has been deleted because the requirement to submit new regulatory mechanisms has been consolidated into revised Part 2.2.2.

Revised WSDOT permit Part 3.3.3, 1st paragraph, now reads as follows:

Within the limitations of state and federal law, the Permittee must demonstrate that it can prohibit illicit discharges pursuant to legal authority which authorizes or enables the control of discharges into and from MS4s owned and operated by the Permittee. Such legal authority may be a combination of statutes, ordinances, permits, contracts, orders, interagency agreements, or similar instruments, The Permittee must prohibit all illicit discharges into the MS4 through enforcement of an ordinance or other regulatory mechanism under the legal authorities of the Permittee. No later than 30 months after the effective date of the permit, the Permittee must adopt or amend an ordinance or other regulatory mechanism to comply with this Permit.

V-4 Pierce: Re: Part 3.3.3.1: Suggested edits to simplify language: *All relevant ~~ordinances and other regulatory mechanisms~~ required by this Part must be submitted to EPA and Puyallup Tribe of Indians within 3 months of adoption or completion.* Clarify whether submittal to Tribe and EPA required for review and approval? If code/mechanisms are already in place, must they be referenced in SWMP?

Response: Yes, existing code/regulatory mechanisms that are already in place must be referenced in the SWMP. Review and approval by the Puyallup Tribe and EPA is not required; however, all current documents must be submitted as required by Part 2.2.3.

Part 3.3.3.1 in each permit (Pierce County, Tacoma, WSDOT) is revised to read as follows:

All relevant ~~ordinances and other~~ regulatory mechanisms required by this Part must be submitted to EPA and Puyallup Tribe of Indians ~~within 3 months of adoption or completion~~ as directed in Part 2.2.3.

V-5-Pierce: Re: Part 3.3.3.2 – Delete phrase *for recalcitrant or repeat offenders* as redundant. There are conditions where enforcement may be used on an egregious first offence.

Response: EPA recognizes that the Permittee may use enforcement based on a first offense. No change was made as a result of this comment.

V-6-Pierce: Re: Part 3.3.3.2 – Add "*discharges of lawn watering and other irrigation runoff*" to Part 3.1.4 and add suggested edit: *Discharges from lawn watering and other irrigation runoff: These discharges must be minimized through, at a minimum, public education activities required by Part 3.1.4, and water conservation efforts.* Add *street wash water* to Part 3.1.4 topics for ed/outreach.

Response: EPA declines to add text to Part 3.1.4 as suggested; See Response 18-Q-3. Part 3.3.3.2 in all three MS4 permits (Pierce County, Tacoma, WSDOT) is revised as follows:

Discharges from lawn watering and other irrigation runoff: These discharges must be ~~minimized~~**reduced** through, **at a minimum**, public education activities required by Part 3.1, and water conservation efforts;

V-7-Pierce: Re: Part 3.3.3.4.3 - Correct citation: 40 CFR 35.2005**(b)**(20)

Response: EPA corrected this citation in all three MS4 permits (Pierce County, Tacoma, WSDOT).

W-1-WDOE, Tacoma, Pierce: Re: Part 3.3.4 –Reference the Illicit Connections and Illicit Discharge Field Screening and Source Tracing Guidance Manual, by Herrera Environmental Consultants Inc and Aspect Consulting, May 2020 (available at <https://www.wastormwatercenter.org/permit-assistance/municipal/permit-assistance-2/ic-id/>) or other methodology of comparable effectiveness.

Cite the 2020 Manual noted above. Tacoma exclusively uses Manual for its IDDE and Source Tracing program.

Response: EPA has revised all references to applicable IDDE manuals in both the Pierce County and Tacoma permits as suggested by commenters.

W-2- Tacoma: Re: Part 3.3.4: Revise phrase "*non-stormwater discharges*" to "*illicit discharges*" in 3.3.4. Tacoma understands the intent, to "detect and eliminate non-stormwater...." But see comments on Definitions #52 Stormwater and stormwater runoff. Also, there are "non-stormwater" discharges that are included in Section 1.2.1 as authorized discharges and Section 3.3.3.3 as conditionally allowed discharges.

Response: EPA revised 1st sentence of Part 3.3.4 in both Tacoma and Pierce County permits as follows:

The Permittee must implement an on-going program to detect and eliminate non-~~stormwater~~ **illicit** discharges, spills, and illicit connections into their MS4.

W-4-Tacoma: Re: Part 3.3.4.1: Define "*priority areas*."

Response: EPA Fact Sheet, page 20, describes the expected process for identifying priority areas:

"...A set of procedures for locating priority areas within the Permittee's MS4 based on areas more susceptible to illicit discharges will assist mandatory field screening activities. Priority procedures will be based on public complaints of illicit discharges, historic illicit discharge areas, and areas more susceptible to spills due to the nature of land use. The list of priority areas will be continuously updated over the Permit term, and is expected to change..."

EPA notes that, given the limited number of outfalls in the Permit Area defined by Part 1.1, such procedures can provide the Permittee with the relative order of importance for conducting their IDDE activities. No change was made in response to this comment.

W-5-Pierce: Re: Part 3.3.4.2 - Clarify whether field assessment is only for dry weather screening. Re: Part 3.3.4.2.2 – Dry Weather Field Screening – this requires inspecting all outfalls in permitted area and testing the water. There is potential that the drainage isn't adequate to support sampling required. County is concerned that program required in response is outside of the permitted area. These areas are flat and tend to go dry in the summer. Spills are much more likely to sit where they are and show up in the fall when the rains start.

Response: EPA clarifies that field assessment activities are not only for dry weather screening of outfalls, and notes that Part 3.3.4.2.1 states dry weather screening activities may include field tests. No change was made in response to this comment.

W-6-Tacoma: Re: Part 3.3.4.2 – Revise to accurately reflect WDOE Phase I Permit related to May 2020 WDOE Manual requirements. Phrase “*draining priority areas during dry weather*” is specific to Manual’s direction for Phase II permittees in Eastern WA. More appropriate text would be: “The program shall include implementation of field screening methodology appropriate to the characteristics of the MS4 and water quality concerns”, as in the 2020 Manual cited above.

Re: Part 3.3.4.2 – Revise text consistent with WDOE Phase I Permit Section S5.C.9.c.i to allow flexibility consistent with WDOE’s 2020 Source Tracing Manual. As written, EPA appears to provide flexibility similar to WDOE only for inspection and field testing, but text is unclear; in subsections it appears Permittee has choices for the investigation but must fulfill Part 3.3.4.2.1 regardless of any other method chosen.

Response: EPA revised Part 3.3.4.2 in Tacoma and Pierce County permits as follows:

Procedures for fField assessment activities, including visual inspection of outfalls draining priority areas during dry weather **appropriate to the characteristics of the MS4** and for the purposes of verifying outfall locations, identifying previously unknown outfalls, and detecting illicit discharges.

EPA believes the revised text provides requested flexibility matching permit text in Parts 3.3.4.1, 3.3.4.3 through 3.3.4.5

W-7-Tacoma: Re: Part 3.3.4.2 - Clarify if this section applies to “*all outfalls in priority areas*” or “*all outfalls located in the Permit Area*” - Revise text to include an alternative method for compliance with this section, consistent with WDOE Phase I Permit Section S5.C.9.c.i. The first paragraph conflicts with regard to target area. Tacoma may not be able to access all of its outfalls due to location relative to water level in receiving water. Also due to questions regarding Permit Area, it is unclear what level of effort is needed.

Re: Part 3.3.4.2.2 - Clarify that dry weather field screening is for potential illicit discharges using the guidance in Part 3.3.4.2.1 and not a full monitoring event.

Response: EPA clarifies that dry weather field screening is intended for investigating potential illicit discharges using the guidance in Part 3.3.4.2.1 and is not a full monitoring event. See also Response W-4.

Given the limited number of outfalls within the Permit Area defined by Part 1.1, EPA expects the Permittee to investigate all outfalls in the Permit Area and the Permittee is free to prioritize the relative order of how and when they conduct their IDDE activities during the permit term.

No change was made in response to these comments.

W-8-Pierce, Tacoma: Re: Part 3.3.4.2.3 – Revise text from “all” to “*all known*.” County **can’t** remain compliant with language implying absolutes. County has largest area covered by permit and requests a reasonable size basin for this permit provision. A reasonable time for screening is a minimum of two permit cycles, especially considering the difficulty of completing the mapping.

Suggested edits: No later than 180 days prior to the permit expiration date, the Permittee must complete field screening of all known MS4 outfalls located within the minimum of 2 basins of 10 square miles within Permit Area; The chosen basins should be the one identified as having the highest potential to pollute the receiving water.

Re: Part 3.3.4.2.3 -Add “*known and accessible*”: as follows: “...the Permittee must complete field screening of all *known and accessible* MS4 outfalls...”

Response: EPA declines to revise text to reference relative basin size; given the number of known outfalls discharging in the Permit Area defined in Part 1.1, such activity is reasonable to accomplish within the term of the permit. EPA revised Part 3.3.4.2.3 in both Pierce County and Tacoma permits to read as follows:

No later than 180 days prior to the permit expiration date, the Permittee must complete field screening of all **known and accessible** MS4 outfalls located within the Permit Area;

W-9-Pierce, Tacoma: Re: Part 3.3.4.3.1 – Revise as indicated below. County’s NPDES staff are not emergency responders. Spills that endanger human health must be responded to by professionals with the training and equipment to do so safely; suggested revision requires permittee to have a system in place to refer these situations to professional responders. Suggested Edit: *Compliance with this provision will be achieved by: ...Having a notification system in place that can alert the appropriate agency to immediately responding to all illicit discharges including spills which are determined to constitute a threat to human health or the environment;*

Re: Part 3.3.4.3.3 - Define *emergencies, urgent, and severe*.

Response: EPA recognizes that the Pierce County and Tacoma program staff are not emergency responders. To clarify, EPA’s expectation for Permittee actions to characterize, trace, and eliminate illicit discharges (including its response to emergencies) are comparable to WDOE’s expectation and requirements in the WDOE Phase I Permit Section S5.C.9.c and d.

To further illustrate this expectation, EPA has revised Parts 3.3.4.3, 3.3.4.4, 3.3.4.5, and added new Part 3.3.4.6 to better align with the text of the WDOE Phase I Permit Section S5.C.9.c and d.

Revised text in both Pierce County and Tacoma permits now reads as follows:

Part 3.3.4 Detection and Elimination

The Permittee must implement an on-going program to detect and eliminate illicit ~~non-~~ stormwater discharges, spills, and illicit connections into their MS4. This program must include:

.....3.3.4.3 Procedures for characterizing the nature of, and potential public or environmental threat posed by, any illicit discharges that are found by or reported to the Permittee. Procedures must address the evaluation of whether the discharge must be immediately contained and steps to be taken for containment of the discharge; ~~Compliance with this provision will be achieved by:~~

~~3.3.4.3.1 Immediately responding to all illicit discharges including spills which are determined to constitute a threat to human health or the environment;~~

~~3.3.4.3.2 Investigating (or referring to the appropriate agency), within seven (7) days, any complaints, reports or monitoring information that indicates a potential illicit discharge, including spills; and~~

~~3.3.4.3.3 Immediately investigating (or referring) problems and violations determined to be emergencies or otherwise judged to be urgent or severe;~~

3.3.4.4 Procedures for tracing the source of an illicit discharge; including visual inspections, and when necessary, opening manholes, using mobile cameras, collecting and analyzing water samples, and/or other detailed inspection procedures; and,

3.3.4.5 Procedures for eliminating the discharge; including notification of appropriate owners or operators of interconnected MS4s; notification of the property owner; technical assistance; follow-up inspections; and escalating enforcement and legal actions if the discharge is not eliminated.; ~~compliance with this provision will be achieved by initiating an investigation:~~

3.3.4.6 Compliance with Parts 3.3.5.3, .4, and .5 of this provision will be achieved by meeting the following timelines:

3.3.4.6.1 Immediately respond to all illicit discharges including spills which are determined to constitute a threat to human health or the environment;

3.3.4.6.2 Investigate (or refer to the appropriate agency), within seven (7) days, any complaints, reports or monitoring information that indicates a potential illicit discharge, including spills;

3.3.4.6.3 Initiate and investigation wWithin twenty-one (21) days of any report or discovery of a suspected illicit connection to determine the source of the connection, the nature and volume of discharge through the connection, and the party responsible for the connection; and

3.3.4.6.4 Within 6 months of the Upon confirmation of an illicit connection, **use the authority granted the Permittee under applicable State law in a documented effort to eliminate the illicit connection within six months.** The Permittee must take action to eliminate the illicit connection and must document the effort as part of the Annual Report. All known illicit connections to the MS4 must be eliminated.

X-1-WSDOT: Re: Part 3.3.4:

Revise consistent with WDOE WSDOT Permit Section S5.C.4.b.ii. As written, it requires a unique program, or modifications to the existing program.

Suggested edits:

3.3.4.1 Procedures for identifying, reporting, and correcting or removing illicit connections and illicit discharges when they are suspected or identified. The program shall also include procedures for addressing pollutants entering the MS4 from an interconnected, adjoining MS4.

Re: Part 3.3.4.2, subsections 1 through 4 – Revise consistent with WDOE WSDOT Permit Section S5.C.4.a, as indicated below. As written, it requires a unique program to be developed; we currently do not perform screening/monitoring/ testing. Suggested edits also add text related to WSDOT program to address traffic spills. See additional details about existing WSDOT program in section 2.1.4 of our WSDOT’s SWMP Plan.

Suggested Edits: Replace 3.3.4.2, and subsections .1 -4 with new text:

3.3.4.2 Traffic Collision Related Spills Procedures to ensure consistent, timely notification and response to traffic collision related spills. This program shall include:

3.3.4.2.1 Procedures for coordination between WSDOT, Washington State Patrol (WSP), Ecology, local jurisdictions, and first responders.

3.3.4.2.2 Utilization of Ecology’s spill tracking information to assist in the identification of high-risk spill locations on state routes.

Re: Part 3.3.4.3: As written, this would require a unique program, or modifications to our existing program. Revise for consistency with WDOE WSDOT Permit as follows:

~~Procedures must address the evaluation of whether the discharge must be immediately contained and steps to be taken for containment of the discharge~~ 3.3.4.3 Procedures for characterizing the nature of, and potential public or environmental threat posed by, any illicit discharges that are found by or reported to the Permittee. Compliance with this provision will be achieved by:

Re: Parts 3.3.4.3.1 and 3.3.4.3.2: Revise text as indicated below, because WSDOT is often not the appropriate response agency; instead, the appropriate WSDOT action is reporting to the appropriate agency. Because of this, some events may take longer to investigate and determine appropriate action, but most should fall within the seven days.

Suggested edits:

3.3.4.3.1 Immediately take appropriate action for all illicit discharges including spills which are determined to constitute a threat to human health or the environment;

3.3.4.3.2 Investigating (or referring to the appropriate agency), within seven (7) days on average, any complaints, reports or monitoring information that indicates a potential illicit discharge, including spills; and

Re: Part 3.3.4.4 – Delete phrase “collecting and analyzing water samples” and revise for consistency with WDOE WSDOT Permit. As written, this requires a unique program, or modifications to our existing program, for the Permit Area. WSDOT does not perform this type of sampling currently. See details about existing WSDOT program in section 2.1.4 of WSDOT SWMP Plan.

Response: EPA agrees to revise WSDOT permit Part 3.3.4 in its entirety to better match the WDOE WSDOT Permit in Section S5.C.4. EPA also added new text as Part 3.3.4.3.5 to reflect the Puyallup Tribes Final §401 Water Quality Certification; see CWA §401 Certification Summary Section 2-12 in this Appendix.

WSDOT permit Part 3.3.4 now reads as follows:

3.3.4 Detection and Elimination

The Permittee must implement an on-going program to detect and eliminate non-stormwater discharges, spills, and illicit connections into their MS4. This program must include:

~~3.3.4.1 Procedures for locating priority areas likely to have illicit discharges, including areas where complaints have been recorded in the past, and areas with storage of large quantities of materials that could result in spills; identifying, reporting, and correcting or removing illicit connections and illicit discharges when they are suspected or identified. The program shall also include procedures for addressing pollutants entering the MS4 from an interconnected, adjoining MS4;~~

~~3.3.4.2 Field assessment activities, including visual inspection of outfalls draining priority areas during dry weather and for the purposes of verifying outfall locations, identifying previously unknown outfalls, and detecting illicit discharges.~~ **Procedures for Traffic Collision Related Spills to ensure consistent, timely notification and response to traffic collision related spills. This program must include:**

3.3.4.2.1 Procedures for coordination between WSDOT, Washington State Patrol, Washington Department of Ecology, Puyallup Tribe, local jurisdictions, and first responders. ~~The dry weather screening activities may include field tests of parameters selected by the Permittee as being indicators of discharge sources. The Permittee may utilize less expensive “field test kits,” and test methods not approved by EPA under 40 CFR Part 136, provided the manufacturer’s published detection ranges are adequate for the illicit discharge detection purposes;~~

3.3.4.2.2 Utilization of Washington Department of Ecology’s spill tracking information to assist in the identification of high-risk spill locations on state routes. ~~No later than 1 year after the effective date of the permit, the Permittee must begin dry weather field screening for non-stormwater flows from stormwater outfalls in the Permit Area~~

~~3.3.4.2.3 No later than 180 days prior to the permit expiration date, the Permittee must complete field screening of all MS4 outfalls located within the Permit Area;~~

~~3.3.4.2.4 Screening for illicit connections must be conducted in an effective manner as described in *Illicit Connections and Illicit Discharge Field Screening and Source Tracing Guidance Manual*, prepared by Herrera Environmental Consultants Inc., and Aspect Consulting, May 2020 (available at <https://www.wastormwatercenter.org/permit-assistance/municipal/permit-assistance-2/ic-id/>) or other methodology of comparable effectiveness;~~

3.3.4.3 Procedures for characterizing the nature of, and potential public or environmental threat posed by, any illicit discharges that are found by or reported to the Permittee. ~~Procedures must address the evaluation of whether the discharge must be immediately contained and steps to be taken for containment of the discharge;~~ Compliance with this provision will be achieved by:

3.3.4.3.1 Immediately take appropriate action for ~~responding to~~ all illicit discharges including spills which are determined to constitute a threat to human health or the environment;

3.3.4.3.2 Investigating (or referring to the appropriate agency), within seven (7) days, **on average** any complaints, reports or monitoring information that indicates a potential illicit discharge, including spills; and

3.3.4.3.3 Initiating an investigation within 21 days of any report or discovery of a suspected illicit connection to determine whether it is illicit.

3.3.4.3.4 Upon confirmation of an illicit connection, use enforcement authority in a documented effort to eliminate the illicit connection within 6 months. The Permittee must document the effort as part of the Annual Report. All known illicit connections to the MS4 shall be eliminated.

3.3.4.3.5 The Permittee must identify and resolve all illicit connections into their MS4 outfalls located in the Permit Area within four years of the permit effective date.

~~3.3.4.4—Procedures for tracing the source of an illicit discharge; including visual inspections, and when necessary, opening manholes, using mobile cameras, and/or other detailed inspection procedures; and,~~

~~3.3.4.5—Procedures for eliminating the discharge; including notification of appropriate owners or operators of interconnected MS4s; notification of the property owner; technical assistance; follow-up inspections; and escalating enforcement and legal actions if the discharge is not eliminated; compliance with this provision will be achieved by initiating an investigation;~~

Y-1-Tacoma, WSDOT: Re: Part 3.3.5.2 –

Revise text to be consistent with Part 3.3.4.3.2, or remove Section 3.3.5.2, or replace text with the following: “The Permittee must respond to all complaints or reports of illicit discharges in accordance with Section 3.3.4.3.” The 2-working day response period here contradicts the 7-day response period in Part 3.3.4.3.2. The source of information about an illicit discharge should not change the requirements for investigation.

Also: If the Permit Area includes Tribal Trust properties only, Tacoma lacks authority to respond to and investigate on Tribal Trust Parcels.

Delete Part 3.3.5.2 for consistency with WDOE WSDOT Permit requirements, because response timelines are described in 3.3.4.3.2. As written, this requires a unique program, or modifications to existing program, to be developed. Per WSDOT existing program, calls are treated the same as emails, or in person reports, under requirement 3.3.4.3.2.

Response: The Permittees must conduct IDDE activities, including appropriate notification to the Puyallup Tribe as necessary, in areas of their jurisdiction draining to the MS4 outfalls discharging in the Permit Area defined by Part 1.1. The Permittee(s) should continue to work closely with the Puyallup Tribe to address any issues that appear to originate from Tribal trust parcels. See Response 5-B-1 and Response Section 7-D. EPA declines to delete Part 3.3.5.2 as requested by the commenter.

EPA has revised Part 3.3.5.2 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to clarify that EPA does not expect a response *investigation* within 2 working days; instead, the Permittee must *confirm receipt* of the complaint or report and thus begin the “clock” for an appropriate response.

Part 3.3.5.2 now reads as follows:

The Permittee must **confirm receipt of** ~~respond to and investigate~~ all complaints or reports of illicit discharges no later than within two working days.

Z-1-WSDOT: Re: Part 3.3.7.1 - Replace “completed” with “current.” Delete Part 3.3.7.3 “~~Dry weather screening efforts,~~” consistent with WDOE WSDOT Permit. Delete Part 3.3.7.5 “~~Record of calls received and follow-up actions taken, and~~”. As written, this would require a unique program, or modifications to our existing program, to be developed. Per WSDOT’s existing program, which is consistent with Part 3.3.7.4, calls are treated the same as emails, or in person reports, under requirement Part 3.3.4.3.2. Revise 3.3.7.1 and delete/renumber 3.3.7.3 and 3.3.7.5, to read as follows:

3.3.7 Annual Report

The Permittee must include in each Annual Report for the relevant reporting period:

3.3.7.1 A copy of the current MS4 map as an electronic file via Arc GIS compatible format;

3.3.7.2 Number and type of illicit discharges identified;

3.3.7.3 Locations and efforts to address identified illicit discharges; and

3.3.7.4 Records of relevant training provided or obtained, and the staff members trained.

Response: EPA agrees to make the changes to the WSDOT permit as requested, consistent with the WDOE WSDOT Permit; EPA also revises the introduction to clarify the scope of the Annual Report, and other revisions consistent with changes in response to other public comments. WSDOT Part 3.3.7 now reads as follows:

3.3.7 Annual Report

The Permittee must include in each Annual Report the following information related to IDDE activities in areas draining to MS4 outfalls within the Permit Area described in Part 1.1 during the reporting period:

~~The Permittee must include in each Annual Report for the relevant reporting period:~~

3.3.7.1 A copy of the **current** ~~completed~~ MS4 map as an electronic file via Arc GIS compatible format;

3.3.7.2 Number and type of illicit discharges identified;

3.3.7.3 ~~Dry weather screening efforts;~~

~~3.3.7.4 Locations and efforts to address identified illicit discharges;~~

~~3.3.7.5 Record of calls received and follow-up actions taken, and~~

3.3.7.46 **Summary information regarding relevant staff training provided or obtained, verification that appropriate staff members received training and the number of staff members trained. Records of relevant training provided or obtained, and staff members trained.**

Z-2-Tacoma: Re: Part 3.3.7.1 – Revise to allow Tacoma to make this map available online or as a specific format per request.

Response: EPA declines to make the revision as requested; no change was made in response. See Response 20-U-2 and CWA §401 Certification Summary Section 2-10 in this Appendix regarding text associated with final CWA Section 402 certification conditions from the Puyallup Tribe.

Z-3-Tacoma: Re: Part 3.3.7.2 - Define “*type of illicit discharge,*” and clarify by listing possible types. Suggest using same types as in WDOE Phase I Permit Appendix 14 Item 8 *Pollutants Identified* or Item 9 *Source or Cause*.

Response: EPA clarifies that “type of illicit discharge” can be described using WDOE’s list of pollutants, sources or causes from WDOE Phase I Permit Appendix 14. EPA chooses not to list each type in the permit(s) but agrees that the categories/sources are helpful descriptions. Examples of illicit discharge types include but are not limited to: *Unconfirmed, unspecified, or not identified; Fuel and/or vehicle related fluids; Food-related oil/grease; Sediment/soil; Solid waste/trash; Sewage/septage/pet waste/human waste; Other wastewater; Paint; Firefighting foam; Soap or cleaning chemicals; Other (Explanation required) Unconfirmed, unspecified, or not identified. Alternatively, Vehicle-related business; Food-related business; Landscape-related business; Mobile business; Construction activity; Other commercial/industrial activity; Vehicle collision; Other accident/spill; Intentional dumping.*

No change was made as a result of this comment.

Z-4-Pierce, Tacoma: Re: Part 3.3.7.3 Revise text: *Field Screening, including* dry weather screening efforts; Delete Part 3.3.7.3 –or revise as follows: “*Summary of illicit discharge screening efforts as required in Section 3.3.4.2 for known and accessible MS4 outfalls;*”

Response: EPA has revised Part 3.3.7.3 in Pierce County and Tacoma MS4 permits as follows:

Summary of field screening efforts required by Part 3.3.4.2, including ddry weather screening ~~efforts~~ for known and accessible MS4 outfalls;

Z-5-Tacoma: Re: Part 3.3.7.4 – Revise consistent with WDOE Phase I Permit Appendix 14 Item 11 (Correction/elimination methods used) and associated options in Appendix 14.

Response: No change was made in response to this comment. EPA clarifies that “Locations and efforts to address identified illicit discharges;” can be described using the list from WDOE Phase I Permit Appendix 14. EPA chooses not to list each of the methods in the permit(s) but agrees that they are helpful descriptions. Examples of efforts to address illicit discharges include but are not limited to: *Clean-up; Education/technical assistance; Add or modify operational source control BMP; Add or modify structural source control BMP; Add or modify treatment BMP; Enforcement; Referred to other agency or department; Other (Explanation required).*

Z-6-Tacoma: Re: Part 3.3.7.5 - Provide an example of "follow-up actions taken." Tacoma receives & investigates hundreds of calls per year for spills and illicit discharges. This could be a large effort to gather/prepare this information for submittal. If referring to calls related to illicit discharges, or to our hotline please clarify. Use reporting format consistent with WDOE Phase I Permit Appendix 14 Item 11, including options in Appendix 14 Item 11.

Response: EPA agrees that “*follow up actions taken*” is redundant with “*efforts to address identified illicit discharges*” in Part 3.3.7.4 and deleted the phrase from Part 3.3.7.5 in both the Pierce County

and Tacoma MS4 permits. See also Response Z-5. EPA acknowledges that the database required by WDOE Phase I Permit Appendix 14 would be sufficient to document these activities in the Annual Report. EPA encourages Permittees to coordinate with Puyallup Tribe to discuss the specific information necessary for inclusion in the Annual Report for this permit.

21. Regarding Part 3.4 – New Development, Redevelopment and Construction Site Runoff

AA-1-WDOE: Re: Parts 3.4 and 3.7 – Don't use the terms: *stormwater treatment and flow control BMPs/facilities*. Instead, recommend using terms found in the Definitions or in the 2019 SWMMWW Glossary: *stormwater facility, flow control BMP or facility, or Treatment BMP or facility*. Alternatively, remove "BMP/facility" from the terms used in the EPA Permit and glossary.

Response: EPA has made the changes as suggested. See Responses 23-FF-3 and 20-U-6 regarding revised Part 9 and added definitions for *Treatment BMP or Facility* and *Flow control BMP or Facility*. EPA has revised all associated text related to these terms throughout each of the three MS4 permits (Pierce, Tacoma, WSDOT).

AA-2-Tacoma: Re: Part 3.4 – 1st sentence reads: The Permittee must implement and enforce a program to reduce pollutants in stormwater runoff to the MS4 from new development, redevelopment, and construction project site activities.

Define *new development, redevelopment, and construction project site activities*.

Response: EPA defined *redevelopment* in the Fact Sheet at page 22 but neglected to include the definitions for *new development or redevelopment* in the permit(s). To address this, EPA added the following definition of *redevelopment* to Part 9 in all three MS4 permits (Pierce County, Tacoma and WSDOT):

Redevelopment means, on a site that is already substantially developed (i.e., has 35% or more of existing hard surface coverage), the creation or addition of hard surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of hard surface that is not part of a routine maintenance activity; and land disturbing activities. See: 2019 Stormwater Management Manual for Western Washington.

(In WSDOT permit, last sentence reads: **See: 2019 WSDOT Highway Runoff Manual**)

EPA added the following definition of *new development* to Part 9 in Pierce County and Tacoma permits only; (note that there is no comparable definition for WSDOT in the Highway Runoff Manual or WDOE WSDOT Permit):

New development means land disturbing activities, including Class IV - general forest practices that are conversions from timberland to other uses; structural development, including construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development. See 2019 Stormwater Management Manual for Western Washington.

EPA declines to define “construction project site activities,” because as drafted, all three MS4 permits (Pierce County, Tacoma and WSDOT) contain a definition of *construction activities*. To simplify text in this Part, EPA revised 1st sentence to delete term project site rather than a new definition as requested by commenter.

EPA notes that the term “project site,” without qualifier, is defined by WDOE; therefore, EPA revised each permit to add the relevant “project site” definition as found in either the 2019 *Stormwater Management Manual for Western Washington* (for Pierce County and Tacoma) or the 2019 *WSDOT Highway Runoff Manual* (for WSDOT).

In Pierce County and Tacoma permits only, EPA revised Part 9 to include:

Project site means that portion of a property, properties, or right of way subject to land disturbing activities, new hard surfaces, or replaced hard surfaces. See 2019 Stormwater Management Manual for Western Washington.

In WSDOT Permit only, EPA revised Part 9 as follows:

Project site means the portion of a site to undergo development or redevelopment. For road projects, it is the area between the beginning and ending mileposts within WSDOT right of way. It is defined in the formal project definition agreed upon by the region and Headquarters as to the work to be done, the estimated cost, and the project schedule. See 2019 WSDOT Highway Runoff Manual. For nonroad projects, refer to the 2019 WSDOT Highway Runoff Manual definitions for project limits.

AA-3-Tacoma: Re: Part 3.4 – If the Permit Area includes Tribal Trust properties only, Tacoma would only include small number of parcels that are in Tribal Trust and Tacoma has easements or other operational agreements. Tacoma does not have regulatory authority to apply this to Tribal Trust parcels.

Response: The Permittee must implement and enforce their requirements to reduce pollutants in runoff from new development and redevelopment in all geographic areas in their jurisdiction that drain to MS4 outfalls discharging in the Permit Area defined in Part 1.1. The Permittee must continue to work closely with the Puyallup Tribe to address any potential issues due to runoff from development activities on Tribal Trust parcels.

BB-1-Tacoma: Re: Part 3.4.1 - Delete 2nd sentence of this paragraph.

Response: EPA declines to revise text as suggested. Reference to Appendix C in each permit provides the reader additional context regarding the specific regulatory mechanisms that are relevant for the Permittee. No change was made in response to this comment.

BB-2-Pierce, Tacoma: Re: Part 3.4.2 – County required to see that industry & construction projects/sites get NPDES permits but has no authority on Tribal Trust lands or State permitted properties. Remove “regulated” to be consistent with other definitions in Part 9; “Regulated” is undefined, only “construction activity” and “industrial activity” are defined.

Suggested edits: *The Permittee must provide adequate direction and oversight to ensure that entities responsible for “regulated construction activities” and “regulated industrial activities,” as defined in Part 9 (DEFINITIONS), occurring in the Permit Area ~~obtain~~ are made aware of the requirement to obtain authorization to discharge under appropriate stormwater permits required by Part 1.5.*

Define “regulated construction activities” and “regulated industrial activities,” as referenced. Terms are not in Part 9 Definitions.

Response: Regarding legal authority, see Response 5-B-1. Although EPA defined *Regulated Construction Activities* and *Regulated Industrial Activities* in Fact Sheet at page 22, EPA neglected to include these definitions in the permit(s). EPA declines to revise Part 3.4.2 as suggested by commenter, but adds the following definitions to Part 9 in all three MS4 permits (Pierce County, Tacoma, WSDOT):

Regulated Construction Activities, as used in this permit, means clearing, grading, or excavation that results in a land disturbance of greater than or equal to one acre, or that disturbs less than one acre if part of a larger common plan of development or sale. See 40 CFR §122.26(b)(x) and 40 CFR §122.26(b)(15). See also stormwater discharge associated with construction activity and stormwater discharge associated with industrial activity.

Regulated Industrial Activities, as used in this permit, means the categories of industrial activity described at 40 CFR §122.26(b)(14)(i)-(ix) and (xi). See also stormwater discharge associated with industrial activity.

BB-3-Tacoma: Re: Part 3.4.2 – Define “oversight;” Clarify whether Permittee to must conduct oversight that is otherwise the responsibility of WDOE or EPA, who issue the Construction and Industrial Stormwater General Permits. Revise text in this Part consistent with the Fact Sheet Page 16 (noted below) or delete Part 3.4.2. The text requires Tacoma to “ensure” facilities that must have an EPA or Ecology CSWGP or ISWGP “obtain” one. Tacoma can’t require EPA or Ecology to issue NPDES permits to such facilities. Tacoma can inform and encourage facility owner/operators to obtain permits but can’t compel them to do so. WDOE Phase I Permit does not require Tacoma to “ensure” that responsible entities obtain permits from WDOE. Tacoma isn’t an authority on permits not administered by Tacoma and therefore may not be aware of every facility/project that requires a permit from another agency. The Permit is written that failure to get responsible entities NPDES-permitted by EPA or Ecology would be a permit violation. Tacoma can’t compel the Puyallup Tribe to obtain permits from EPA or Ecology. Note: EPA Fact Sheet Page 16, last sentence only requires Tacoma to “*educate those operators of the need to comply with CWA.*”

Response: In Part 3.4.2, “adequate direction and oversight” means that when the Permittee has knowledge of potential stormwater discharges to the Permittee’s MS4 in areas draining to MS4 outfalls within the Permit Area defined in Part 1.1, the Permittee proactively educates the site operators of their obligation to obtain NPDES permits to ensure that potential pollutants into the MS4 are properly controlled. When such activities are outside of the Permittee’s jurisdictional control, proactive education could involve concurrently notifying EPA and the Puyallup Tribe, or WDOE, regarding such site activities. To further clarify this provision, EPA has revised Part 3.4.2 in all three MS4 permits (Pierce County, Tacoma and WSDOT) EPA as follows:

The Permittee must provide adequate direction and oversight to ensure that educate entities responsible for “regulated construction activities” and “regulated industrial activities,” as defined in Part 9 (Definitions) occurring within the Permit Area and discharging to the Permittee’s MS4, to obtain authorization to discharge under the appropriate stormwater permits as required by Part 1.5.

As noted above, when NPDES regulated activities occur on Tribal Trust property and discharge to the Permittee’s MS4, EPA expects the Permittee to work cooperatively with Puyallup Tribe and EPA to educate, inform, and direct the operator to apply for discharge authorization under an EPA-issued stormwater permit, as appropriate, or to cease the discharge.

Within the Permit Area, recognizing that the Permittee(s) does not have enforcement authority over Tribal Trust Land within the 1873 Survey Area, EPA expects Permittee(s) to share information through cooperation to ensure any stormwater discharges are appropriately controlled. In such cases, the Permittee's compliance with this provision would be determined by evidence of Permittee's communication with the operator, Puyallup Tribe, and/or EPA to direct the operator regarding its obligation to obtain discharge authorization under the appropriate NPDES permit. All subsequent enforcement of that operator's permit obligation remains with EPA and Puyallup Tribe.

Outside of the Permit Area, EPA expects the Permittee(s) to similarly use its knowledge, influence, and available regulatory mechanisms (to the extent practicable) to educate, inform, and direct that operator to apply for discharge authorization under the appropriate WDOE-issued ISGP or CSWGP. See also Response J-2.

CC-1-Pierce: Re: Part 3.4.3 – Delete this section. If the Permit Area includes Tribal Trust properties only, regulating development on Tribal Trust land is under the authority of Puyallup Tribe. As stated in other comments, land draining to the County's discharge points covered in this permit are outside of Tribal Trust land and therefore covered by the WDOE Phase 1 Permit.

Response: See Response 5-B-1 and Response Section 7-D. EPA expects the Permittee to use its available legal authority to appropriately regulate development occurring on in geographic areas draining to MS4 outfalls that discharge within the Permit Area defined by Part 1.1. No change was made in response to this comment.

CC-2-Tacoma: Re: Part 3.4.3 – Revise as follows:

The Permittee's enforceable mechanism must include minimum requirements, thresholds, and definitions equivalent to Appendix I of the Phase I Municipal Stormwater Permit (effective August 1, 2019) or the comparable Appendix of the most current Phase I Municipal Stormwater Permit of the most up to date version of the documents listed in APPENDIX C of the for new development, redevelopment, and construction sites. Adjustment and variance criteria equivalent to those in Appendix I of the Phase I Municipal Stormwater Permit (effective August 1, 2019) or the comparable Appendix of the most current Phase I Municipal Stormwater Permit must also be included.

Re: Part 3.4.3.2 – Revise as follows:

The Permittee's enforceable mechanism must include the following when implementing the minimum requirements found in the most up to date version of the documents listed in APPENDIX C Appendix I of the Phase I Municipal Stormwater Permit (effective August 1, 2019) or the comparable Appendix of the most current Phase I Municipal Stormwater Permit:

Response: EPA declines to revise Part 3.4.3 as suggested by the commenter. EPA revised Appendix C to reference the Permittees' current regulatory documents that are deemed by WDOE as equivalent to Appendix I of the WDOE Phase I Permit (effective August 1, 2019). See Response 35-RR-2. No change was made in response to these comments.

CC-3-Pierce: Re: Part 3.4.4.3 – Delete and revise text to acknowledge the County complies with EPA's permit for those lands and discharges by complying with the WDOE Phase I Permit. County has no legal authority to inspect Tribal trust lands.

Response: EPA expects the Permittee to use its available legal authority to appropriately regulate and inspect new and redevelopment activities occurring in geographic areas draining to MS4 outfalls that discharge within the Permit Area defined by Part 1.1. EPA recognizes the Permittee has no legal

authority on Tribal trust land. See Responses 21-CC-4 and 5-B-1. No change was made in response to this comment.

CC-4-Tacoma: Re: Part 3.4.4 - Revise as follows: *"This program will be applied to all permitted sites that meet the thresholds adopted."* Tacoma could be non-compliant by not completing inspections on sites constructing without permits. Tacoma doesn't know which sites attempt to construct without a permit. Sites constructing without permits are subject to Tacoma enforcement, but they must be identified for that to happen.

Response: If a construction site is unpermitted by either WDOE or EPA construction stormwater permits, and the site is contributing runoff into the Permittee's MS4 draining to MS4 outfalls within the Permit Area defined by Part 1.1, EPA expects the Permittee to exercise its legal authority to properly enforce against the site operator where it has jurisdiction to do so. When such construction activities occur on Tribal trust land but discharge to the portion of the Permittee's MS4 draining to outfalls in the Permit Area, EPA expects the Permittee to work cooperatively with EPA and the Puyallup Tribe to ensure the site activities are appropriately controlled. See Response 21-BB-3. No change was made in response to this comment.

DD-1-Tacoma: Re: Part 3.4.5 - Define *stormwater management issues*. Clarify if stormwater management issues here are limited to subjects in Part 3.4 or are broader. Suggest edit: *"Orientation and training concerning the Permittee's stormwater management program must be accomplished within the first six months of employment for new staff who work directly on topics and requirements outlined in Section 3.4."*

Response: In all three MS4 permits (Pierce County, Tacoma, WSDOT) EPA replaced phrase *stormwater management issues* here and in other training provisions with reference to the individual control measure, and revised Part 3.4.5 as follows:

The Permittee must ensure that all staff whose primary job duties are implementing the new development, redevelopment, and construction site runoff program, including plan review, construction site inspections, and enforcement, are trained to conduct these activities. **No later than one year from permit effective date, the Permittee must provide appropriate training to existing employees who will implement this Permit.** Orientation and training concerning the Permittee's stormwater management program must be accomplished within the first six months of employment for new staff who work directly on **stormwater management issues** topics and requirements outlined in Part 3.4. Follow-up training must be provided as necessary to address changes in procedures, techniques, requirements, or staffing. ~~Permittees must document and maintain records of the training provided and the staff trained.~~

DD-2-Pierce: Re: Part 3.4.6 – Delete "relevant." Suggested edit: *The Permittee must summarize in each Annual Report for the relevant reporting period:* County requests it be allowed to prepare and submit one annual report that contain the required information for both EPA and WDOE permits.

Response: EPA expects the Permittee to submit a unique Annual Report in compliance with the MS4 permit. While the Permittee can submit certain topics in common between the EPA and WDOE permits, it will be necessary for the Permittee to submit a unique Annual Report to EPA and Puyallup

Tribe documenting compliance with this Permit. EPA has deleted the word *relevant* as suggested. No other change was made in response to this comment.

DD-3-Tacoma: Re: Part 3.4.6 – Clarify scope of the reporting, what it entails, and revise as indicated below. It's not possible to easily supply information required in a short time, we don't know permit effective date and scope of this reporting. Is it narrative summaries to respond to each item (3.4.6.1 - 3.4.6.5)? Provide an example of the response required for compliance. Edit text to state: "Beginning 24 months after the effective date of this Permit, the Permittee must summarize in each Annual Report for the relevant reporting period:"

Response: EPA declines to revise Part 3.4.6 as suggested by the commenter. All required submittal dates will be identified in the final permits. Lengthy narrative responses are not required as part of the Annual Report; summary information with appropriate location data is more appropriate for this portion of the Annual Report. See Response 21-DD-7 below. See also Response Section 33-PP re: Appendix A Annual Report.

DD-4-Tacoma: Re: Part 3.4.6.1 – Clarify the form and scope of this request; revise as suggested below. WDOE's Permit Annual Report question #23 requests # of actions rather than a summary. Revise to report only the number of corrective actions and Clarify that 'construction sites' refers to new/redevelopment projects meeting thresholds of WDOE Phase I Permit Appendix 1 requiring compliance with the Minimum Requirements.

Response: EPA has revised Part 3.4.6.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) as follows:

~~Any~~ **Number of** corrective actions taken at ~~construction~~ **project** sites during the previous reporting period;

See also Response DD-7 below.

DD-5-Tacoma: Re: Part 3.4.6.2 – Clarify scope: is *"Inspection Passed"* or *"Inspected failed and rescheduled"* acceptable to report as the "result/response" of site inspections conducted? Or is it necessary to write a multi-sentence inspection summary? This is large body of work Tacoma must revise its reporting databases, reporting process, and add staff.

Response: *"Inspection Passed"* or *"Inspected failed and rescheduled"* is acceptable. No change was made as a result of this comment.

DD-6-Pierce: Re: Part 3.4.6.2 – Clarify how site location must be reported - Address or latitude /longitude? Other information? (i.e. business name, inspection or business type, etc.)? Add bullet after "Number of Site plans reviewed;" – seems 2 separate requirements.

Response: Part 3.4.6.2 has been renumbered; individual site locations should be identified by address and latitude/longitude. See Response 21-DD-7 below.

DD-7-Pierce, Tacoma: Re: Part 3.4.6.3 - Delete section; requirement is unclear and may be covered under Section 3.4.6.1. This information is not tracked in existing databases and is inconsistent with WDOE Phase I Permit. If not deleted, provide example of response, and clarify what actions/review/event this pertains to.

Re: Part 3.4.6.4 – Revise text to not report each staff member. Suggested edits: "Provide records of type/subject of training provided and verification that the appropriate staff members have received training."

Re: Part 3.4.6.5 – Clarify BMPs to be reported here. List each active site and BMPs associated with that site? All BMPs selected and implemented in the Permit Area?

Re: Part 3.4.6.5- Delete section (or revise as below). Clarify if intent is to also capture a day-by-day BMP list used on a given site. As written, this is large effort to list for new /redevelopment sites; Tacoma needs time to create report on permanent BMPs. Listing BMPs at construction projects sites is also time intensive (Tacoma may not know/witness exact BMPs used at each site (those as needed and/or temporary basis); temporary erosion/sediment control BMPs change as project develops over time. Limit BMP definition. If not, Tacoma will need to hire more staff to do this reporting, & non-compliant until staff/systems exist to record/summarize all BMPs per Permit text as written.

Re: Part 3.4.6.5 – Delete section or clarify; County does not permit on tribal trust lands. This requires submitting plan sets, drainage reports to EPA & Tribe. Current databases are not designed to summarize/tally individual BMPs. County would need a completely new database and tracking program.

Response: EPA agrees to revise Part 3.4.6 in response to these comments, consistent with reporting requirements for other SWMP control measures in each Permit. EPA clarifies that it does not require Permittees to submit entire databases or lengthy lists of actual BMPs used at project sites; however, it is expected that the Permittee’s Annual Report summarize the sites under development during the reporting period, and summarize the inspection, site plan review, and other control measure activities occurring in the geographic areas of the Permittee’s jurisdiction that drain to the Permittee’s MS4 outfalls within the Permit Area defined in revised Part 1.1.

EPA has revised Part 3.4.6 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to clarify the content of the Annual Report as follows:

3.4.6 Annual Report

The Permittee must include in each Annual Report the following information related to controlling runoff from new development and redevelopment activities during the reporting period in areas draining to MS4 outfalls within the Permit Area described in Part 1.1

1.1 The Permittee must summarize in each Annual Report for the relevant reporting period:

3.4.6.1 **Any-Number of** corrective actions taken at ~~construction~~ **project** sites ~~during the previous reporting period;~~

3.4.6.2 Number of site plans reviewed;

3.4.6.3 Number of site inspections conducted by the Permittee, including the location ~~and total number of such inspections and result/response; and~~

~~3.4.6.3~~ **Any follow-up action(s)** conducted by the Permittee, any subsequent enforcement actions, and/or any referrals to different departments or agencies;

3.4.6.4 **Summary information regarding relevant staff training provided or obtained, verification that appropriate staff members received training and the number of staff members trained** ~~Records of type/subject of relevant training provided or obtained, and the staff members trained, and~~

~~3.4.6.5~~ **The specific BMPs that were selected and implemented for reducing pollutants in stormwater runoff from new development, redevelopment, and construction project sites.**

DD-8-Tacoma: Re: Part 3.4.6.5 and elsewhere: Define “stormwater treatment and flow control BMPs/facilities” (use WDOE Phase I Permit definition), correct existing text consistently throughout permit. EPA’s grouping of words as written is more problematic, undefined and frequently used. Use WDOE definition throughout.

Response: EPA agrees; see Responses 23-FF-3 and 20-U-6.

22. Regarding Part 3.5 - Structural Controls

EE-1-WDOE, Pierce: Re: Part 3.5 - Include the following reporting parameters for Structural stormwater control projects in addition to the project name and status update: *corresponding project type, cost estimate, basin area treated and latitude and longitude of the project location(s)*. See Appendix 12 of WDOE Phase I permit for more information about reporting parameters required.

Revise text to reference WDOE Phase I permit because all lands upstream of existing outfalls are in areas covered by WDOE Phase I permit.

Response: As requested, EPA has revised Part 3.5.4 in the Pierce County and Tacoma MS4 permits to reflect WDOE Phase I Permit’s Appendix 12 reporting framework for the structural control program, as follows:

In each Annual Report, the Permittee must provide the following information for current planned structural stormwater control projects that are scheduled for implementation; this list must include a status update for any ongoing project. The Permittee may use Appendix 12 of the Washington Department of Ecology’s Phase I Municipal Stormwater Permit as a format and guidance for submitting this information: ~~a list of current planned projects that are scheduled for implementation and a status update for any ongoing projects in each Annual Report.~~

3.5.4.1 Project Name

3.5.4.2 Project Location (Latitude/Longitude)

3.5.4.3 Project type

3.5.4.4 Cost estimate

3.5.4.4 Basin area treated (in acres)

See also Response EE-4 below regarding edits to Annual Report requirements for the WSDOT Permit.

EE-2-Tacoma: Re: Part 3.5 – Revise to add 2 year “ramp up” period. Tacoma’s biannual budget may not correspond to EPA permit term. Tacoma’s activities for WDOE Phase I Permit Section S5.C.7 are similar but occur throughout Tacoma and may not occur in EPA Permit Area every year.

Response: EPA declines to revise the timeframe for implementation of this program as requested by the commenter. EPA will coordinate with Tacoma and the Puyallup Tribe regarding dates triggered by the Permit effective date. No change was made as a result of this comment.

EE-3-Tacoma: Re: Part 3.5 – If the Permit Area includes Tribal Trust properties only, Tacoma would include small number of parcels in Tribal Trust and Tacoma has easements or other operational agreements. Scope under this Section is limited as Tacoma’s authority is very small compared to the area in WDOE Phase I Permit. Most resources would be directed to WDOE Permit Area based on relative size of WDOE and EPA Permit Areas.

Response: To reduce pollutants in MS4 discharges occurring in the Permit Area defined by Part 1.1, the Permittee must plan and construct structural stormwater controls in any area of their jurisdiction that drains to the MS4 outfalls in the Permit Area, where such controls may be needed to prevent or reduce pollutants that are not be adequately controlled by other required SWMP actions. See Response 5-B-1 regarding legal authority.

See also CWA §401 Certification Summary Section 2-9 in this Appendix, regarding new Tacoma permit Part 2.5, reflecting a specific requirement in Condition 11 of the Puyallup Tribe’s CWA Section 401 final certification for Tacoma Permit. This condition requires Tacoma to work closely with the Puyallup Tribe to plan and prioritize structural control projects that address pollutants draining from areas discharging through MS4 outfalls in the Permit Area defined in revised Part 1.1. The Permittee must initiate regular meetings with Puyallup Tribe Water Quality Manager (at least annually) to discuss, coordinate and consult on planned structural stormwater controls, and other SWMP activities to be implemented during the permit term in the geographic areas draining to the Tacoma MS4 outfalls in the Permit Area.

EE-4-WSDOT: Re: Part 3.5 - Revise text consistent with WDOE WSDOT Permit Section S5.C.6 as described below. As written, requires a new unique program to be developed. WSDOT’s existing SW Retrofit Management Program and Highway Runoff Manual are implemented statewide & consider impacts caused by stormwater discharges from existing highways and areas of new development.

Because WSDOT’s project planning and funding processes are unique and largely dictated by the Legislature, Parts 3.5.2.1 – 3.5.2.7 as drafted are misaligned with how WSDOT operates.

Revise existing text as follows: *The Permittee must implement a program to retrofit existing highways lacking stormwater treatment or flow control, or for which treatment or flow control is not to current standards as specified in the Highway Runoff Manual.*

Replace Parts 3.5.2.1 through 3.5.2.7 with:

3.5.2.1 The Permittee must retrofit (i.e. provide stormwater treatment or flow control to) existing highways if a project triggers runoff treatment or flow control requirements as defined in the HRM.

3.5.2.2 For projects that trigger runoff treatment or flow control requirements as defined in the HRM, the Permittee must retrofit the amount of existing impervious surface and existing pollutant generating impervious surface within the project limits that equates to 20% of the cost to meet stormwater requirements for the new impervious surfaces and new pollutant generating impervious surface (i.e., 20% cost obligation), or as much as feasible.

Response: EPA agrees and has revised WSDOT permit Part 3.5 to reflect WSDOT’s unique approach to structural stormwater controls, and to better align with the WDOE WSDOT Permit Section S5.C.6 as requested by the commenter.

WSDOT permit Part 3.5. as revised also reflects the WSDOT CWA §401 Certification. See CWA §401 Certification Summary Section 2-15 in this Appendix.

Revised WSDOT permit Parts 3.5, 3.5.1, 3.5.2, 3.5.3 and 3.5.4 now read as follows:

The Permittee must implement a program **to retrofit existing highways discharging to MS4 outfalls in the Permit Area described in Part 1.1 that lack stormwater treatment or flow control, or for which treatment or flow control is not to current standards as specified in the 2019 WSDOT Highway Runoff Manual cited in Appendix C.**~~that considers structural stormwater controls to prevent or reduce impacts to receiving waters caused by discharges from the MS4.~~ The program must address impacts from disturbances to watershed hydrology and stormwater pollutant discharges and include the following components:

3.5.1 SWMP Document

The Permittee's SWMP Document must describe the Structural Stormwater Control Program including the following:

~~3.5.1.1 The Structural Stormwater Control Program goals; and how WSDOT implements its~~ **3.5.1.2 The planning process used to develop the Structural Stormwater Control Program as described in Parts 3.5.2 and 3.5.3.**

3.5.2 Program Design

3.5.2.1 The Permittee must retrofit existing highways through runoff treatment or flow control if a project triggers runoff treatment or flow control requirements as defined in the 2019 WSDOT Highway Runoff Manual cited in Appendix C ~~The program must consider impacts caused by stormwater discharges from areas of existing development, including runoff from highways, streets and roads owned and/or operated by the Permittee, and areas of new development, where impacts are anticipated as development occurs. When planning structural stormwater control projects, the permittee must consider:~~

3.5.2.2 For projects that trigger runoff treatment or flow control requirements as defined in the 2019 WSDOT Highway Runoff Manual, the Permittee must retrofit the amount of existing impervious surface and existing pollutant generating impervious surface within the project limits that equates to 20% of the cost to meet stormwater requirements for the new impervious surfaces and new pollutant generating impervious surface (i.e., 20% cost obligation), or as much as feasible.

~~3.5.2.1 The geographic scale of the planning process;~~

~~3.5.2.2 Issues and regulations addressed;~~

~~3.5.2.3 Steps in the planning process;~~

~~3.5.2.4 Types of characterization information considered;~~

~~3.5.2.5 Amount budgeted for implementation;~~

~~3.5.2.6 The public involvement process; and,~~

~~3.5.2.7 A description of the prioritization process, procedures and criteria used to select the Structural Stormwater Control projects.~~

3.5.3 Stormwater Retrofit Projects

The program must address impacts that are not adequately controlled by **operational source controls and** other required actions of the SWMP. **The Permittee must develop a**

stormwater retrofit plan for stormwater discharges from Permittee's existing highways that are resulting in illicit discharges or violations of surface water standards.

3.5.3.1 The program must consider the following projects:.....

.....3.5.4 Annual Report

The Permittee must provide a **prioritized** list of ~~current~~ planned projects that are scheduled for implementation and a status update for any ongoing projects in each Annual Report.

23. Regarding Part 3.6 – Source Control for Existing Development

FF-1-Tacoma: Re: Part 3.6 – If the Permit Area includes Tribal Trust properties only, Tacoma would only include that small number of parcels in Tribal Trust and Tacoma has easements or other operational agreements. Tacoma lacks authority to conduct activities on Tribal Trust parcels.

Response: See Response 5-B-1. EPA expects the Permittee to use its available legal authority to appropriately control sources of pollutants occurring on land that contributes discharges to the MS4s discharging within the Permit Area defined by Part 1.1. No change was made in response to this comment.

FF-2-Pierce: Re: Part 3.6.2.2 – Revise to provide point of notification for permit documents. Preferably electronically from a shared site that EPA and Tribes can access.

Response: Part 3.6.2.2 is revised based on edits to Parts 2.2.2 and 2.2.3. No change was made as a result of this comment.

FF-3-Tacoma: Re: Part 3.6.3 - Define source control BMPs, operational source control BMPs, structural source control BMPs, and treatment BMPs/facilities, flow control BMPs/Facilities.

Response: EPA has revised all three MS4 permits (Pierce County, Tacoma and WSDOT) as indicated below.

- 1) EPA revised Pierce County and Tacoma permits Part 9 to include a definition of *source control BMP* consistent with the 2019 *Stormwater Management Manual for Western Washington*; in doing so, definitions for both *operational source control BMPs* and *structural source control BMPs* are also provided:

***Source control BMP* means a structure or operation intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. See 2019 *Western Washington Stormwater Management Manual for Western Washington*. *Structural Source Control BMPs* are physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater. *Operational Source Control BMPs* are non-structural practices that prevent or reduce pollutants from entering stormwater. See Volume IV of the 2019 *Stormwater Management Manual for Western Washington* for additional details.**

- 2) EPA revised the WSDOT permit Part 9 to incorporate the appropriate *source control* definition as found in the 2019 *Highway Runoff Manual*, as follows:

Source control means a structure or operation intended to prevent pollutants from coming into contact with stormwater, either through physical separation of areas or through careful management of activities that are sources of pollutants. **Structural source control BMPs** are physical, structural, or mechanical devices or facilities intended to prevent pollutants from entering stormwater. **Operational source control BMPs** are nonstructural practices that prevent or reduce pollutants entering stormwater. See: **2019 Highway Runoff Manual** for additional details.

3) EPA added the following definitions to Part 9 in all three MS4 permits (Pierce County, Tacoma WSDOT); see also Response U-6:

Treatment BMP or Facility means a BMP that is intended to remove pollutants from stormwater. A few examples of treatment BMPs are wetponds, oil/water separators, biofiltration swales, and constructed wetlands. See **2019 Stormwater Management Manual for Western Washington**.

Flow control BMP or Facility means a drainage facility designed to mitigate the impacts of increased surface and stormwater runoff flow rates generated by development. Flow control facilities are designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground, or to hold runoff for a short period of time, releasing it to the conveyance system at a controlled rate. See **2019 Stormwater Management Manual for Western Washington**.

FF-4-Pierce, WSDOT, Tacoma: Re: Part 3.6.3.1 –

Revise as suggested below. When enforcing on a site with discharges authorized by a separate NPDES permit, Permittee will coordinate with appropriate WDOE Permit manager. Suggested edits: Sites with discharges authorized by a separate NPDES permit will require coordination with the discharge authorizing agency.

Revise to reference current manuals: 2019 SWMMWW, Phase I Municipal Stormwater Permit (effective August 1, 2019), and 2019 Highway Runoff Manual.

Reference current documents: The requirements of this subsection are met by using source control BMPs in Volume IV of the 2012 Stormwater Management Manual for Western Washington as amended in December 2014 (SWMMWW) or those found in the most up-to-date version of the documents listed in APPENDIX C Volume 6 of the City of Tacoma Stormwater Management Manual – July 2021 Edition or the comparable Volume of the most current City of Tacoma Stormwater Management Manual.

Response: EPA has revised Part 3.6.3.1 in the Pierce County and Tacoma MS4 permits to reference the 2019 *Stormwater Management Manual for Western Washington*.

EPA revised WSDOT permit Part 3.6.3.1 to reference 2019 *WSDOT Highway Runoff Manual*.

EPA declines to make the other edits suggested by the commenter.

For the Pierce County MS4 permit only: Part 3.6.3.1 as revised reflects Pierce County CWA §401 Certification. See also Response FF-10 and CWA §401 Certification Summary Section 2-16 in this Appendix.

FF-5-Tacoma: Re: Part 3.6.4.2: Remove reference to mobile-based businesses. Section title refers to publicly and privately owned institutional, commercial, and industrial sites with potential to generate pollutants to the Permittee's MS4. Mobile based businesses may not be associated with a site; clarify how this applies to mobile based business not associated with a site.

Response: EPA agrees to delete reference to *mobile based businesses* all three MS4 permits (Pierce County Tacoma WSDOT) consistent with the WDOE Phase I Permit Section S5.C8.b.ii.b. (Note: There is no comparable provision in WDOE WSDOT Permit.)

FF-6-Pierce, Tacoma: Re: Part 3.6.4.4 – Revise or delete. As written, inconsistent with WDOE Phase I permit. County updates source control list on ongoing basis as complaints received and inspections occur, and only required once per permit cycle. EPA permit requiring an annual update is additional workload that is not value-added. Suggested edit: *“The Permittee must update the inventory annually once each permit cycle.”*

Re: Part 3.6.4.4 – Revise consistent with WDOE Phase I Permit Section S5.C.8.b.ii, which requires this update “at least once every 5 years.” Or clarify annual inventory “update.” Tacoma has processes in place (User Survey, Field Inspections) used to update source control inventory almost continuously.

Response: EPA has revised Part 3.6.4.4 all three MS4 permits (Pierce County Tacoma WSDOT) to update the inventory at least once every five years to be consistent with WDOE Phase I Permit Section S5.C.8.b.ii. (Note: There is no comparable provision in WDOE WSDOT Permit.)

FF-7-Tacoma: Re: Part 3.6.5.2 - Replace “properties” with “sites” to be consistent with Part 3.6.4.

Response: EPA revised text in Part 3.6.5.2 in all three MS4 permits (Pierce County Tacoma WSDOT) as suggested.

FF-8-Pierce: Re: Part 3.6.6 – Revise to recognize that when enforcing on a site with discharges authorized by a separate NPDES permit, Permittee will coordinate with appropriate Ecology Permit manager. Suggested edit: *The Permittee must enforce its ordinance or regulatory mechanism at sites, identified pursuant to Part 3.6.4. ~~including~~ Sites with discharges authorized by a separate NPDES permit will require coordination with the discharge authorizing agency.*

Response: EPA revised text in 1st paragraph Part 3.6.6 in all three MS4 permits (Pierce County Tacoma WSDOT) by adding the following sentence:

For sites with discharges authorized by a separate NPDES permit, the Permittee must coordinate with the appropriate NPDES permitting authority.

FF-9-Pierce, Tacoma: Re: Part 3.6.6.4 – Delete section. Pierce County has no legal or enforcement authority over tribal trust lands. Suggested edit: ~~The Permittee may refer non-emergency violations of local ordinances to EPA and Puyallup Tribe of Indians, provided, the Permittee also makes a documented effort of progressive enforcement. At a minimum, a Permittee's enforcement effort must include documentation of inspections and warning letters or notices of violation.~~

Re: Part 3.6.6.4 – Revise to include specific EPA and Tribe contacts for Tacoma to contact when Tacoma's progressive enforcement does not yield compliance.

Response: EPA declines to delete Part 3.6.6.4 as suggested. No change was made in response to this comment.

EPA expects the Permittee to use its available powers in its jurisdiction to appropriately assess existing development to determine if inadequate controls result in illicit discharges or are

contributing to violations of water quality standards through the Permittee's MS4 discharging within the Permit Area defined by Part 1.1. For situations associated with existing development on parcels where the Permittee does not have legal authority, the Permittee should continue to work closely with EPA and the Puyallup Tribe to share information that can help to address any needed source control.

EPA revised Part 3.6.6.4 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to refer to EPA and Tribal contact procedures in revised Part 6.1. See Response Section 29-LL.

FF-10-Tacoma: Re: Part 3.6.7 -Revise text as indicated below to allow any structural stormwater control – including structural source control measures such as treatment BMPs initiated and installed by the private entity - be allowed to address issues that are not adequately controlled by operational source control measures. As written, permit indicates that only BMPs that are on the SSC Project List (Permit Section 3.5.3) are appropriate to use as remedies for source control issues. That is problematic as the issues may be generated on private sites and the SSC project List may not contain anything that would remedy a problem at specific locations.

Revise consistent with WDOE Phase I Permit Sections S5.C.8.b.i and S5.C.8.b.iv. to allow private sites to provide their own remedy for their own source control issues. It's inappropriate to transfer responsibility for private illicit discharges from responsible private party to Tacoma and ultimately all stormwater rate payers.

Response: EPA does not intend to limit the level or implementation of needed controls.

Commenter does not provide example of suggested language to be consistent with WDOE Phase I Permit Sections S5.C.8.b.i and S5.C.8.b.iv; however, EPA has revised Part 3.6.7 in all three MS4 permits (Pierce County, Tacoma, WSDOT) as indicated below to allow possible response options including, but not limited to, those listed in the Structural Control Program requirements in Parts 3.5.3.1 and 3.5.3.2.

For the Pierce County MS4 permit only: Part 3.6.7 as revised below reflects Pierce County CWA §401 Certification. See also Response FF-4 and CWA §401 Certification Summary Section 2-16 in this Appendix.

3.6.7 Additional Controls

If stormwater discharges from areas of existing development are not adequately controlled by operational source controls alone, and/or other required actions of the SWMP, and are resulting in illicit discharges or violations of water quality standards, the Permittee must implement a structural stormwater control program that includes, **but is not limited to**, projects identified in Parts 3.5.3.1 and 3.5.3.2.

FF-11-Tacoma Re: Part 3.6.7 – If the Permit Area includes Tribal Trust properties only, Tacoma would only include that small number of parcels that are in Tribal Trust and Tacoma has easements or other operational agreements. Delete section - for any Tribal Trust parcels, Tacoma lacks authority to determine where “existing development are not adequately controlled by operational source controls alone and other required actions of the SWMP and are resulting in illicit discharges or violations of water quality standards” Difficult to develop effective program to address unknown impacts.

Response: EPA expects the Permittee to use its available powers in its jurisdiction to appropriately assess existing development to determine if inadequate controls result in illicit discharges or are

contributing to violations of water quality standards through the Permittee's MS4 discharging within the Permit Area defined by Part 1.1. For situations associated with existing development on parcels where the Permittee does not have legal authority, the Permittee should continue to work closely with EPA and the Puyallup Tribe to share information that can help to address any needed source control. No change was made in response to this comment.

FF-12-Pierce: Re: Part 3.6.9 – Revise as indicated below. Staff may be reassigned to source control from other work. Check other training requirements to reflect date from assignment rather than date of hire with the County.

Suggested edit: The Permittee must train staff who are responsible... to conduct these activities within the first six months of ~~employment~~ *being assigned this work, which may include being hired.*

Response: EPA has revised Part 3.6.9 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to delete the phrase: ~~within the first six months of employment.~~

FF-13-Tacoma: Re: Part 3.6.10.1 - Provide example of scope of information requested here. Tacoma has a system to record inspections/related data but supplying all information this section requests as written will be a large effort. Include database entries, individualized documents from file folders and inspection forms. New procedures to prepare documents will be required.

Response: EPA does not intend for entire databases to be submitted with the Annual Reports and does not intend for the Permittee to develop new procedures to summarize or report such information. As in Part 3.6.4, EPA expects to receive a source control inventory that identifies the publicly and privately owned institutional, commercial, and industrial sites that have potential to generate pollutants to the Permittee's MS4 discharging in the Permit Area. Based on comparable provisions in the WDOE Phase I Permit, EPA expects the Permittee already has this information available, and it likely consists as a subset of the information that the Permittee already has. EPA encourages Permittees to coordinate with Puyallup Tribe Water Manager directly to discuss the specific information necessary to provide in the Annual Report. See also Response FF-6 and FF-14.

To clarify expected content to be submitted in the Annual Report related to Source Control, EPA revised Part 3.6.10 as follows in all three MS4 permits (Pierce, Tacoma, WSDOT):

The Permittee must include in each Annual Report the following information related to source control activities during the reporting period in areas draining to MS4 outfalls within the Permit Area described in Part 1.1: ~~The Permittee must include in each Annual Report for the relevant reporting period:~~

3.6.10.1 The 1st Year Annual Report must contain the available source control inventory information for areas draining to MS4 outfalls in the Permit Area; This summary list should include, at a minimum, site location identifier or name, address, latitude/longitude, and brief site description or type as listed in Part 3.6.4; subsequent Annual Reports may refer to or reference this initial inventory;

3.6.10.2 Summary information regarding Records of all source control inspections, follow up actions taken, enforcement actions taken, including any and circumstances beyond the Permittee's control that may have prevented an intended inspection from occurring;

3.6.10.3 Verification that the source control inventory list provided in the 1st Year Annual Report has been updated at least once within the last five years; [An]The updated source

control inventory including those sources identified by complaints (sources identified by complaints must be noted as such in the inventory) **must be available to EPA and the Puyallup Tribe upon request; and**

3.6.10.4 **Summary information regarding relevant training provided or obtained, verification that appropriate staff members received training and the number of staff members trained. ~~Records of relevant training provided or obtained, and the staff members trained.~~**

FF-14-Tacoma: Re: Part 3.6.10.2: See Comments on Section 3.6.4.4. WDOE Phase I Permit does not require Tacoma to submit list. Revise as follows: "Verification that the source control inventory has been updated at least once in the last 5 years."

Response: EPA requires a known list of sources located in areas draining to the MS4 outfalls in the Permit Area to be submitted as part of the 1st Year Annual Report. See also Response FF-6. EPA has revised all three MS4 permits [Pierce County, Tacoma, WSDOT] Part 3.6.10.2 as follows:

Verification that the source control inventory list provided in the 1st Year Annual Report has been updated at least once within the last five years. The ~~an~~ updated source control inventory including those sources identified by complaints (sources identified by complaints must be noted as such in the inventory) **must be available to EPA and the Puyallup Tribe upon request; and..**

24. Regarding Part 3.7 – Municipal Operations and Maintenance

GG-1-WDOE: Re: Parts 3.4 and 3.7 – Don't use the terms: *stormwater treatment* and *flow control BMPs/facilities*. Use terms found in the Definitions or in the 2019 SWMMWW Glossary: *stormwater facility, flow control BMP or facility, or Treatment BMP or facility*. Alternatively, remove "BMP/facility" from the terms used in the EPA Permit and glossary.

Response: See Responses 23-FF-3 and 20-U-6 regarding revised Part 9 and added definitions for *Treatment BMP or Facility* and *Flow control BMP or Facility*. EPA revised associated text related to these terms throughout each of the three MS4 permits (Pierce County, Tacoma, WSDOT). EPA revised associated text related to these terms throughout each of the three MS4 permits (Pierce County, Tacoma, WSDOT).

GG-2-Pierce: Re: Part 3.7.1 – Revise to include as requirement in Annual Report, not SWMP. The information is in a large database that is not transferable to a private party. Suggested edit: *The Permittee must include a written description of the O&M Program in the SWMP. The permittee must maintain a database that can be queried for ~~Document including~~ a list of regulated and owned and/or operated stormwater facilities. The ~~Permittee~~ database must include The permittee must have the ability to query the report for a variety of information which EPA and the permittee will develop over the term of this permit.*

List regulated & owned/operated facilities, maintenance schedules & date of inspections. With State regulators, no one read the data we submitted. We'd like permit language where EPA and tribe, if we must submit this twice in hard copy, are reading & responding to the data. Add deadline after each AR where EPA, Tribe, & County meet to discuss EPA and Tribal review. Clarify "maintenance schedule." Is it pertaining to inspections only or does it include repairs, cleaning, other maintenance work? How is emergency work treated?

Response: EPA agrees to revise Part 3.7.1 but declines to revise text as suggested by the commenter. The requirement to provide the list of permittee-regulated and permittee-owned and operated stormwater facilities has been moved to the Annual Report requirements in revised Part 3.7.10; See Response 24-GG-20. Revised Part 3.7.1 in both Pierce County and Tacoma MS4 permits now reads as follows:

3.7.1 SWMP Document

The Permittee must include a written description of the O&M Program **to regulate maintenance and conduct maintenance activities** in the SWMP Document. ~~including a list of regulated and owned and/or operated stormwater facilities. The Permittee must include maintenance schedules and the date of most recent inspection or maintenance conducted for each facility~~

Revised Part 3.7.1 in WSDOT MS4 permit now reads as follows:

3.7.1 SWMP Document

The Permittee must include a written description of the O&M Program **to conduct maintenance activities** in the SWMP Document. ~~including a list of regulated and owned and/or operated stormwater facilities. The Permittee must include maintenance schedules and the date of most recent inspection or maintenance conducted for each facility~~

GG-3-Tacoma: Re: Part 3.7.1 – Define “regulated stormwater facilities.” Clarify what “maintenance schedule” means. List could be very long; most recent date of inspection or maintenance could be included; but unknown if information is available.

Response: In the Fact Sheet, page 25, EPA states: *Regulated facilities include permanent stormwater treatment and flow control BMPs and catch basins regulated by the Permittee. (Emphasis added).* For clarity and consistency with the WDOE Phase I Permit, EPA has revised the text throughout Part 3.7 in all three MS4 permits (Tacoma, Pierce, WSDOT) to refer to *facilities regulated by the Permittee.*

GG-4-Tacoma: Re: Part 3.7.2 – Revise as follows:

The Permittee must establish maintenance standards that are as protective, or more protective, of facility function than those specified in the ~~SWMMWW~~ or those found in the most up to date version of the documents listed in ~~APPENDIX C~~ City of Tacoma Stormwater Management Manual – July 2021 Edition or the most up to date version of the City of Tacoma Stormwater Management Manual.

Response: EPA declines to revise text as requested. Appendix C is revised to reference the Permittee’s appropriate documents. No change was made in response to this comment.

GG-5-Pierce: Re: Part 3.7.3.2 - Revise *30 months* to 60 months (or permit cycle). County has no authority in tribal trust lands. County code must be updated to meet this requirement. County will strengthen other parts of our code at same time and requests the entire permit term to accomplish.

Response: EPA deleted Part 3.7.3.2 in all three MS4 permits (Pierce County, Tacoma, WSDOT) because requirement to update ordinances as necessary is addressed in revised Part 2.2.2. EPA expects the Permittee to use its available legal authority to appropriately operate and maintain its infrastructure that contributes discharges to the MS4s discharging within the Permit Area defined by Part 1.1.

GG-6-Tacoma: Re: Part 3.7.3.2 - Define *permanent stormwater treatment and flow control BMPs/facilities regulated by the Permittee*. Use terms similar to WDOE Phase I Permit definition for this type of facility.

Response: See Responses 23-FF-3 and 20-U-6 regarding revised Part 9 and definitions for Treatment BMP or Facility and Flow control BMP or Facility.

EPA deleted the word “permanent” in Part 3.7.3.2 and elsewhere in this part. See Response 24-GG-21. By definition, stormwater facilities are permanent, and EPA’s repeated use of the word is unnecessary.

GG-7-Tacoma Re: Part 3.7.4 – Delete this section and all related reporting. If the Permit Area includes Tribal Trust properties only, Tacoma would only include small number of parcels that are in Tribal Trust and Tacoma has easements or other operational agreements and there will not be any regulated stormwater facilities.

Response: EPA declines to delete Part 3.7.4 as requested. EPA expects the Permittee to use its available legal authority to appropriately operate and maintain its infrastructure that contributes discharges to the MS4s discharging within the Permit Area defined by Part 1.1. See also Response GG-3 and GG-4.

GG-8-Tacoma: Re: Part 3.7.4 – Clarify phrase “the Permittee must seek access” and level of effort required. Is the requirement to “seek access” once per inspection cycle or continuously?

Response: Part 3.7.4 requires annual inspection of all stormwater facilities regulated by the Permittee, (unless the Permittee documents its reduced frequency per Part 3.7.5.1.)

EPA intends this phrase to have the same meaning as in the WDOE Phase I Permit (i.e., requesting access at least once per inspection cycle). WDOE clarified in its WDOE 2012 RtC, pg 31: “*Permittees may determine the extent to which they pursue access to stormwater treatment [facilities] and flow control...facilities, provided a request for access is made.*”

No change was made in response to this comment.

GG-9-Tacoma: Re: Part 3.7.5 – Define *Permittee owned and/or operated permanent stormwater facilities used for flow control and treatment*, other than catch basins. See prior comments re Part 3.4.6.5 and Definitions 41, 45, and 56. Revise to use term ‘*permanent stormwater treatment and flow control BMPs/facilities*’ and WDOE Phase I Permit definition. See comments on Section 3.4.6.5 and Definitions Items 41, 45 and 56.

Response: See Responses 23-FF-3 and 20-U-6 regarding revised Part 9 and added definitions for *Treatment BMP or Facility* and *Flow control BMP or Facility*. EPA deleted the word “permanent” in Part 3.7.5 and elsewhere in this part. See Response 24-GG-21. By definition, stormwater facilities are permanent, and EPA’s repeated use of the word in this Part is unnecessary.

GG-10-Tacoma: Re: Part 3.7.5 – Clarify if EPA believes catch basins are to be used for flow control or stormwater treatment. How would that relate to Minimum Requirements #6 Stormwater Treatment and #7 Flow Control? EPA’s text implies catch basins might be used for flow control or stormwater treatment. This has confusing implications for other portions of the permit.

Response: No, EPA does not believe catch basins are to be used for flow control or stormwater treatment. See also WDOE 2012 RtC, pg 29. EPA has revised 1st sentence of Part 3.7.5 in all three MS4 permits (Pierce County, Tacoma, WSDOT) as follows:

The Permittee's O&M program must include annual inspection of all Permittee owned and/or operated permanent stormwater facilities used for flow control and treatment, ~~other than catch basins.~~

GG-11-Pierce: Re: Part 3.7.5.2 - Suggested Edit: For the purposes of this permit, a major storm event is rainfall greater than the 24-hour, 10-year or greater recurrence interval.

Response: For consistency with WDOE Phase I Permit EPA has added "or greater" to Part 3.7.5.2 in Pierce County and Tacoma permits as suggested. EPA does not revise WSDOT permit as there is no comparable provision in the WDOE WSDOT Permit.

GG-12-Tacoma: Re: Part 3.7.5.2 - Define potentially damaged permanent stormwater control facilities. Use term permanent "stormwater treatment and flow control BMPs/facilities" WDOE Phase I Permit definition for this term and include a definition of "potentially damaged".

Response: See Responses 23-FF-3 and 20-U-6 regarding revised Part 9 and added definitions for Treatment BMP or Facility and Flow control BMP or Facility. EPA declines to provide definition of "potentially damaged" as it is intended to mean the same as WDOE Phase I Permit Section S5.C.10.c.ii. No change was made in response this comment.

GG-13- Pierce, Tacoma: Re: Part 3.7.5.3 – Revise as indicated below. County knows required inspections, but not total universe. Clarify what compliance looks like how County can maintain compliance. Suggested edits: *The Permittee must have a program designed to inspect all sites and achieving inspection of at least 95% of the total universe of identified permanent stormwater facilities used for flow control and treatment annually required inspections.*

Re: Part 3.7.5.3 – Delete the word *sites* and define "total universe" in context of this section. Part 3.7.5 requires a program to annually inspect all Permittee owned and/or operated permanent stormwater facilities used for flow control and treatment, other than catch basins. Compliance metric in 3.7.5.3 is related to the number of sites and facilities inspected vs. the number of facilities inspected.

Response: The 1st sentence of Part 3.7.5.3 establishes the goal of the inspection program and reads as follows: *The Permittee's O&M program must include annual inspection of all Permittee owned and/or operated permanent stormwater facilities used for flow control and treatment, other than catch basins.* (Emphasis added).

EPA revised Part 3.7.5.3 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to better match WDOE Phase I Permit Section S5.C.10.c.iii and WDOE WSDOT Permit Section S5.8.b.i; as such EPA declines to delete the word sites or to incorporate other edits as suggested.

Revised text now reads as follows:

Compliance with the inspection requirements in Part 3.7.5 will be determined by evaluating Permittee records of an established stormwater facility inspection program. ~~The Permittee must have a program designed to inspect all sites and achieving inspection of at least 95% of the total universe of identified permanent stormwater facilities used for flow control and treatment annually required inspections.~~

GG-14-Tacoma: Re: Part 3.7.6 - Clarify if this section applies to both catch basins and inlets and define each term. Section is titled "*Permittee Owned or Operated Catch Basins*" but throughout requirements appear to apply to catch basins and inlets.

Response: The requirements in Part 3.7.6 apply to catch basins and inlets, as in the WDOE Phase I Permit Section S5.C.10.d. and WDOE WSDOT Permit Section S5.7.c. Catch basin and inlet are defined as in the 2019 SWMMWW and in the 2019 HRM. EPA has added both definitions to Permit Part 9 in all three MS4 permits (Tacoma, Pierce County, WSDOT).

GG-15-Tacoma, Pierce: Re: Part 3.7.7 – Revise text to allow one year to document and implement maintenance practices and define *lands owned or maintained by the Permittee*. Suggest using text from WDOE Phase I permit: *Lands owned or maintained by the Permittee include, but are not limited to: parking lots, streets, roads, highways, buildings, parks, open space, road right-of-way, maintenance yards, and stormwater treatment and flow control BMPs/facilities.*

Re: Part 3.7.7 - Suggested edit: *The Permittee must document and implement maintenance practices to reduce stormwater impacts associated with runoff from all lands within the permit area, owned or maintained by the Permittee, and road maintenance activities under the functional control of the Permittee.*

Response: EPA has revised 1st sentence of Part 3.7 in all three MS4 permits (Pierce County, Tacoma, WSDOT) and added text as follows:

3.7.7 Other Maintenance Practices

The Permittee must document and implement maintenance practices to reduce stormwater impacts associated with runoff **discharging through the Permittee's MS4 in the Permit Area defined in Part 1.1** from, ~~all~~ lands owned or maintained by the Permittee, and/or road maintenance activities under the functional control of the Permittee. ***Lands owned or maintained by the Permittee include, but are not limited to parking lots; streets, roads, and highways; buildings, parks, and open space; road rights-of-way; maintenance yards; stormwater treatment BMPs or facilities; and flow control BMPs or facilities.*** The Permittee must ensure...

GG-16-Pierce, Tacoma: Re: Part 3.7.7, item 11– Revise consistent with WDOE Phase I Permit Section S5.C.10.e.xi as follows: "*Application of fertilizers, pesticides, and herbicides according to the instructions for their use, including reducing nutrients and pesticides using alternatives that minimize environmental impacts.*"

Delete reference to Nutrient Management Plans (which are required for cattle feeding operations). If not revised, clarify the circumstances and thresholds for "*nutrient management and integrated pest management plans.*"

Response: EPA has revised Part 3.7.7.11 in all three MS4 permits (Pierce County, Tacoma, WSDOT) as follows:

3.7.7.11 Application of fertilizer, pesticides, and herbicides **according to the instructions for their use, including reducing nutrients and pesticides using alternatives that minimize environmental impacts**, including the development of nutrient management and integrated pest management plans;

GG-17-Pierce: Re: Part 3.7.8 – Revise text consistent with Phase I Permit to recognize budget and project planning timelines. Clarify whether this is only for facilities that are owned by the County on tribal trust land. Or does this also apply in drainage basins covered by WDOE Phase I Permit? The SWPPP language includes a timeline for structural source control on County facilities which is not included in our state permit. County has a biannual budget cycle and won't have a schedule of necessary structural BMPs until we propose budget and if it gets approved.

Response: No change was made a result of this comment. EPA expects the Permittee to use its available resources to appropriately implement Stormwater Pollution Prevention Plans at all heavy equipment maintenance or storage yards, and/or material storage facilities owned and/or operated by the Permittee within the Permit Area that are not already regulated under another appropriate NPDES permit. If there are existing locations that are not controlled through appropriate BMPS but that contribute discharges to the MS4s discharging within the Permit Area defined by Part 1.1, EPA expects the compliance timeframe as drafted (i.e., two years from permit effective date) sufficiently recognizes a Permittee's budget and project planning constraints.

GG-18-Pierce: Re: Part 3.7.9 -Revise as indicated below. See other training comments. Training for O&M says training must occur within the first 6 months of EMPLOYMENT. Suggested edit:
.....Orientation and training concerning the Permittee's stormwater management program must be accomplished within the first 180 days of employment, or a new assignment, for new staff who work directly on stormwater management issues.

GG-19-Tacoma: Re: Part 3.7.9 -Revise as indicated below. Define "contracted companies", "environmental project officers" Revise text so that the modifier of "whose construction, operations or maintenance job functions may impact stormwater quality" applies to all listed categories. Clarify that personnel to be trained are employed or under contract by the Permittee.

Response GG-18 & 19: EPA revised 1st sentence of all three MS4 permits (Part 3.7.9 in Pierce County and Tacoma, and Part 3.7.10 in WSDOT) to be consistent with both the WDOE Phase I Permit Section S5.C.10. and the WDOE WSDOT Permit; and added "or a new assignment" to 3rd paragraph as suggested. EPA also revised text as discussed in Responses A-8 and DD-1. Revised text now reads as follows:

The Permittee must develop and implement an on-going training program for **the Permittee staff who may have primary** ~~Permittee's facility maintenance staff, contracted companies, environmental project officers, or other staff whose~~ **responsibility for** construction, operations or maintenance job functions **that** may impact stormwater quality.

The training program must address the importance of protecting water quality; the requirements of this permit; O&M standards; inspection procedures; selection of appropriate BMPs as required in this Part; ways to perform their job activities to prevent or minimize impacts to water quality; and procedures for reporting water quality concerns, including potential illicit discharges.

No later than one year from permit effective date, the Permittee must provide appropriate training to existing employees who will implement this permit. Orientation and training concerning the Permittee's stormwater management program must be accomplished within the first 180 days of employment, **or new assignment**, for new staff who work directly on **topics and requirements outlined in Part 3.7.** ~~stormwater~~

~~management issues.~~ Follow-up training must be provided as needed to address changes in procedures, techniques, or requirements.

GG-20-Tacoma: Re: Part 3.7.10 – Revise to require information by request, not as requirement of each Annual Report. Tacoma maintains inspection & maintenance records. It's a large task to supply a list of all inspection, maintenance, or repair records.

Clarify if this is requesting information on facilities regulated by the Permittee, owned by the Permittee, or both. Provide example of information to be submitted. This could be a large requirement that Tacoma may need to alter its recordkeeping systems to compile and create a presentation version of this data.

Re: Part 3.7.10.3 and 3.7.10.4 - Clarify or revise as indicated. Text says “...to be inspected;” is this the number of facilities & catch basins where inspections will occur in the future/the following year? More useful to request the total number of facilities and catch basins owned or operated by the Permittee. Revise Annual Report to request these numbers, and of those, how many inspected and maintained each reporting period.

Define “*permanent stormwater facilities used for flow control and treatment.*”

Revise to add “*and inlets*” after *catch basins* in Parts 3.7.10.4 and 3.7.10.4.1.

Re: Part 3.7.10.5 – Revise to say: “Records of type/subject of training provided and verification that the appropriate staff members have received training.” To report each staff member & training they received requires major changes to our recordkeeping and extensive work to create submittal.

Response: In all three MS4 permits (Pierce County, Tacoma, WSDOT) EPA revised and renumbered this Part to clarify EPA’s expectation that the Permittee summarize the total number and location of stormwater facilities and catch basins and related Operation and Maintenance (O&M) (inspections, maintenance and repair) occurring in areas draining to the Permittee’s MS4 outfalls within the Permit Area. This includes both facilities regulated by the Permittee and facilities owned/operated by the Permittee, as outlined in Parts 3.7.4 and 3.7.5.

This initial information should be available as a subset of the Permittee’s inventory information that exists as part of the Permittee’s ongoing SWMP activities in compliance with the WDOE Phase I Permit. To reiterate, EPA is interested in the O&M activities conducted in drainage areas leading to the MS4 outfalls in the Permit Area; EPA does not expect to receive entire databases of Permittee records that are unrelated to these areas.

EPA revised Part 3.7.10 to require an inventory or “master list” of such facilities to be submitted in the 1st Year Annual Report; subsequent Annual Reports must summarize the Permittee’s progress towards achieving the inspection and maintenance objectives of “80-95% of all inspections conducted” as identified in Parts 3.7.4, 3.7.5 and 3.7.6. Instead of having this information in the SWMP document, EPA clarifies that the Annual Report must provide the lists of Permittee-regulated stormwater facilities and Permittee-owned and operated stormwater facilities, including catch basins.

To clarify, the Permittee must report the anticipated number of facilities and catch basins to be inspected throughout the permit term, as well as the number of such inspections actually conducted during the reporting period.

In each Annual Report, EPA expects the Permittee to provide three categories of inspection information for areas draining to their MS4 outfalls in the Permit Area. For each outfall drainage

area, the Permittee submits an inventory of stormwater facilities that are regulated by the Permittee; stormwater facilities that are owned/operated by the Permittee; and catch basins and inlets that are owned/operated by the Permittee. This information includes the total number of individual features within the drainage area; the anticipated number of Permittee inspections to occur during the five-year permit term, and the number of actual inspections that occurred during the reporting period.

EPA added definitions for treatment facilities or BMPs, and flow control facilities or BMPs in Part 9. See also Response FF-3.

EPA deleted the word “permanent” in Part 3.7.10. By definition, such stormwater facilities are permanent, and EPA’s repeated use of the word in this Part is unnecessary; and

EPA revised text in what is now Part 3.7.10.5 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to add “and inlets” after catch basins, consistent with WDOE Phase I Permit and WDOE WSDOT Permit.

Revised Part 3.7.10 in Pierce County and Tacoma permits now reads as follows {see revised WSDOT permit Part 3.7.11 in Response GG-26 below}:

3.7.10 Annual Report

The Permittee must include in each Annual Report **the following information related to O&M activities in areas draining to MS4 outfalls within the Permit Area described in Part 1.1 during** for the relevant reporting period:

3.7.10.1 **Summary Information regarding** ~~Records of all permanent~~ stormwater facility inspections, catch basin inspections, **and** maintenance or repair activities conducted by the Permittee, and those circumstances beyond the Permittee’s control that prevent a maintenance activity from occurring.

3.7.10.2 Where circumstances ~~beyond the Permittee’s control~~ prevented the maintenance activity, as described in Part 3.7.2, from occurring, the Permittee must document the circumstances and **to describe** how they were outside the Permittee’s control.

3.7.10.3 The 1st Year Annual Report must include a list of all Permittee-regulated stormwater facilities, and their locations, that are expected to be inspected during the permit term in compliance with this Part.

Subsequent Annual Reports must summarize the Permittee’s inspection of those Permittee-regulated stormwater facilities to document progress towards achieving > 80% of required inspections during the permit term.

3.7.10.3.4 **The 1st Year Annual Report must include a list of all** ~~The total number of~~ Permittee-owned and/or operated permanent stormwater facilities used for flow control and treatment, **and their locations, that are expected to be inspected during the permit term** in compliance with this Part. ~~3.7.10.3.1~~

Subsequent Annual Reports must ~~document and~~ summarize the Permittee’s inspection and maintenance of those Permittee-owned and/or operated ~~permanent~~ stormwater facilities **to document progress towards achieving > 95% of required inspections during the permit term.**

3.7.10.4.5 The 1st Year Annual Report must include a list of all ~~the total number of~~ Permittee-owned and/or operated catch basins **and inlets** to be inspected annually in compliance with this Part. ~~3.7.10.4.1~~

Subsequent Annual Reports must document the Permittee's progress toward inspecting and maintaining **>95% of all catch basins and inlets** prior to the permit expiration date.

3.7.10.5 6 Summary information regarding ~~Records of relevant training provided or~~ **obtained, verification that the appropriate staff members have received training, and number of staff members trained.** ~~relevant training provided or obtained, and the staff members trained.~~

As noted in this Response Section, EPA revised and renumbered Part 3.7 of the WSDOT permit to incorporate public comments and conditions of the Puyallup Tribe's CWA §401 Certification. See Response 24-GG-20, and CWA §401 Certification Summary Section 2-17 and 18 in this Appendix. For brevity, the revised text of WSDOT's Annual Report requirements in Part 3.7 now reads as follows:

3.7.11 Annual Report

The Permittee must include in each Annual Report the following information related to O&M activities in areas draining to MS4 outfalls within the Permit Area described in Part 1.1 during the relevant reporting period:

3.7.11.1 Summary information regarding all stormwater facility inspections, catch basin inspections, and maintenance or repair activities conducted by the Permittee, and those circumstances considered beyond the Permittee's control that prevent a maintenance activity from occurring.

3.7.11.2 Where circumstances prevented the maintenance activity as described in Part 3.7.2 from occurring, the Permittee must document the circumstances to describe how they were outside the Permittee's control.

3.7.11.3 The 1st Year Annual Report must include a list of all Permittee-regulated stormwater facilities and their locations (if any), that are expected to be inspected during the permit term in compliance with this Part.

Subsequent Annual Reports must summarize the Permittee's inspection and maintenance of those Permittee-regulated stormwater facilities to document progress towards achieving **> 80%** of required inspections during the permit term.

3.7.11.4 The 1st Year Annual Report must include a list of all Permittee-owned and/or operated stormwater facilities used for flow control and treatment, and their locations, that are expected to be inspected during the permit term in compliance with this Part.

Subsequent Annual Reports must summarize the Permittee's inspection and maintenance of those Permittee-owned and/or operated stormwater facilities to document progress towards achieving **> 95%** of required inspections during the permit term.

3.7.11.5 The 1st Year Annual Report must include a list of all Permittee-owned and/or operated catch basins and inlets to be inspected annually in compliance with this Part.

Subsequent Annual Reports must document the Permittee's progress toward inspecting and maintaining >95% of all catch basins and inlets prior to the permit expiration date.

3.7.11.6 A copy of the WSDOT Vegetation Management Plan.

3.7.11.7 Summary information regarding relevant staff training provided or obtained, verification that appropriate staff members received training, and the number of staff members trained.

25. Regarding Part 4 – Adaptive Management Response

HH-1-Pierce: Re: Part 4 – Provide single way to notify EPA and Tribe -hard copy mail or email, not both.

Response: EPA revised Permit Part 6.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to clarify the submittal of documents. See Response Section 29-LL. In response to this comment, EPA revised Part 4, 1st paragraph, in all three MS4 permits (Pierce County, Tacoma, WSDOT) as follows:

The Permittee must notify EPA **Director of the Enforcement and Compliance Assurance Division, EPA Director of Water Division** and the Puyallup Tribe of Indians **in writing as required by the addresses listed in Part 6.1 (Submittal Process) 6.1.1 (-)** within 30 days of becoming aware that, based on credible site-specific information, a discharge from the Permittee's MS4 is causing or contributing to a known, likely, on-going, and/or continuing violation of water quality standards in the receiving water.

HH-2-Tacoma: Re: Part 4 – If the Permit Area includes Tribal Trust properties only, Tacoma would only include small number of parcels that are in Tribal Trust and Tacoma has easements or other operational agreements. Tacoma's ability to investigate & respond to issues will be limited and will not include any work on Tribal Trust parcels. Tacoma not authorized to ensure Permit compliance on Tribal Trust Parcels, and Tacoma can't meet requirements of this Part if areas on Tribal Trust Parcels are out of compliance. Provide exclusionary language to ensure Tacoma can remain in compliance when Permit sections might relate to Tribal Trust lands.

Response: See Response 5-B-1 regarding legal authority. No change was made in response to this comment.

HH-3-Tacoma: Re: Part 4 – Revise consistent with WDOE Phase I Permit Section S4.F and S4.G.

Response: EPA declines to revise Part 4 as suggested. The comparable EPA provision to WDOE Phase I Permit Section S4.F is EPA Permit Part 4 in its entirety. The comparable EPA provision to WDOE Phase I Permit Section S4.G is Part 8.13 (Re-opener Clause). No change was made in response to this comment.

HH-4-Tacoma: Re: Part 4 –Suggested edit: Add following to end of 1st paragraph Part 4, consistent with WDOE Phase I Permit to ensure permittees remain in compliance if following Part 4 procedures. "A Permittee remains in compliance with this Permit despite any discharges prohibited by this Permit when the Permittee complies with the requirements of this Section."

Response: EPA declines to revise Part 4 as suggested, because a comparable statement is added to revised Part 1.3 in all three MS4 permits (Pierce County, Tacoma, WSDOT). See Response 11-H-2. No change was made in response to this comment.

HH-5-Tacoma: Re: Part 4.1 – Revise consistent with WDOE Phase I permit: add following to the end of Section 4.1 “For ongoing or continuing violations, a single written notification to EPA will fulfill this requirement.”

Response: EPA agrees and has revised Part 4.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to add the following sentence: **For ongoing or continuing violations, a single written notification to EPA and Puyallup Tribe will fulfill this requirement.**

HH-6-Pierce: Re: Part 4.2 - Clarify what water quality standards will EPA use for this review - State, Tribal, or Federal?

Response: The permit authorizes discharges to tribal surface waters. EPA has written the permit to ensure that the *Water Quality Standards for Surface Waters of the Puyallup Tribe* are met. No change was made as a result of this comment.

HH-7-Pierce: Re: Parts 4.3.2 and 4.3.3 - Revise to limit (to only what County plans to implement) what is included as required BMPs and monitoring in the Adaptive Management Report. Appropriateness of a BMP is evaluated in a project design, which is separate from the Adaptive Management Program. Should the selected BMPs fail to correct the problem, other BMPs would be evaluated as a follow up project. Monitoring is conducted to assess a known contaminate. Suggested edits: delete "*Potential*" and "*or may*" in both sections.

Response: EPA declines to revise Parts 4.3.2 and 4.3.3 as requested, because each of these provisions are directly comparable to WDOE Phase I Permit Section S4.F.3.a.ii and iii, respectively, and to WDOE WSDOT Permit Section S4.F.3.a.ii and iii, respectively. No change was made in response to this comment.

HH-8-Tacoma: Re: Part 4.3.2 – Revise consistent with WDOE Phase I Permit Section S4.F.3.a.ii. See also other Tacoma Comment regarding AKART.

Response: EPA declines to revise Part 4.3.2 as suggested. EPA’s permit is written to ensure compliance with the *Water Quality Standards for Surface Waters of the Puyallup Tribe*. As drafted Part 4.3.2 is directly comparable to WDOE Phase I Permit Section S4.F.3.a.ii. No change was made in response to this comment.

HH-9-Pierce: Re: Part 4.4 - Define a “reasonable timeframe” in the sentence below: 30 days?

Response: If modifications are required, EPA will specify an appropriate and fair time frame in which the Permittee must resubmit and EPA will review the revised report. EPA intends to coordinate with Puyallup Tribe and the Permittee to define a “reasonable timeframe” of no less than 30 days for the Permittee to submit any subsequent reports. No change was made as a result of this comment.

26. Regarding Part 5 – Monitoring – Pierce County

II-1-Pierce: Monitoring provisions are significantly different and more extensive than WDOE Phase I Permit, which allows permittees pay into a monitoring fund rather than collect individual samples in a duplicative manner with other jurisdictions. Revise text consistent with WDOE Phase I Permit so County can contract with Tacoma to sample one location for both jurisdictions. Data collected can be used to determine parameters at levels of concern during first permit cycle. If data collected during first permit cycle establishes parameters present at levels that exceed water quality criteria, additional or different sampling may be necessary during the next permit cycle

Response: EPA confirms that the County may contract with Tacoma or others to accomplish the monitoring requirements of their permit. Permit Part 2.1 already allows for shared implementation of this or any provision of the permit. No change was made as a result of this comment.

II-2-Pierce: Re: Part 5 - Delete parameters that are inconsistent with WDOE Phase I Permit. Several parameters here have never been required to be collected or analyzed by WDOE Phase I Permit. Such additional requirements add significant expense to permit compliance. Parameters listed in Part 5.1.5 are the same as in WDOE Phase I Permit at Appendix 9. EPA declines to delete listed parameters as requested.

Response: To ensure compatibility with other monitoring conducted by the Permittee(s) in accordance with WDOE Phase I Permit, EPA has added text to Part 5 that incorporates WDOE Phase I Permit Appendix 9 by reference as relevant guidance for Permittee(s) to follow. See Response 26-II-3.

II-3-Pierce: Re: Part 5.1 – Revise to allow more time, and to allow sampling to be combined/completed by another jurisdiction with a similar permit, such as Tacoma. Suggested edits: *The Permittee must implement a stormwater monitoring program no later than ~~two~~ three years after the effective date of the Permit. The stormwater monitoring program is intended to characterize stormwater runoff quantity and quality in a manner that allows analysis of loadings and changes in conditions over time. Sampling efforts may be completed by another jurisdiction with a similar permit (ie City of Tacoma).*

Response: EPA declines to revise Part 5.1 as requested; the permit already allows for cooperation with other entities [See Response 26-II-1]. No additional time is needed in order for the Permittee to initiate sampling required by Part 5.1.

EPA revised 1st paragraph of Part 5.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to clarify as follows:

The Permittee must **begin implementation of** a stormwater monitoring program no later than two years after the effective date of the Permit.... The stormwater monitoring program is intended to characterize stormwater runoff quantity and quality in a manner that allows analysis of loadings and changes in conditions over time. **The Permittee may develop their stormwater monitoring program in compliance with this Part using as guidance the WDOE’s Phase I Municipal Stormwater Permit Appendix 9 – Stormwater Discharge Monitoring – August 1, 2019, Modified October 20, 2021, at https://fortress.wa.gov/ecy/ezshare/wq/permits/MuniPhaseI_Appendix9-Final.Mod.pdf.**

II-4-Pierce: Re: Part 5.1.1 – Define “tributary conveyance” in Part 9 and edit text as indicated below.

It is difficult to assess this requirement w/o understanding Permit Area boundaries & authority in Tribal Trust Lands.

Revise text to clarify where outfall monitoring may occur; Suggested edit: The Permittee must meet the requirements of this section by monitoring one outfall, within the Permit Area, discharging at a downstream location or directly into the Puyallup River.....The Permittee must fully map all known portions of the tributary conveyance systems and drainage areas and have an ongoing program to mapping new drainage within of the discharge monitoring location by the end of this permit term.

Re: Parts 5.1.1.1 & 5.1.1.2 –EPA text puts Permittee in non-compliance by using absolute language; text does not recognize continually changing conditions, County’s inability to access some private sites, and unknown historic features that the County is simply unaware of.

Suggested Edit: delete “*fully map*” and add a reasonable standard such as: 95% of all drainage, or as WDOE Phase I Permit states “All known features”

Response: EPA added the definition of *tributary conveyance* to Part 9 in all three MS4 permits (Pierce County, Tacoma, WSDOT); definition is the same as in the WDOE Phase I Permit:

Tributary conveyance means pipes ditches, catch basins, and inlets owned or operated by the Permittee and designed or used for collecting and conveying stormwater.

EPA agrees to revise the Pierce County permit Parts 5.1.1 and 5.1.1.1 in a manner suggested by the commenter. This Part also reflects the relevant condition in the Puyallup Tribes Final §401 Water Quality Certification for the Pierce County. See CWA §401 Certification Summary Section 2-21 in this Appendix.

Revised Part 5.1.1 in Pierce County Permit reads as follows:

5.1.1 Discharge Monitoring Locations

The Permittee must meet the requirements of this section by monitoring **at least one representative stormwater outfall**, within the Permit Area, discharging **at a downstream location or directly into** the Puyallup River.

5.1.1.1 The Permittee must **fully map all known portions of** the tributary conveyance systems and drainage areas of the discharge monitoring location. **As required by Part 3.3.2, prior to the expiration date of this permit, the Permittee must have an ongoing program to map any new drainage contributing to the selected discharge monitoring location.**

II-5-Pierce: Re: Part 5.1.1.2 – Revise to allow entire 1st permit term to “map the tributary conveyance system and drainage areas” of one known outfall specifically to the Puyallup River. Tributary Conveyance mapping will take 2+ years because details EPA requires are not currently collected. This is a substantial effort that is ongoing in all permits held by Pierce County.

Response: EPA declines the revise the permit to allow five years to map the tributary conveyance system(s) leading to the identified monitoring location. Map characteristics required by this permit are not substantially different than the mapping required by the WDOE Phase I Permit. No change was made as a result of this comment.

II-6-Pierce: Re: Part 5.1.1.2 – Revise to follow WDOE Phase I Permit example, for consistency have one mapping section. This mapping in this part may or may not sync with the IDDE required mapping. Recommend a discussion with EPA about our current mapping standards and how they dovetail with regional NPDES permittees’ mapping standards.

Clarify – What’s included in *fully map tributary conveyance systems and drainage areas*? What level of accuracy is required? What coordinate system must it be reported in? Is elevation data required or just

stream and channel centerlines? What data needs to be included with built infrastructure (pipe size, material, slope, junctions, etc.

Response: Through the MS4 Mapping requirements in Part 3.3.2, EPA expects that the Permittee will have substantive knowledge of the drainage infrastructure upstream of and contributing to the selected monitoring location.

EPA also expects that the MS4 mapping currently being conducted by Pierce County in compliance with the WDOE Phase I Permit (and comparably outlined in Permit Part 3.3.2) provides a sufficient level of accuracy.

As noted in Response II-4, EPA revised Part 5.1.1.2 in the Pierce County permit to reference MS4 mapping characteristics in Part 3.3.2. No other changes were made in response to this comment.

II-7-Pierce: Re: Part 5.1.1.2 – Revise to allow sampling efforts to be combined completed by another jurisdiction with a similar permit, such as Tacoma. Revise to add text that County may contract with Tacoma for permit monitoring. Allow Tacoma and Pierce County to monitor one common outfall location for during the first permit cycle. We encourage EPA to incorporate language requiring Tacoma and Pierce County to monitor an outfall with contributing drainage from each.

Response: See Response 26-II-1. Permittee(s) should discuss any mutual sampling plans with Puyallup Tribe during the initial planning stages. See also Responses II-22; JJ-10 and JJ-11.

II-8-Pierce: Re: Part 5.1.1.2 - Add new section 5.1.1.3: *If the continuous flow recording indicated the site will not provide adequate flow for sampling, a different outfall must be chosen and continuous flow recording must be undertaken for one year at the new location. The change and delay in progressing to outfall sampling must be reported and explained in the annual report with a plan for locating an outfall with sufficient flow described in the Stormwater Management Plan for the following year.*

Response: EPA declines to add the text as suggested by the commenter. If the initially selected monitoring location is inadequate, the Permittee should contact the Puyallup Tribe and EPA to discuss such issues, in addition to reporting the explanation in the Annual Report. No change was made in response to this comment.

II-9-Pierce: Re: Part 5.1.1.2 – Revise Proposed Sample Frequency/monitoring requirements with input from County staff that understand these drainage basins. Approximately 7-9 samples during wet season and 2-4 during dry season (or, ~11 storm events per year, 60-80% during the wet season and 20-40% during the dry) is likely infeasible given the flow regimes in the area.

- Based on a 2020 hydrologic year, Staff report “7 winter storms a year produce enough runoff to allow for sampling” is more accurate and feasible.
- Dry weather sampling is likely infeasible; often no flow due to the northwest summer drought condition - the usual weather pattern.
- Site will need sufficient flow to support automatic sampling and one-year continuous flow monitoring.
- As stated in MS4 mapping comment above, this may also require some detailed, on-the-ground vetting of our GIS data.
- Staff familiar with the drainage systems in this area believe proposed requirement is not feasible due to the topography and seasonal lack of flow. Recommend EPA work with staff familiar with the area to develop feasible sampling protocol.

Response: As drafted, the requirements in Part 5 are comparable to WDOE Phase I Permit Appendix 9. The Pierce County permit contains a condition from the Puyallup Tribe certification which requires the permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5 when approving the QAPP. See also Responses II-22; JJ-10 and JJ-11. No change was made in response to this comment.

II-10-Pierce: Re: Part 5.1.1.2 -Clarify EPA’s criteria for choosing an outfall for discharge monitoring. See the comments related to mapping requirements. Outfall size? Outfall type? Upstream jurisdiction? Upstream drainage area?

The assumed Permit Area is very flat and doesn’t flow year-round. Describe how the permittee can remain in compliance if no suitable outfall with sufficient flow can be located.

Response: The Permittee should discuss potential sampling location(s) with the Puyallup Tribe during initial planning stages and development of the QAPP.

The Pierce County permit contains a condition from the Puyallup Tribe certification which requires the permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5 when approving the QAPP. See also Responses II-22; JJ-10 and JJ-11. As drafted the requirements in Part 5 are comparable to WDOE Phase I Permit Appendix 9. No change was made in response to this comment. See also Response II-3.

II-11-Pierce: Re: Part 5.1.2.2, statement...” ...*Evaluated for rainfall runoff relationship*”-Clarify expected timeline for this requirement at the beginning of the section. This requirement will take two years to implement.

Response: As indicated elsewhere in Part 5, the Permittee has one year from the Permit effective date to develop their QAPP, and one year thereafter to begin implementation of their monitoring program.

The Permittee should begin discussions with the Puyallup Tribe as soon as possible to determine appropriate candidate monitoring locations. Initial determinations regarding adequacy of flow regimes at a given location can begin at any time but the Permit requirements outline the expectation that such efforts begin no later than upon the Permit effective date.

II-12-Pierce: Re: Part 5.1.2.2 –Revise to acknowledge inadequate flow is not the permittee’s fault and not “non-compliance” (See also suggested new 5.1.2.3 text below)

Clarify the following: Does permit need to be modified to change the monitoring frequency? How will alternative agreement to specific permit requirements be handled and documented? This is a question for the entire permit and may be best described in the General condition section. What monitoring goals must be met to reduce sampling frequency? If inadequate number of storm events can be captured due to circumstances outside of our control, do we risk falling out of compliance?

Suggest adding new Part 5.1.2.3: *EPA recognizes that there may be conditions within the basin that cause this sampling requirement to be infeasible. If flow recordings show that flow is inadequate to meet this requirement, the permittee will be considered to have met this permit condition and remain in compliance with the permit.*

Response: The Pierce County permit contains a condition from the Puyallup Tribe certification which requires the permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification

Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5.1 when approving the QAPP. As drafted, requirements in Permit Part 5 are comparable to WDOE Phase I Permit Appendix 9.

EPA declines to add the text as suggested by the commenter.

The Permittee should begin to discuss potential sampling location(s) with the Puyallup Tribe as soon as possible during initial planning stages and development of the QAPP. See Responses 27-JJ-3, JJ-10 and JJ-11; and 26-II-22.

II-13-Pierce: Re: Part 5.1.4.1 – Storm Event Length - Define antecedent dry period (Time defining separate storms) using WDOE Phase I Permit definition. Northwest has significantly different rainfall patterns than the rest of the United States. As such, we need a definition that allows permittees to clearly distinguish between storms. For example, Northwest has experienced up to 90 days in a row of rain. Under these saturated conditions there is not a clear inter-storm period within the MS4. 75% composite of storm event hydrograph may be difficult to reliably capture in the Northwest climate. 75% of 24hr storm may place samples out of holding time requirements – especially grab samples captured at first flush by the automated sampler.

Response: EPA used the antecedent dry period definitions from WDOE's *Phase I Municipal Stormwater Permit Appendix 9 – Stormwater Discharge Monitoring – August 1, 2019, Modified October 20, 2021*, at https://fortress.wa.gov/ecy/ezshare/wq/permits/MuniPhaseI_Appendix9-Final.Mod.pdf in Pierce County permit Part 5.1.3, specifically:

- During the wet season (from October 1 through April 30) antecedent dry period means Less than or equal to 0.05" rain in the previous 6 hours, unless more time is needed to return to baseflow at the sampling point.
- During the dry season (From May 1 – September 30) antecedent dry period means Less than or equal to 0.02" rain in the previous 24 hours.

As previously stated, the Pierce County permit contains a condition from the Puyallup Tribe certification which requires the permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5.1 when approving the QAPP. EPA encourages the Permittee to begin discussions with the Puyallup Tribe as soon as possible to determine feasible candidate monitoring locations. See also Responses II-22, JJ-10 and JJ-11.

II-14-Pierce: Re: Part 5.1.4.2 – Clarify the Aliquots Requirement for 10 aliquots, but can be 7-9 if other criteria is met? How can we confirm those criteria are met and lesser aliquots acceptable? Can this be better defined?

Response: This provision is the same as in WDOE's *Phase I Municipal Stormwater Permit Appendix 9 – Stormwater Discharge Monitoring – August 1, 2019, Modified October 20, 2021*, at https://fortress.wa.gov/ecy/ezshare/wq/permits/MuniPhaseI_Appendix9-Final.Mod.pdf.

See also: WDOE's Automatic Sampling for Stormwater Monitoring Standard Operating Procedure Version 1.1, dated July 2018, Publication 18-10-024 at <https://apps.ecology.wa.gov/publications/documents/1810024.pdf>.

As previously stated, the Pierce County permit contains a condition from the Puyallup Tribe certification which requires the permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 Appendix. Given this, the Puyallup Tribe may approve

deviations from the requirements of Part 5.1 when approving the QAPP. See also Responses II-22, JJ-10 and JJ-11.

EPA encourages the Permittee to begin discussions with the Puyallup Tribe as soon as possible to determine appropriate sample types.

II-15-Pierce: Re: Part 5.1.4.3 – Precipitation Data - Revise last sentence as follows: hourly 15-minute interval. Precipitation data collected hourly may miss peaks in the storm hydrograph & need to be collected at much smaller intervals – especially to capture the rise/fall of curve likely with a piped outfall.

Response: Part 5.1.4.3 states “...at least hourly rainfall amounts.” Emphasis added. Permittee is free to collect precipitation data at more frequent intervals. No change was made in response to this comment.

II-16-Pierce: Re: Part 5.1.4.4 – Grab Samples – Revise as indicated below, and clarify:

- Will Permittee be expected to collect grab samples during non-working hours? Add text that EPA is determining staff hours, if we are expected to work outside our union contracted hours.
- Define "early" -- "*Grab samples must be collected early in the storm event.*" Or revise as indicated below.
- Reconsider having early storm events sampled via "grab" samples. These efforts have been notoriously unsuccessful. It will take numerous years of flow data collected through dry years, medium and wet years to begin approximating when staff would be able to retrieve a grab sample at an outfall. This is a better effort left to the next permit term when we have adequate flow data to develop a sampling regime.

Suggested Edit: *Grab samples are necessary for some parameters (See Part 5.1.5.4). Grab samples must be collected within (xxx) hours of the beginning of the early in the storm event and no later than (XXX) hours after the storm has begun.*

Response: The Permittee is not expected to collect grab samples during nonworking hours. EPA is not establishing any expectations through this Permit that affect union contracted hours for Permittee staff.

EPA is not revising the text as suggested. The Pierce County permit contains a condition from the Puyallup Tribe certification which requires the permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5.1 when approving the QAPP. See also Responses II-22, JJ-10 and JJ-11.

EPA recognizes the inherent difficulty in collecting grab samples and recommends that these issues be discussed with Puyallup Tribe and described in the QAPP.

II-17-Pierce: Re: Part 5.1.4.5 – *Analytical Methods* - Specify all acceptable analytical methods to ensure results are comparable between permittees.

Re: Part 5.1.5 – *Parameters* - Please list all conventional parameters, specific herbicides, specific metals, specific insecticides and pesticides for clarity and consistency.

Response: EPA declines to list the analytical methods in the permit. All parameters to be monitored are listed in Permit Appendix E. In general, EPA encourages the Permittees to use analytical methods

approved under 40 CFR Part 136; however, WDOE-approved methods are acceptable, and in some cases, necessary (e.g., for Petroleum Hydrocarbons).

As supplemental guidance, EPA encourages the Permittees to use the Washington Department of Ecology's *Phase I Municipal Stormwater Permit Appendix 9 – Stormwater Discharge Monitoring – August 1, 2019 and Modified October 20, 2021*, available at:

https://fortress.wa.gov/ecy/ezshare/wq/permits/MuniPhaseI_Appendix9-Final.Mod.pdf

No change was made in response to this comment.

II-18-Pierce: Re: Part 5.1.5.4 – Grab Sample Parameters -Use *E. coli* for consistency. Many states, following EPA recommendation, have switched to monitoring *E. coli* instead of fecal coliform.

Response: EPA revised the grab sample parameter from fecal coliform to *E. coli* as suggested.

II-19-Pierce: Re: Part 5.1.6.2 – Sediment Sampling Collection System - Define minimum outfall size. In-line traps require minimum outfall size as a best practice – yet permit does not define minimum outfall size for sampling location. Current state permit minimum outfall size is 8 inches.

Response: EPA recommends the Permittee refer to WDOE's guidance, *Collection of Stormwater Solids Using In-Line Traps Standard Operating Procedure Version 2.0 July 2018 Publication 18-10-025* for additional information and context.

The Pierce County permit contains a condition from the Puyallup Tribe certification which requires the Permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5.1 when approving the QAPP. See also Responses II-22, JJ-10 and JJ-11. Permittee should discuss appropriate monitoring location with the Puyallup Tribe and address such considerations in the QAPP.

II-20-Pierce: Re: Part 5.1.6.3 & 5.1.6.4 - *Solid Sample Parameters*, analyte priority - Clarify what is the standard way to collect and analyze these parameters? Does missing analytes due to low volume of samples place County out of compliance? Revise text to clarify that failing to sample analytes due to low sample volume does not constitute a Permit violation.

Suggested new text, as last sentence: *Failing to sample analytes due to low sample volume does not constitute a permit violation.*

Response: EPA recommends the Permittee refer to WDOE's guidance, *Collection of Stormwater Solids Using In-Line Traps Standard Operating Procedure Version 2.0 July 2018 Publication 18-10-025* for additional information and context.

The Pierce County permit contains a condition from the Puyallup Tribe certification which requires the Permittee to submit the QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5.1 when approving the QAPP. See also Responses II-22, JJ-10 and JJ-11. Permittee should discuss appropriate monitoring location with the Puyallup Tribe during the development of the QAPP and address associated frequency and volume considerations in the QAPP.

II-21-Pierce: Re: Part 5.1.6.5 - *Stormwater Solids Samples* - Clarify how, what and why a "visual, qualitative determination of grain size" should be performed?

What is a visual, qualitative determination of grain-size, how should it be reported, and why is it included along with quantitative laboratory analysis that will give precise information on sediment texture?

Response: EPA is ensuring that all three MS4 permits (Pierce County, Tacoma, WSDOT) are consistent with WDOE's permit(s) to the extent possible. The requirement regarding grain size is in the WDOE Phase I Permit at *Appendix 9 – Stormwater Discharge Monitoring – August 1, 2019 Modified October 20, 2021*, page 5 of 12, and, to be consistent, EPA has included it in these permits as well.

II-22-Pierce: Re: Part 5.2 - Quality Assurance Project Plan - Clarify if a QAPP is required for all sampling, including IDDE and dry weather screening sampling?

Revise timeframe to allow review of QAPP by EPA and Tribe prior to implementation.

Response: EPA has revised Part 5.2, 1st sentence, in all three MS4 permits (Pierce County, Tacoma, and WSDOT) to clarify that a QAPP is required only for the monitoring requirements specified in Part 5. EPA also revised Part 5.2., 2nd paragraph, to clarify the date by which draft and final QAPPs must be submitted to Puyallup Tribe for review and approval, and other relevant details.

These and other text revisions also reflect the relevant condition of the Puyallup Tribe's CWA Section 401 certification; see revised Part 5.2 in CWA §401 Certification Summary Section 2-22 in this Appendix.

II-23-Pierce: Re: Part 5.2.3.3 – Map(s) - Clarify: Are specific criteria defined for land use classes? Are we following USGS for LU/LC classifications? What resolution/how recently updated must the map be?

Response: The map(s) indicating the sampling point location should reflect current conditions and land use at a resolution or scale that is easily viewed and understood. USGS land use classifications are acceptable. See, for example, maps included as part of City of Tacoma's *Thea Foss and Wheeler-Osgood Waterways Stormwater Monitoring Quality Assurance Project Plan*, dated July 2020, Version 1.1, specifically: *Figure 3-1 (City of Tacoma Watersheds)*; *Figure 3-2 (Thea Foss Basins Land Use)* *Figure 7-1 (Baseflow Origins in Foss Drainage)* and *Figure 7-2 (Whole-Water Monitoring Location - OF230)*.

II-24-Pierce: Re: Part 5.3 - Representative Sampling - Clarify how to document bypasses, upsets in stormwater systems in the field. We don't monitor individual systems. Each system is designed to a specific storm. It is understood and permitted that all storms over the design storm will bypass. Is EPA text intended to create a flow monitoring regime at every stormwater BMP? Also, Bypass language is more appropriate for a sewer treatment plant. County requests that this language be removed from the Permit.

Suggested edit: *Samples and measurements taken to meet the requirements of this permit must be representative of the volume and nature of the monitored discharge, including representative sampling of any unusual discharge or discharge condition, including ~~bypasses, upsets, and maintenance-related conditions affecting effluent quality.~~*

Response: Part 5.3 represents a standard condition that must be included in all NPDES permits. See 40 CFR §122.41(j)(1). As drafted, Part 5.3 is comparable to WDOE Phase I Permit and WDOE WSDOT Permit Section G.9.A, which includes the parenthetical phrase regarding unusual discharge or

discharge condition. This text is not intended to create a flow monitoring regime at every stormwater BMP. In light of this comment, EPA has revised Part 5.3 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to reflect the required provision in 40 CFR §122.41(j)(1) as follows:

Samples and measurements taken to meet the requirements of this permit must be representative of the volume and nature of the monitored **activity. discharge, including representative sampling of any unusual discharge or discharge condition, including bypasses, upsets, and maintenance related conditions affecting effluent quality.**

II-25-Pierce: Re: 5.5 - Additional Monitoring - Revise to clarify that additional monitoring requirement only extends to the permit's coverage area. Suggested edit: *...If the Permittee monitors within this permit's coverage area, any pollutant more frequently than required by this permit...*

Response: The Permit's terms and conditions are required within the Permit Area defined by revised Permit Part 1.1. It is unnecessary to make the requested revision since the Permit only authorizes discharges in the Permit Area. No change was made in response to this comment.

27. Regarding Part 5 – Monitoring - Tacoma

JJ-1-Tacoma: Re: Part 5 – Revise monitoring requirements to reflect the flow and discharge behavior for pumped discharges and tidally influenced outfalls. Part 5 monitoring is written for gravity flow discharges. However, the proposed required monitoring location behaves differently than gravity flow discharges as the outfall discharges from a pump station. Further, proposed monitoring location is tidally influenced causing the outfall to be submerged at higher tides.

Response: EPA revised Tacoma permit Part 5 to provide the Permittee flexibility to reflect flow and discharge behavior for pumped discharges and tidally influenced outfalls.

The Tacoma permit contains a condition from the Puyallup Tribe certification which requires the Permittee to submit a QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5 when approving the QAPP. EPA encourages Tacoma to begin discussions with the Puyallup Tribe as early as possible in the development of the monitoring program and QAPP. See also Responses II-22, JJ-10 and JJ-11.

JJ-2-Tacoma: Re: Parts 5.1.1.2 and 5.1.4.3 – Revise this section.

A standard gravity flow rainfall to runoff relationship cannot be developed for this monitoring location because stormwater is pumped into the Puyallup River at the proposed monitoring location. A rainfall to runoff relationship will be developed based on pump run-time records vs rainfall. This method will be described in the QAPP. Revise this section as necessary to allow these details to be included and approved through the QAPP.

Tacoma will collect one year of continuous flow recordings to the best of our ability and control. However, there may be circumstances beyond our control (e.g., equipment damage and failure) that may prevent the Permittee from conducting flow monitoring until new equipment can be purchased and installed.

Response: EPA revised Tacoma permit Part 5.1.1.2 as follows:

The discharge monitoring location must be evaluated for a rainfall to runoff relationship **based on pump run-time records compared to rainfall; this method must be described in the Quality Assurance Plan required by Part 5.2.** ~~in order to ensure that the discharge~~

~~monitoring location will receive enough runoff for sufficient sample volume. This rainfall to runoff relationship will also assist in programming the automatic sampling equipment. In order to establish the rainfall to runoff relationship, one year of continuous flow recording (including base flow and all storm events) is necessary.~~

JJ-3-Tacoma: Re: Part 5.1.2.1 - It's not possible to obtain sampling data at the frequencies described in EPA text. Revise to add following: "*Permittees shall sample each stormwater discharge monitoring location according to the frequency described below. Documented good faith efforts with good professional practice by the Permittee which do not result in collecting a successful sample for the full number of required storms may be considered as contributing toward compliance with this requirement.*"

Revise to recognize it can take several years to establish the institutional knowledge to successfully obtain stormwater samples at a new sampling location. In addition, circumstances beyond a Permittee's control (rain forecast) should be taken into account when considering frequency of sampling. For example, in Water Year 2020, outfall sampling in the Thea Foss Waterway resulted in 160 deployments of flow composite samplers with 77 composite samples being submitted for analyses. This is a success rate of 62%. The number of storms successfully sampled at 3 of the 7 locations were less than 11 (9, 8 and 10).

Response: EPA agrees to revise Part 5.1.2 in all three MS4 permits (Pierce County, Tacoma, WSDOT) as follows:

The Permittee must sample the stormwater discharge monitoring location according to the frequency described below. Documented good faith efforts with good professional practice by the Permittee which do not result in collecting a successful sample for the full number of required storms may be considered as contributing toward compliance with this requirement ~~Sample the discharge monitoring location according to the following frequency:~~

See also Response JJ-4.

JJ-4-Tacoma: Re: Part 5.1.4 - Revise as necessary to allow such details to be included and approved through the QAPP.

- Since this is a pump station, stormwater runoff is discharged as long as the pumps are running. Time of concentration from the farthest point of the upstream MS4 applies to gravity systems and not the pumped discharge.

- The sampling technique will be volume based on amount of pump run time. In this case, flow-weighted and time composite are the same. Since it is level activated, time of concentration does not apply in this situation: the discharge is flowing or it is not.

Revise Part 5.1.4.1 to include "75% of the volume discharged". This requirement is based on gravity flow discharges, which is not the situation for the required monitoring location.

Response: EPA has revised Tacoma permit Part 5.1.4 in recognition of the unique nature of sampling discharge from a pump station as requested by the commenter, and as suggested for Part 5.1.4.1. Revised Tacoma permit Part 5.1.4 reads as follows:

~~Storm~~ Discharge events must be sampled using flow-weighted composite sampling techniques. Automatic samplers must be programmed to begin sampling as early in the **discharge runoff** event as practical and to continue **as long as the discharge occurs**. ~~sampling past the longest estimated time of concentration for the tributary area.~~

5.1.4.1 For ~~storm~~ discharge events lasting less than 24 hours, samples shall be collected for at least seventy-five percent (75%) of the **volume discharged**. ~~storm event hydrograph~~. For **discharge storm** events lasting longer than 24 hours, samples shall be collected for at least seventy-five percent (75%) of the **volume discharged during hydrograph** of the first 24 hours of the storm.

5.1.4.2 Each composite sample must consist of at least 10 aliquots. Composite samples with 7 to 9 aliquots are acceptable if they meet the other sampling criteria and help achieve a representative balance of wet season/dry season events and storm sizes.

5.1.4.3 Continuous flow recording of all ~~storm~~ **discharge** events (~~not just sampled storm events~~) is necessary for at least one year to establish a baseline rainfall/runoff relationship. Ongoing continuous flow monitoring is required for each of the sampled **discharge storm** events as necessary to properly conduct the flow-weighted composite sampling. Precipitation data must be collected from the nearest rain gauge reporting at least hourly rainfall amounts.

5.1.4.4 Grab samples are necessary for some parameters (See Part 5.1.5.4). Grab samples must be collected early in the ~~storm~~ **discharge** event.

JJ-5-Tacoma: Re: Part 5.1.5.1 - Revise the Permit language to allow the method and reporting limit modifications as presented in the *Thea Foss and Wheeler-Osgood Waterways Stormwater Monitoring Quality Assurance Project Plan* (2020 Ecology Permit QAPP) dated July 2020 and as listed in several other comments. See also Comments for Appendix E and submitted 2020 Ecology Permit QAPP.

Response: The Tacoma permit contains a condition from the Puyallup Tribe certification which requires the Permittee to submit a QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5 when approving the QAPP. EPA encourages Tacoma to begin discussions with the Puyallup Tribe as early as possible in the development of the monitoring program and QAPP. See also Responses II-22, JJ-10 and JJ-11.

As drafted, the requirements in Part 5 are comparable to WDOE Phase I Permit Appendix 9. Regarding reporting limits, EPA notes that no change is necessary; the reporting limits presented in the *Thea Foss and Wheeler-Osgood Waterways Stormwater Monitoring Quality Assurance Project Plan*, if used by the Permittee in the QAPP, would comply with minimum levels cited in Tacoma Permit-Appendix E as drafted.

JJ-6-Tacoma: Re: Part 5.1.5.2- Revise to allow the modified priority order presented in the 2020 Ecology Permit QAPP. The priority order was modified to account for discharges to organic and metal impacted marine sites. See also comment JJ-9, re: Part 5.1.6.4.

Response: EPA declines to revise Part 5.1.5.2 as suggested. The Tacoma permit contains a condition from the Puyallup Tribe certification which requires the Permittee to submit a QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22. Given this, the Puyallup Tribe may approve deviations from the requirements of Part 5 when approving the QAPP. EPA encourages

Tacoma to begin discussions with the Puyallup Tribe as early as possible in the development QAPP to discuss Tacoma's modified priority order.

JJ-7-Tacoma: Re: Part 5.1.5.4 - Use *E. coli* rather than fecal coliform for bacteria analysis to provide a more accurate indicator of pathogen risk and as well as changes to recreational guidance and standards

Response: EPA revised Part 5.1.5.4 as suggested.

JJ-8-Tacoma: Re: Part 5.1.6 - Revise to allow for once a year sampling or to allow for a good faith effort with appropriate documentation. For 20 years, Tacoma has been collecting stormwater solid samples from a sampling location with similar characteristics to the monitoring location proposed in this draft permit. The location Tacoma currently samples has a deep sump just upstream of the outfall. The sump is cleaned after every sampling event to ensure the sample is representative. After cleaning, stormwater sediment volumes increase only when there is storm runoff. Twice a year sampling may not yield enough sediment volume because of lack of storms and the resulting runoff.

Response: EPA recommends the Permittee discuss such details regarding the proposed solids sampling location with the Puyallup Tribe during the development of the QAPP.

Revised Part 5.1.6.1 already provides for such situations:

Puyallup Tribe of Indians may approve reducing this requirement to a once per year frequency if the Permittee provides evidence demonstrating that insufficient material is present in the conveyance. No change was made in response to this comment.

JJ-9-Tacoma: Re: Part 5.1.6.4 - Revise to allow the modified priority order presented in the 2020 Ecology Permit QAPP. The priority order was modified to account for discharges to organic and metal impacted marine sites.

Response: No change was made in response to this comment. See Response 27-JJ-6.

JJ-10 & JJ-11-Tacoma: Re: Part 5.2 – QA Plan - Paragraph 1: Add "or as approved by EPA and the Puyallup Tribe of Indians in the Final QAPP." to the end of the final sentence. There are several monitoring site conditions (as described in comments here) that won't meet requirements in Part 5.

Paragraph 2: Add a schedule for QAPP submittal including: 1) time for review and comments from EPA and Puyallup Tribe of Indians, and 2) response to comments of the draft QAPP for Tacoma, such that the QAPP can be implemented by the Permittee no later than 1 year from the effective date of the Permit. Tacoma requires a total of 45 days to respond to comments and finalize the QAPP for submittal within 1 year (at least 30 days to respond to comments and another 15 days to finalize the QAPP).

QA Plan - Remove the word "implemented" here – it conflicts with Section 5.1, paragraph 1, sentence 1 on page 34. Tacoma agrees that an approved QAPP can be submitted as final to EPA and the Puyallup Tribe of Indians within 1 year. However, the stormwater monitoring program will be implemented after the QAPP is finalized and submitted. This would occur later than 1 year. Implementation of the program is covered under Section 5.1.

Response: EPA has revised Part 5.2 to clarify the dates by which draft and final QAPPs must be submitted to Puyallup Tribe for review and approval, and other relevant details.

The Tacoma permit contains a condition from the Puyallup Tribe certification which requires the Permittee to submit a QAPP to the Tribe for approval. See CWA §401 Certification Summary Section 2-22 in this Appendix for full text of revised Part 5.2. Given this, the Puyallup Tribe may approve

deviations from the requirements of Part 5 when approving the QAPP. EPA encourages Tacoma to begin discussions with the Puyallup Tribe as early as possible in the development of the monitoring program and QAPP. Other revisions based on public comments related to this Part, see also Responses II-22.

JJ-12-Tacoma: Re: Part 5.3 - Remove language or revise to state the samples must be taken to represent Section 5.1 – Stormwater Monitoring. The flow composite monitoring program targets forecasted storm events that meet the rainfall event criteria. The monitoring program will sample any of these events if they occur during the storm event that is being sampled. This Section appears to conflict with some areas of Section 5.1.

Response: See Response 26-II-24.

28. Regarding Part 5 – Monitoring – WSDOT

KK-1-WSDOT: Re: Part 5 - Revise as indicated below. Proposed monitoring locations are not discharge locations. Each time “*discharge monitoring location*” is used in Part 5, suggest modifying to “*monitoring locations*” Suggest deleting “*discharge*” each time it is used here and adding an “s” to “*location*.”

Response: EPA agrees to revise WSDOT permit Part 5 as suggested in this and subsequent comments KK-2 through KK-11 below.

KK-2 & KK-3-WSDOT: Re: Part 5.1.1 - Re: Table (*with Outfall Name/Location, Latitude, Longitude, Receiving Water and Owner*) - WSDOT proposes an alternative monitoring plan.

WSDOT evaluated the feasibility of sampling the proposed monitoring location, and for the following safety, logistical and data representativeness reasons, alternative is needed.

Proposed location is tidally influenced making access impossible at times; infeasible to isolate stormwater from tidal water as the outfall frequently is submerged by the rising tide. The outfall is fed by a pumped system which outputs a large volume of water which makes sampling at this location unsafe. Additionally, there is a pinch valve on the outfall which would make obtaining a sample from the outfall structure very difficult.

WSDOT’s proposed alternative sampling plan would measure the effectiveness of the new Constructed Stormwater Treatment Wetland (CSTW) to quantify the effectiveness of the BMP in reducing pollutant concentrations during standard roadway operation conditions. The CSTW treats the majority of stormwater that eventually enters the Puyallup River at the outfall originally proposed to be monitored. The outlet of the CSTW was determined to be the best unbiased effluent sample location as the effluent of the adjacent modified media filter drain mixes with untreated water. Therefore, the results would not be representative of the effectiveness of the treatment train.

Remove the current information in the table, *I-5 Outfall (located south of I-5 bridge on west bank of Puyallup River)* and the associated lat/long information.

Revise table heading from “Outfall Name/Location” to “Location”, and include the following monitoring locations: Inlet to constructed stormwater treatment wetland (Latitude: 47.2388, Longitude: -122.4064) and Outlet of constructed stormwater treatment wetland (Latitude: 47.2389, Longitude: -122.4032).

Response: EPA agrees and revised table describing two Discharge Monitoring Locations in WSDOT permit Part 5.1.1 now reads as follows:

5.1.1 Discharge Monitoring Locations

The Permittee must meet the requirements of this section by monitoring at the following locations:

Location	Approximate Latitude	Approximate Longitude	Receiving Water
Inlet to constructed stormwater treatment wetland	47.2388	-122.4064	Puyallup River
Outlet of constructed stormwater treatment wetland	47.2389	-122.4032	Puyallup River

KK-4-WSDOT: Revise to Part 5 references to sampling protocols allow for following the TAPE’s long detection method.

To effectively sample the CSTW, WSDOT’s sample collection should be conducted according to long detention protocols outlined in WDOE’s Technology Assessment Protocol – Ecology (TAPE). Long detention method is preferred because influent water entering CSTW contains water from previous storm events, prohibiting true influent-to- effluent comparisons for single storm events. Also, water entering the system generally takes hours to days to exit the system, again limiting the ability to pair discrete influent and effluent volumes. Revise text to define sampling protocols in TAPE’s long detention sampling method; this is appropriate because it is a tested and formally recognized process for sampling stormwater inflows and outflows at pond or wetland type BMPs. Note that the actual pollutant parameters listed in EPA permit, and other requirements, are not standard TAPE protocol.

Response: EPA has revised WSDOT permit Part 5.1, 1st paragraph, to incorporate the WDOE TAPE sampling protocols using the long detention method, as indicated below. EPA also includes reference to the stormwater monitoring requirements from the WDOE Phase I Permit Appendix 9 as relevant additional information for WSDOT to consider while developing its monitoring plan. Revised WSDOT permit Part 5.1 now reads as follows:

5.1 Stormwater Monitoring

The Permittee must begin implementation of a stormwater monitoring program no later than two years after the effective date of the Permit. The stormwater monitoring program is intended to quantify the effectiveness of the Constructed Stormwater Treatment Wetland (CSTW) at reducing pollutant concentrations during standard roadway operations over time. The Permittee may develop their monitoring program in compliance with this Part using as guidance the Washington Department of Ecology’s Technology Assessment Protocol – Ecology (TAPE). See: <https://apps.ecology.wa.gov/publications/SummaryPages/1810038.html> and the Washington Department of Ecology’s *Phase I Municipal Stormwater Permit Appendix 9 – Stormwater Discharge Monitoring – August 1, 2019 and Modified October 20,*

2021, available at:

https://fortress.wa.gov/ecy/ezshare/wq/permits/MuniPhaseI_Appendix9-Final.Mod.pdf.

KK-5-WSDOT: Re: 5.1.1.2 - Revise to align with TAPE long detention method. In standard paired influent to effluent stormwater sampling, establishing a distinct rain to runoff calculation is important for optimal sample collection. For this reason, most standard sampling programs recommend a year of collecting site precipitation and flow data before sampling. However, the long detention method does not require a one year period of monitoring rain to runoff prior to sampling.

Instead, the long detention method recommends: "Proponents should determine how much rainfall is necessary to produce sufficient inflow and outflow from the BMP" for adequate sample collection.

Suggest deleting existing text and replacing with the following: 5.1.1.2 The permittee will ensure that rain to runoff relationships are established to meet sampling goals, and that specific storm event hydrology is monitored and validated as accurate and representative of site flows.

Response: EPA has revised the text consistent with the commenter's suggestion. Revised WSDOT permit Part 5.1.1.2 now reads as follows:

The Permittee must evaluate the monitoring locations to establish a rainfall to runoff relationship to ensure adequate sample collection during storm events to meet sampling goals. The Permittee must ensure that specific storm event hydrology is monitored, validated, and representative of site flows.

KK-6-WSDOT: Re: Part 5.1.2 - Revise to align with TAPE long detention method. Delete existing text (5.1.2, 5.1.2.1 and 5.1.2.2) and replacing with the following: 5.1.2 Sample Collection Methodology
Sample collection will be conducted according to long detention protocols outlined in Technology Assessment Protocol – Ecology (TAPE). TAPE can be accessed at
<https://apps.ecology.wa.gov/publications/SummaryPages/1810038.html>."

Response: EPA revised the text consistent with the commenter's suggestion; WSDOT permit Part 5.1.2 now reads as follows:

5.1.2 Sample Collection Methodology

Sample collection must be conducted according to the long detention protocols outlined in the Washington Department of Ecology's Technology Assessment Protocol – Ecology (TAPE). See:

<https://apps.ecology.wa.gov/publications/SummaryPages/1810038.html>

KK-7-WSDOT: Re: Part 5.1.3 - Revise to reflect that TAPE long detention time method. This method collects influent and effluent samples, not as pairs, but in a true random fashion, so that given sufficient data, values for influent and effluent parameters will be representative, while derived independently. Given a sufficiently large sample size, aggregate influent and effluent data can be compared and BMP effectiveness quantified.

Delete existing text and replace with the following: 5.1.3 Storm Event Selection

The Permittee will use historic rainfall data to ascertain mean rainfall data for each day of the year. The Permittee will then estimate the amount of rainfall required to produce flow at both the influent and effluent. The number of sample days will be increased by 5% to account for equipment failure and operator error. The amount of additional sample days may be revisited during the sampling season to

see if more sample days should be added. When sampling individual storm events, it must be determined that sampling is of sufficient duration to represent inflow and outflow hydrographs.

The permittee will assign a number to each day of the proposed study and will use a random number generator to select the days to be sampled. The process will be used for both the influent and effluent as they will be sampled separately. The Permittee will select the 24-hour sample period that works best for their field schedule. The sample period will remain the same for the entirety of the sample period.

Storms occurring after several days or more of no precipitation may be specifically targeted for sampling. This exception to the protocol of random sampling allows for the inclusion of important first-flush events, such as occur during the dry season.”

Response: EPA has revised the text consistent with the commenter’s suggestion. Revised WSDOT permit Part 5.1.3 now reads as follows:

5.1.3 Storm Event Selection

The Permittee must use historic rainfall data to ascertain mean rainfall data for each day of the calendar year. The Permittee must then estimate the amount of rainfall required to produce sufficient flow at both the influent and effluent locations of the CSTW and create a target number of sample days per year.

The Permittee must add at least 5% to the target number of sample days account for equipment failure and operator error.

The Permittee must conduct sampling of sufficient duration to represent both inflow and outflow hydrographs.

The Permittee will assign a number to each day of the proposed study and will use a random number generator to select the days to be sampled. The process will be used for both the influent and effluent as they will be sampled separately. The Permittee will select the 24-hour sample period that works best for their field schedule. The sample period will remain the same for the entirety of the sample period.

Storms occurring after several days or more of no precipitation may be specifically targeted for sampling. This exception to the protocol of random sampling allows for the inclusion of important first-flush events, such as occur during the dry season.

KK-8-WSDOT: Re: Part 5.1.4 - Revise to align with TAPE long detention method. Delete existing text and replace with the following:

5.1.4 Sampling Protocol

Sample the monitoring locations according to the following frequency:

5.1.4.1 The Permittee must sample and analyze a minimum of fifteen (15) valid influent and effluent samples. (TAPE further specifies: “This long detention BMP method does not require there to be equal number of influent and effluent samples, however, influent and effluent monitoring shall occur for the same duration. If the influent monitoring is extended to meet any of the above requirements, monitoring of the effluent must also be extended and vice versa.

5.1.4.2 Sampling will be done for a period of up to 24 hours by automated flow-proportional composite sampling. An automatic sampler with a flow meter will be used so the volume of each subsample is

proportionate to flow. Inflow and outflow must be monitored separately. Monitoring will be conducted over a set 24-hour period.

5.1.4.3 Each composite sample must consist of at least 10 aliquots. Composite samples with 7 to 9 aliquots are acceptable if they meet the other sampling criteria and help achieve a representative balance of wet season/dry season events and storm sizes.

5.1.4.4 Precipitation data must be collected from an on-site rain gauge.

5.1.4.5 Grab samples are necessary for some parameters (See Part 5.1.5.4). Grab samples must be collected early in the storm event.

5.1.4.6 For all effluent monitoring the Permittee must use sufficiently sensitive analytical methods which meet the following:

5.1.4.6.1 The Permittee must use a method that detects and quantifies the level of the pollutant, or

5.1.4.6.2 The Permittee must use a method that can achieve a maximum level (ML) less than or equal to those specified in Appendix E.

Response: EPA has revised the text consistent with the commenter's suggestion. Revised WSDOT permit Part 5.1.4 now reads as follows:

5.1.4 Sampling Protocol

The Permittee must sample both monitoring locations according to the following frequency:

5.1.4.1 The Permittee must sample and analyze a minimum of fifteen (15) valid influent and effluent samples. Consistent with the TAPE long detention BMP methodology, it is not necessary that there to be equal number of influent and effluent samples, however, influent and effluent monitoring must occur for the same duration. If the influent and/or effluent monitoring is extended to meet any of the above requirements, monitoring of the effluent/influent must also be extended.

5.1.4.2 Individual sampling events must be conducted for a period of up to 24 hours using automated flow-proportional composite sampling. The Permittee must use an automatic sampler with a flow meter to ensure the volume of each subsample is proportionate to flow. Inflow and outflow must be monitored separately. Monitoring must be conducted over a set 24-hour period.

5.1.4.3 Each composite sample must consist of at least 10 aliquots. Composite samples with 7 to 9 aliquots are acceptable if they meet the other sampling criteria and help achieve a representative balance of wet season/dry season events and storm sizes.

5.1.4.4 The Permittee must collect precipitation data from an on-site rain gauge.

5.1.4.5 Grab samples are necessary for some parameters (See Part 5.1.5.4). Grab samples must be collected early in the storm event.

5.1.4.6 For all influent and effluent monitoring the Permittee must use sufficiently sensitive analytical methods which meet the following:

5.1.4.6.1 The Permittee must use a method that detects and quantifies the level of the pollutant, or

5.1.4.6.2 The Permittee must use a method that can achieve a maximum minimum level (ML) less than or equal to those specified in Appendix E or as otherwise approved by the Puyallup Tribe of Indians.

KK-9 & KK-10-WSDOT: Re: Part 5.1.5 - Remove “Methylene blue activating substances (MBAS)” from the list of parameters as they are not a common pollutant in highway runoff.

Suggested edits: 5.1.5 Flow-proportional composite samples must be analyzed for the following parameters utilizing an Ecology- or EPA- accredited laboratory and the methods and reporting limits as provided in Table 1 found in APPENDIX E or otherwise approved by EPA:

- Conventional parameters
- Nutrients
- Metals
- Organics:
- Polycyclic aromatic hydrocarbons (PAHs)
- Pesticides
- Phthalates

Re: Part 5.1.5.4 - Grab samples – Revise based on WSDOT’s understanding that *E. Coli* is a better indicator and preferred over Fecal coliform bacteria. If WSDOT’s understanding is accurate, replace the requirement to analyze samples for “fecal coliform bacteria” with “*E. Coli*.”

Response: EPA declines to delete MBAS from the list of parameters. As noted in Part 5.1.5.3, sampled parameters that are below reporting limits (identified in the Permit as Minimum Levels, see Response Section 37-TT) after two years of data may be dropped from the analysis.

Revised WSDOT permit Part 5.1.4 now reads as follows:

5.1.5. Parameters

5.1.5.1 Flow proportional composite samples must be analyzed for the parameters listed in Appendix E and summarized below, utilizing an Ecology- or EPA- accredited laboratory and the methods and reporting limits as provided in Table 1 in Appendix E or otherwise approved by Puyallup Tribe of Indians:

- **Conventional parameters**
- **Methylene blue activating substances (MBAS)**
- **Nutrients**
- **Metals**
- **Organics:**
- **Polycyclic aromatic hydrocarbons (PAHs)**
- **Pesticides**

- **Phthalates**

5.1.5.2 Analyte Priority. If the volume of stormwater sample collected from a qualifying storm is insufficient to allow analysis for all parameters listed above, the sample shall be analyzed for as many parameters as possible in the following priority order: (1) metals and hardness; (2) conductivity; (3) TSS; (4) nutrients; (5) organics: PAHs, phthalates, insecticide, and herbicides; (6) BOD5; and (7) remaining conventional parameters. If insufficient sample exists to run the next highest priority pollutant, that analysis should be bypassed and analyses run on lower priority pollutants in accordance with the remaining priority order to the extent possible.

5.1.5.3 Parameters that are below minimum levels after two years of data may be dropped from the analysis.

5.1.5.4 Grab samples must be analyzed for the following constituents/parameters utilizing an Ecology- or EPA-accredited laboratory and minimum levels listed in Appendix E-Table 1:

***E. coli* bacteria**

Total petroleum hydrocarbons – diesel fraction

KK-11-WSDOT: Re: Part 5.1.6 - Revise Solids Sampling based on previous WSDOT collection methods and experience with solids sampling in the 2009 and 2014 WDOE WSDOT Permits. Historically, WSDOT collected/sampled dry sediment deposited in pavement edge interceptors, which is likely possible near the CSTW influent. Feasibility is likely limited at the CSTW effluent, and it is likely difficult to get sufficient sediment volumes post-CSTW settling.

Revise to delete existing text and replace with the following:

5.1.6 Stormwater Solids Samples

Stormwater solids samples must be collected twice per water year at the influent of the CSTW, or in the vicinity of the influent monitoring location, according to the following:

5.1.6.1 EPA may approve reducing this requirement to a once per year frequency if the Permittee provides evidence demonstrating that insufficient material is present in the conveyance.

5.1.6.2 Use of in-line traps or similar collection system is needed for stormwater solids sampling. Settled out sediment sampling is also sufficient.

EPA has revised the text consistent with the commenter's suggestion. Revised WSDOT permit Part 5.1.6 now reads as follows:

5.1.6 Stormwater Solids Samples

Stormwater solids samples must be collected twice per water year at the influent of the CSTW monitoring location, or in the vicinity of the CSTW influent monitoring location, according to the following:

5.1.6.4 Puyallup Tribe of Indians may approve reducing this requirement to a once per year frequency if the Permittee provides evidence demonstrating that insufficient material is present in the conveyance. See Part 5.2.

5.1.6.4 Use of in-line traps or similar collection system is needed for stormwater solids sampling. The Permittee may also sample settled out sediment from the CSTW.

5.1.6.3 Stormwater solids samples must be analyzed for the following parameters utilizing an Ecology- or EPA-accredited laboratory and the methods and minimum levels listed in Appendix E-Table 2 or otherwise approved by Puyallup Tribe of Indians:

- Conventional parameters
- Metals
- Organics:
- Pesticides
- PAHs
- Phthalates
- Phenolics
- Polychlorinated biphenyls (PCBs)
- Polybrominated diphenyl ethers (PBDEs)
- Total petroleum hydrocarbon – diesel fraction (TPH-Dx)

5.1.6.4 Analyte Priority. If the stormwater solids sample volume is insufficient to analyze for all of the parameters listed below, the sample must be analyzed for as many parameters as possible in the following priority order: (1) conventional parameters; (2) metals; (3) TPH-Dx; (4) Phenolics; (5) PAHs and phthalates; (6) pesticides; (7) PBDEs; and (8) PCBs. If insufficient sample exists to run the next highest priority pollutant, that analysis may be bypassed and analyses run on lower priority pollutants in accordance with the remaining priority order to the extent possible. Additional samples must be collected if insufficient sample exists from a single sample to run all of the organic pollutants listed above.

5.1.6.5 A visual, qualitative determination of grain size must be reported for all stormwater solids samples (in addition to the quantitative analysis for all samples with sufficient volume).

5.1.6.6 Parameters that are below minimum levels after two years of data may be dropped from the analysis.

29. Regarding Part 6 – Reporting Requirements

LL-1-Pierce, Tacoma: The Permit reporting requires entire databases be transferred to EPA and to Puyallup Tribe. Many essay questions are included and then duplicated in the SWMP. Commenter attached a detailed summary where the EPA reporting requirements are more work, require more detail, and are different from the Phase I MS4 Permit.

County requests that all reporting be consistent with the Phase I MS4 Permit so the County can forward a copy of its MS4 Permit annual report to EPA and the Tribe. EPA reporting requirements require County prepare two completely separate Annual Reports, requiring significant additional resources w/o environmental benefit; this is inconsistent with EPA's statement that its Permit does not require work beyond what WDOE Permit requires.

Revise Part 6.2 and Appendix A to allow Tacoma to submit the same annual report that is submitted for the WDOE Phase I Permit. Tacoma requests the AR would be approved to include information for the

entirety of Tacoma's MS4 including all areas that are under the EPA Permit and all areas that are under the WDOE Phase I Permit.

Response: EPA declines to revise text as suggested by commenters. EPA clarifies that the Permit text does not require entire databases of information to be submitted as part of the Annual Report. Permittees may not submit to EPA and Puyallup Tribe the same Annual Report that is submitted to WDOE pursuant to the WDOE Phase I or WSDOT Permits. See also Response Section 33-PP. EPA recognizes there are differences between the EPA and WDOE Annual Report formats, as identified by the commenters.

EPA agrees to revise its optional Appendix A-Annual Report template format to make it more like the Annual Report structure of the WDOE Phase I Permit. EPA also revised required Annual Report elements to clarify the type and scope of information expected. For example, see Response Sections 21-DD, 18-R, and 20-Z; and individual Response 23-FF-13.

LL-2, LL-3, LL-4: Pierce, Tacoma: Re: Part 6.1 (*Submittal Process*) - Clarify Submission Process - Will there be an option to submit electronically either via email, the cloud, or thumb drives? Annual Report, SWMP, and other documents will likely be large attachments. Recommend submitting via NetDMR only. We would like an electronic option that allows the Tribes and other interested parties to view all required reports via one electronic portal.

Remove reference to compact disc to save and store records. Most computers no longer have this ability. Revise to allow one place to upload and share data. Two reports add confusion and additional chances of non-compliance due to a clerical mistake.

Re: Part 6.1.1 – Revise to clarify EPA recipient of reports and use consistent language throughout the Permit. Use consistent language throughout the Permit. See comments regarding Part 9 definitions of “Director” and “EPA.”

Re: Part 6.1.2 - Revise last sentence of 6.1.2 to state, “...no longer required to submit such materials to EPA and the Puyallup Tribe of Indians via portable electronic document format.” Last sentence states, “After the Permittee begins using NetDMR, the Permittee is no longer required to submit such materials to EPA and the Puyallup Tribe of Indians via paper submittal.” Part 6.1 indicates only electronic document format. Clarify what items are referred to with paper submittal.

Response: EPA has revised Part 6.1 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to reflect the Puyallup Tribe's CWA Section 401 Certification conditions for each respective permit, and in response to public comment. See CWA §401 Certification Summary Section 2-23 in this Appendix for complete text of revised Part 6.1.

In response to comments above, EPA revised Part 6.1 to require submittal of electronic documents only; to identify proper email addresses for document submittal; and to identify appropriate electronic file name formats for each document type required by the Permit(s).

In Part 6.1.2, EPA corrected the reference to the electronic portal to be established at a future date. EPA's NetDMR portal is not available for EPA's MS4 permit program; instead, at a national level EPA is creating a separate web-based portal for MS4 permit information that is expected to be available in late Calendar Year 2023. Until that time, Permittees must submit electronic documents to the email addresses identified in Part 6.1. EPA revised Part 6.1.2 to state, when the portal is available

(prior to the expiration date of each permit), EPA will notify each Permittee and upon appropriate registration, the Permittee may begin using that system without a modification to the MS4 permit.

LL-5, Pierce, Tacoma: Re: Part 6.2 (*Annual Report*) - Revise Annual Report dates based on actual effective date of the permit. Ensure we aren't required to submit monitoring data twice for the annual report. Water year data will always be 3 months behind the rest of the annual report information. There are no issuance or effective dates on Page 1. Part 6.2 assumes Permit effective prior to December 31, 2022. Revise as needed for actual Permit effective date.

Response: EPA intends to revise all cited dates in all final permits to reflect the respective permit issuance date, effective date, expiration date, and document submittal dates where necessary. EPA will also update the Schedule of Submittals on page 5 of each permit. In the interim, EPA has revised Pierce County and Tacoma permits, Part 6.2, to add one year to the Reporting Periods and Annual Report due dates.

See Response 29-LL-6, LL-7 below for revisions to the WSDOT permit Part 6.2.

LL-6, LL-7-WSDOT: Re: Part 6.2 (*Annual Report*) -Revise Annual Report due dates from March 31 to October 31 consistent with WDOE WSDOT Permit Section S8.B. As written in Schedule (pg.5), Annual Reports are due on March 31 each year. WSDOT's existing WDOE Permit ARs are due October 31 each year.

Revise Reporting Periods to reflect WSDOT fiscal years, consistent with WDOE WSDOT Permit Section S8.B. As written, reporting periods for Annual Reports are based on calendar year. WSDOT's existing WDOE Permit reporting period is based on the previous fiscal year (July 1 to June 30). Revise reporting period for each annual report to reflect WSDOT's fiscal years. For example: 1st year – Permit Effective Date – 6/30/23 – Due Date 10/31/23, 2nd year – 7/1/23 – 6/1/24 – Due Date 10/31/24, etc.

Response: EPA agrees to revise the WSDOT permit Part 6.2 table of Annual Report reporting periods and due dates to reflect State fiscal year (July – June) and October 1st submittal deadline.

LL-8-Pierce, Tacoma: Re: Part 6.3 (*Stormwater Monitoring Reports*) - Revise Stormwater Monitoring Reports, 1st sentence, re: due dates: An "Annual Stormwater Monitoring Report" must be submitted with each Annual Report beginning the March following the year in which the permit becomes effective in 2023.

Monitoring reporting dates are by water year and not consistent with other permit language reporting requirements. Revise to clarify both *reporting period of monitoring data* and *due date for submittal of data*; add: "Annual report due the March following the year in which the permit becomes effective.

Annual SW Monitoring Report must be submitted each year, with the Annual Report. Clarify what data is to be submitted: whether all monitoring data collected during the preceding water year, and all previous year's data in each subsequent report for all monitoring conducted by the County, even outside of permitted area.

Re: Part 6.3 – Revise text to include the partial data set in the first full year of data such that it can be validated with the full year of data any data from a partial year will only be considered "draft data". All data is combined by Water Year (October through September each year) and is validated as a set according to EPA Tier Two Data validation procedures. With the draft Permit schedule as anticipated, only 1-3 samples would be collected between the effective date of the permit (August) and the beginning of the full Water Year on October 1 (very few storms in August and September).

Response: EPA will revise all dates in Part 6 and in the Schedule of Submittals on page 5 of all three MS4 permits (Pierce County, Tacoma, WSDOT) to reflect appropriate deadlines based on final permit issuance and permit effective date(s).

EPA revised Part 6.3 and Appendix B in all three MS4 permits (Pierce County, Tacoma, WSDOT) to reflect the Puyallup Tribe's CWA Section 401 Certification conditions for each respective permit, and in response to public comment. See CWA §401 Certification Summary Section 2-24 in this Appendix for complete text of revised Part 6.3.

EPA recognizes that monitoring data will be documented based on the Water Year in which the data was collected. Stormwater Monitoring Reports are expected to be submitted with each Annual Report. Each monitoring report should include all data and other information collected or accomplished to date. The expected content for each Monitoring Report is provided in EPA Permit Appendix B, which is comparable to the annual monitoring report required by WDOE Phase I Permit Appendix 9.

In response to public comment, EPA revised Part 6.3 of all three MS4 permits (Pierce County, Tacoma, WSDOT) to acknowledge that the stormwater monitoring report attached to the 1st Year Annual Report may not contain data yet must document the Permittee's progress towards developing the QAPP and initiating the monitoring activities as required by Part 5. Subsequent monitoring reports must integrate data from earlier Water Years into the analysis of results, as appropriate.

LL-9, LL-10-Pierce, Tacoma: Re: Part 6.4 (*Availability of Records*)- Clarify if Tribe also has ability to request an extension for records retention?

Revise text to simplify, consistent with WDOE Phase I Permit: "*Each Permittee is required to keep all records related to this Permit and the SWMP for at least five years.*" Suggested Edit: *The Permittee must retain records and copies of all information Each Permittee is required to keep all records related to this Permit and the SWMP"(including all monitoring, calibration, and maintenance records and all original strip chart recordings for any continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the SWMP Document and application for this permit) for a period of at least five years from the end date of the sample, measurement, report or application, or for the term of this permit., whichever is longer. This period may be extended at the request of EPA at any time.*

Re: Part 6.4 - Add "prior to the expiration of the five year retention date" to the end of last sentence of this section.

Response: Yes, the Puyallup Tribe may also request Permittees extend the retention time for records related to these Permits.

EPA revised Part 6.4 in all three MS4 permits (Pierce County, Tacoma, WSDOT) accordingly. Because these MS4 permits do not require Discharge Monitoring Reports, EPA deleted the phrase copies of DMRs from this Part. EPA declines to otherwise revise text in Part 6.4 as suggested by commenters; this is a standard NPDES condition required by 40 CFR §122.41(j)(2); as written the provision reflects language included in all NPDES permits issued by EPA Region 10.

30. Regarding Part 7 – Compliance Responsibilities

MM-1-Tacoma: Re: Part 7 - Revise to add subsection her to clarify Tacoma's compliance responsibilities on Tribal Trust parcels. Tacoma lacks regulatory authority on Tribal Trust parcels unless Tacoma has an easement or other operational agreement that allows for Permit activities.

Response: EPA declines to revise text as requested. See Response 5-B-1 regarding legal authority.

MM-2-Pierce, Tacoma: Re: Part 7 - Define noncompliance and clarify how permittee recognizes noncompliance in context of this Part.

Re: Part 7.1 - Duty to comply – section appears to have been drafted for an individual wastewater permit, rather than a programmatic municipal storm water permit. For example, there are Part 7 provisions that describe what to do in an “upset” or “bypass,” which implies that some mechanical or technical adjustment to avoid municipal stormwater discharges is possible. Other portions of the EPA Permit, however, provide for an adaptive management approach, which is the appropriate compliance pathway for a programmatic municipal stormwater permit.

Response: Permit Parts 7 and 8 contain standard NPDES regulatory language specified in 40 CFR §122.41, that must be included in all NPDES permits to address compliance responsibilities and other general requirements. Although certain provisions may not strictly apply to MS4 facilities (for example, the upset or bypass provisions), it is mandatory that each of the standard provisions be included in a NPDES permit. Standard NPDES language is also in WDOE Phase I Permit G1 – G21.

Through responses below, EPA clarifies the standard conditions in light of the authorized MS4 discharges but declines to revise text in any significant manner.

EPA agrees that the other terms and conditions in the permit text provide relevant context specific to municipal stormwater discharges regarding appropriate operation and maintenance of the Permittee's MS4. Similar language is also in WDOE Phase I Permit.

No change was made as a result of this comment.

MM-3-Pierce: Re: Part 7.5 (*Proper Operation and Maintenance*) - This appears to be industrial or POTW language. Remove “must at all times”. This is not possible for a stormwater system that collects sediments slowly over time and gradually reaches a maintenance needed condition. See suggested changes for stormwater control facilities that do not have an operator stationed at them, but rather are intended to function without intervention until annual inspection assesses maintenance needs, which are then completed to keep the SW facility operating as designed and in conjunction with all other stormwater facilities in the MS4 basin achieve compliance.

Suggested edits: The Permittee must ~~at all times properly operate and~~ maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to work as designed and in conjunction with all other stormwater facilities in the MS4 basin achieve compliance with the conditions of this Permit.

Response: All provisions in Parts 7 and 8 of each permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. EPA declines to revise the text as suggested. This text is comparable to WDOE Phase I Permit G.2. No change was made as a result of these comments.

MM-4-Pierce, Tacoma: Re: Part 7.7 (*Planned Changes*) - Clarify if the intent is that any repair or activity where a change is made to meet new design standards requires notice. Clarify and define “permitted facility”. Per 40 CFR 122.29(b), it appears that “facility” refers to areas used for treating, storing, disposing or managing hazardous waste and hazardous secondary materials. Please clarify how this section relates to a MS4 permit. “Facility” is also defined in Permit Section 9.19 however that definition does not appear to be helpful in understanding this section.

Clarify “planned physical alterations or additions to the permitted facility”. If the “permitted facility” is the Permittee’s MS4, does this mean Tacoma needs to notify EPA and the Tribe if Tacoma extends a pipe within the MS4, adds or removes a catch basin, adds a new treatment or flow control facility or adds a connection to our system? These types of changes happen often, sometimes on a weekly basis and typically do not change the overall operations or characteristics of discharges from the MS4. Per the definition of “facility” provided in this Permit, activity is also part of a facility, it is unclear how activity is defined or how that relates to this section. Clarify the intent of this section and actions required by the Permittee.

Response: Part 7.7 triggers the Clean Water Act’s new source performance standards for certain categories of discharges, and/or to alert the NPDES permitting authority to changes that would significantly increase pollutants in the discharge.

Example changes suggested by the commenter (i.e., changes to the MS4 that would repair or change the MS4 to meet a new design standard) do not require notice to EPA or the Tribe under Part 7.7, because there are no applicable new source performance standards that apply to MS4 discharges. Therefore, there are no “planned physical alterations or additions” to the Permittee’s MS4 that could result in the MS4 being considered either a “new source” or a “new discharger” under 40 CFR §122.29(b).

However, it is possible that, through the installation of a new MS4 outfall, the Permittee could significantly increase the quantity of pollutants to be discharged. In such a case, EPA and the Tribe would expect the Permittee to submit notice as required by Part 7.7 due to the potential to increase the discharge of pollutants, and which may result in revision or modification to the permit.

As previously noted, all provisions in Parts 7 and 8 of each permit are standard conditions, specified in 40 CFR §122.41 and must be included in all NPDES permits. No change was made as a result of this comment.

MM-5-Pierce: Re: Part 7.8 (*Anticipated Noncompliance*) -Bypass for stormwater is based on the design flow. Remove word “bypass” in this context. In a POTW bypass happens because of a problem at the plant. In stormwater, rain is the determining factor. If EPA wants to know the design standards for each system in the Tribal Trust Lands (or however the final Permit Area is defined) they should write it as a mapping project and allow time for it to be developed.

Response: Part 7.8 as drafted does not include the word *bypass*. No change was made in response to this comment. See Response 30-MM-10.

MM-6-Tacoma: Re: Part 7.8 (*Anticipated Noncompliance*) - Define “activity” in the context of this section. Provide examples of items that would be reported under this section.

Response: As previously noted, all provisions in Parts 7 and 8 of each permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits.

As a hypothetical example of a “planned activity” that could be reported under this provision, consider if the Permittee’s organization planned to lay off all staff responsible for inspections of stormwater treatment facilities/BMPs and flow control facilities/BMPs due to extreme budget constraints; such mandatory staff shortage would result in the Permittee conducting no maintenance inspections during the upcoming reporting period. Such anticipated non-compliance should be communicated to EPA and the Tribe as required by this provision.

This provision is comparable to WDOE Phase I Permit G.20. No change was made as a result of this comment.

MM-7-Pierce: Re: Part 7.9 (*Twenty-Four-Hour Notice of Noncompliance Reporting*) - Revise to be consistent with WDOE Phase I Permit. This is substantially different from our current reporting structure and could represent a significant workload for WQ staff during ‘upset’ or ‘bypass’ events. Clarify how this relates to flood events, because the Permit Area is in flood-prone areas where such events are likely to occur.

Response: EPA declines to revise this provision as requested by the commenter. No change was made as a result of this comment. EPA determines that this provision is fully consistent with the WDOE Phase I Permit and does not result in additional workload for the Permittee. Part 7.9 is comparable to WDOE Phase I Permit Section G.3. and WDOE WSDOT Permit Section G.3.

Part 7.9 requires the Permittee to notify EPA and the Tribe within 24 hours in three (3) scenarios: 1) any discharge that could endanger human health or the environment; 2) an unanticipated bypass that exceeds an [narrative] effluent limitation in the permit; or 3) any upset that exceeds a narrative effluent limitation in the permit.

With regard to “bypass,” EPA recognizes that stormwater facilities for both treatment and flow control are designed to overflow in the event of extreme weather. In general, such facilities will treat and control runoff associated with the majority of storm events, and it is intentional and anticipated that these facilities may overflow (or “bypass”) the treatment or flow control function during an extreme weather event. Therefore, under normal operation of stormwater facilities associated with the MS4, is unlikely that any ‘unanticipated bypass’ would occur that needs to be reported as required by Part 7.9. Similarly, under normal operation of stormwater facilities associated with the MS4, it is unlikely, though possible, that an upset would occur (note that upset is defined at 40 CFR §122.41(n) as “an exceptional incident in which there is unintentional and temporary noncompliance...because of factors beyond the reasonable control of the permittee”).

Therefore, the most likely scenario that could prompt the Permittee to notify EPA and the Tribe as required by Part 7.9 would be in the case of an accident or spill that results in a discharge to or from the MS4 that could endanger human health or the environment.

MM-8-Tacoma: Re: Part 7.9 (*Twenty-Four-Hour Notice of Noncompliance Reporting*) - Clarify when reporting under Section 7.9 is required. It is understood there are Water Quality Standards for the receiving waters. Terms *noncompliance* and *effluent limitation* are used in this section.

Clarify circumstances for reporting under 7.9 first bullet and provide examples. Define noncompliance.

Clarify Second and third bullets references to “exceedance of any effluent limitation”; what are effluent limitations in the context of this Permit? Definition in Part 9 Item 15 effluent limitation does not reference what the effluent limitations are or where they are listed within the Permit.

Response: Part 7.9 is comparable to WDOE Phase I Permit Section G.3. and WDOE WSDOT Permit Section G.3.

Spills into or through the MS4, catastrophic failure of a stormwater treatment BMP or facility, catastrophic failure of a flow control BMP or facility are examples of circumstances for reporting under this provision.

EPA declines to define non-compliance; Part 7.1 (*Duty to Comply*) sufficiently explains the expectations for the Permittee's compliance with the permit's terms and conditions.

In any MS4 permit, the "effluent limitations" are the permit's narrative terms and conditions which require the permittee's implementation of the stormwater management control measures through the SWMP in order to reduce pollutants to the maximum extent practicable, protect water quality, and comply with applicable provisions of the Clean Water Act. See: preamble to EPA's *NPDES Municipal Separate Storm Sewer System General Permit Remand Rule*, December 9, 2016, at 89 FR 89337; and 40 CFR §122.34.

MM-9-Tacoma: Re: Part 7.9.2 (*Written Report Waiver*) - Clarify how to request a waiver of the written report as in this section, including appropriate contact information for the Director of EPA Office of Compliance and Enforcement.

Response: The phone number provided in Part 7.9.2 may be used to request the waiver from a written report. Waivers are provided at the discretion of the EPA Director of the Enforcement and Compliance Assurance Division. No change was made in response to this comment.

MM-10-WDOE, Tacoma, Pierce, WSDOT: Re: Part 7.10 (*Bypass of Treatment Facilities*)- Revise text so it aligns with WDOE Phase I Permit G4 - treatment facilities may be designed so that a portion of the flow that exceeds the design capacity standards may bypass the treatment facility or not meet the full performance goal. Revise text such as: *the intentional bypass of stormwater from all or any portion of a stormwater treatment BMP, whenever the design capacity of the treatment BMP is not exceeded, is prohibited unless the following conditions are met....*

Define, clarify *bypass* in the context of this permit. The given definition of *bypass* does not seem appropriate for a stormwater system. Per the requirements of new development and redevelopment, stormwater treatment devices are required to treat 91% of the runoff. Would this be considered a bypass per the Permit definition?

Define *treatment facilities*. Does this provision apply to all "treatment facilities"? Some are required mitigation per new development or redevelopment which meet the standards of the approved stormwater manual and Minimum Requirement #6 and some are "retrofits", which are designed to treat stormwater based on other limiting factors.

Clarify and provide examples when notification of anticipated bypass is required. As noted above, treatment facilities are designed to treat 91% of the runoff volume, and often upstream flowsplitters and facility overflows are part of the facility's design. Would flowsplitters or overflows during extreme intensity events be considered bypass and require notification?

Clarify what are the effluent limitations referenced here? Per Permit requirements, stormwater treatment BMPs/facilities are designed using a presumptive approach. Clarify how a Permittee complies with this provision.

Response: All provisions in Parts 7 and 8 of each permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit in response to these comments.

EPA appreciates the interpretation of this provision relative to MS4 discharges and agrees that this provision can be interpreted in light of the overall maintenance and operation of the MS4.

As drafted, the permits contain an adequate definition of *bypass* and *treatment*: *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.....*Treatment* means stormwater management practices that ‘treat’ stormwater after pollutants have been incorporated into the stormwater.

As written, the permits’ text allows stormwater treatment facilities to be designed (consistent with the *Stormwater Management Manual for Western Washington* and/or equivalent documents such as the *Highway Runoff Manual*) so that a portion of the flow that exceeds the design capacity standards may bypass the treatment facility. Therefore, an overflow from an appropriately designed, operated, and maintained stormwater treatment BMP is not considered a bypass in this context and therefore is presumed to be in compliance with the permit text.

EPA believes it unlikely there will be situations unrelated to weather-related discharges or essential maintenance where stormwater must be intentionally forced to bypass a treatment BMP.

The first sentence of Part 7.10.1, addresses most if not all situations likely to be encountered by a permittee during the appropriate operation and maintenance of a MS4: “*The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation.*” This section goes on to say that such bypasses are not subject to the subsequent paragraphs 7.10.2 and 7.10.3.

In this case, “effluent limitations” are the permit’s narrative terms and conditions requiring the permittee’s implementation of the stormwater management control measures through the SWMP in order to reduce pollutants to the maximum extent practicable, protect water quality, and comply with applicable provisions of the Clean Water Act. See preamble to EPA’s *NPDES Municipal Separate Storm Sewer System General Permit Remand Rule*, December 9, 2016, at 89 FR 89337.

MM-11-Pierce: Re: Part 7.11 (*Upset Conditions*) -Delete entire section.

Response: All provisions in Parts 7 and 8 of each permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. EPA notes that WDOE Phase I Permit contains comparable provision G.21. No change has been made in response to this comment.

MM-12-Tacoma: Re: Part 7.12 (*Other Noncompliance*)- Revise to add word “*known*” prior to the word “noncompliance” in the first sentence. As written, provision requires permittees to report on all instances of non-compliance either known or unknown. It is not possible to report unknown events. Provide examples of what would be reported under this section.

Clarify if this section to be used to notify EPA and Tribe if the Permittee did not comply with a specific permit provision during the previous reporting year, similar to WDOE Phase I Permit G20? Is this how Permittee notifies EPA and the Tribe of a programmatic non-compliance issue? For example: not inspecting 20% of the businesses and/or properties listed in the source control inventory per Part 3.6.5.2, or is this where the Permittee would report items responded to in Section 3.3.4.3, such as spills and illicit discharges that would not be severe enough to be reported under Section 7.9?

Response: EPA declines to revise this provision as directed by the commenter but recognizes that a Permittee cannot report on “unknown noncompliance.”

To clarify the types of information to be reported, yes – reports of non-compliance such as the examples provided by the commenter may be provided to EPA and the Tribe through the Annual Report, as described in this provision. No change was made in response to this comment.

31. Regarding Part 8 – General Requirements

NN-1-Tacoma: Re: Part 8.3 (*Duty to Provide Information*)- Clarify to whom at EPA the Permittee must furnish information, consistent with Part 6.1.1 and 7.8.

Clarify the reference to “Director” – text does not indicate which EPA office.

Response: EPA revised Part 8.3 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to direct contact to the EPA Director of Water Division.

NN-2-Tacoma: Re: Part 8.3 (*Duty to Provide Information*)- Clarify where information is to be submitted pertaining to this permit - to the Addresses noted in Section 6.1.1 or to two separate locations and Directors? See comments on Section 6.1.1 and Part 9 Definitions for *Director* and *EPA*.

Response: If EPA and or the Puyallup Tribe request information per the provisions in Part 8.3, EPA will provide the appropriate response address. As a separate matter, EPA revised Part 6.1.1 to specify appropriate addresses; see CWA §401 Certification Summary Section 2-23 in this Appendix, and Response LL-2,3,4.

NN-3-Tacoma: Re: Part 8.9 (*Transfers*)- Clarify how to contact the Director of Water and Watersheds? See comments on Sections 6.1.1 (*Addresses*) and Section 8.3.

Response: EPA revised Part 8.9 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to direct contact to the EPA Director of Water Division as directed in Part 6.1.1 (*Addresses*).

NN-4-Tacoma: Re: Part 8.9 (*Transfers*)- Revise to indicate that Tacoma lacks the authority to implement these requirements on Tribal Trust parcels unless Tacoma has an easement or other operational agreement that will allow for Permit activities.

Response: EPA declines to revise Part 8.9 (*Transfers*) as suggested. No change was made in response to this comment.

NN-5-Tacoma: Re: Part 8.10 (*State/Tribal Laws*) - Revise to indicate that Tacoma lacks authority to implement these requirements on Tribal Trust parcels unless Tacoma has an easement or other operational agreement that will allow for Permit activities.

Response: EPA declines to revise Part 8.10 (*State/Tribal Laws*) as suggested. No change was made in response to this comment

NN-6-Tacoma: Re: Part 8.13 (*Re-opener Clause*) - Clarify specifically whom EPA refers to in this paragraph, see comments regarding Part 9 Definitions for *EPA* and Section 6.1.1.

Response: EPA revised Part 8.13 in all three MS4 permits (Pierce County, Tacoma, WSDOT) to direct those requesting modification to contact to the EPA Director of Water Division as directed in Part 6.1.1 (*Addresses*). See CWA §401 Certification Summary Section 2-25 in this Appendix for full text revision of Part 8.13.

32. Regarding Part 9 – Definitions

OO-1-Tacoma: Re: Part 9 (Definitions) - Certain terms are commonly used, many not defined in Part 9, for example, phrase “*Stormwater treatment and flow control BMPs/facilities*” is used throughout the Permit but is not defined. Remove all definitions that do not appear in the permit.

Response: To the extent practicable, Part 9 has been revised for punctuation and general consistency, and to delete extraneous definitions. EPA has also added and/or refined definitions as requested through comments. See, for example, Response FF-3.

OO-2-Tacoma: Re: Part 9 (Definitions) -Clarify why certain terms are in quotation marks and ensure that the use is consistent throughout the Permit., e.g, defn #12 and #15 “contiguous zone”, “waters of the United States” “discharged” is quotes and sometimes it is not, see definition #12.

Re: 9.15 -Effluent limitation - Why is “discharged” in quotation marks? Remove quotation mark after the word “compliance.”

Response: EPA revised Part 9 definitions in all three MS4 permits (Pierce County, Tacoma, WSDOT) to delete quotation marks and refer to the federal NPDES regulation directly and/or include the definition in Part 9 as needed. Definitions cited by commenter were included/quoted from federal NPDES regulations, and therein, quotation marks are used to aid readers indicating other terms which themselves are defined in the federal NPDES regulation. See 40 CFR §122.2. Such clues are unnecessary in the three MS4 permits.

OO-3-WSDOT: Re: Part 9 (*Definitions*) - Add definition of “discharge point” consistent with WDOE WSDOT Permit. Part 3.3.2.1 requires mapping discharge points, but EPA has no definition for discharge point. Add definition as follows: *Discharge point means the location where a discharge leaves the permittee’s MS4 to another permittee’s MS4 or a private or public stormwater conveyance. “Discharge point” also includes the location where a discharge leaves the permittee’s MS4 and discharges to ground, except where such discharge occurs via an outfall.*

Response: EPA uses the term *discharge point* twice in each of the permits (Pierce County, Tacoma, WSDOT), in Part 3.3.2 (Map of MS4). EPA agrees to define *discharge point* in Part 9 in all three MS4 permits. This definition is compatible with both the WDOE WSDOT Permit & WDOE Phase I Permit; however, based on EPA’s authority under the Clean Water Act, EPA has omitted the mention of discharges to ground. EPA added the following definition:

Discharge point means the location where a discharge leaves the permittee’s MS4 to another permittee’s MS4 or a private or public stormwater conveyance.

OO-4-Pierce: Re: Part 9 (Definitions)- Question re: *Discharge of a Pollutant*: Will we need to delineate the jurisdictional reach or extent based on a localized Waters of the United States analysis of the County's receiving waters once the tribal vs trust lands points of compliance mapping (borders) questions have been clarified by the EPA?

Response: The Permittee should consult with the Puyallup Tribe Water Quality Manager regarding specific questions related to identification of surface waters overlying Tribal Trust properties. No change was made in response to this comment.

OO-5-Tacoma: Re: Part 9.3 – Definition of Bypass- Revise definition consistent with WDOE Phase I Permit, which defines bypass as “the diversion of stormwater from any portion of a stormwater treatment facility.” as it seems more appropriate for this Permit.

Response: *Bypass* is defined in NPDES regulation at 40 CFR §122.41 (m). However, EPA agrees to revise the definition of bypass in all three MS4 permits (Pierce County, Tacoma, WSDOT) in the following manner:

Bypass means the intentional diversion of waste streams from any portion of a treatment facility. **See 40 CFR §122.41(m). For the purposes of this permit, Bypass also means the intentional diversion of stormwater from any portion of a stormwater treatment facility.**

OO-6-Pierce: Re: Part 9.5 – Definition of Construction General Permit- Update Website link; as listed, is not valid. When searching EPA website for permits, only the 2017 CGP (WAR10I000) is available, not the referenced *NPDES General Permit for Stormwater Discharges from Construction Activities in Indian Country within the State of Washington*. Update references.

Response: No change was made response to this comment. The “2017 Construction General Permit” is the shorthand title for the group of EPA-issued general permits for areas where EPA is the NPDES Permitting Authority. The weblink provided appropriately provides access to the latest version, now known as the 2022 Construction General Permit or 2022 CGP, as issued simultaneously in several states and Indian Country by EPA on February 17, 2022. The NPDES permit number for the 2022 CGP for Indian Country in WA state as WAR10I000. See 2022 Construction General Permit (CGP), Appendix B.10 (defining the unique NPDES permit number assigned to the geographic area in WA where the CGP applies) and 2022 CGP Part 9.10.4 (in particular see Part 9.10.4.g for Puyallup Tribe), containing specific provisions applicable to any activities resulting in a discharge to tribal waters in WA.

OO-7-Tacoma: Re: Part 9.9 – Definition of Director- Clarify what EPA department that the term Director is related. “Director” often used with no context (see Sections 7.7, 7.10.2.1, 8.2, 8.3, 8.5.2.1, Appendix C). Permittee must submit documents/notifications to “Director” yet no address is provided in Part 6.1.1.

Response: EPA revised the definition of *Director* in all three MS4 permits (Pierce County, Tacoma, WSDOT) to differentiate between relevant EPA offices as indicated below. Where needed EPA also revised text in each permit to indicate the appropriate EPA Director:

***Director* means the Regional Administrator of EPA Region 10, or the Director of EPA Region 10 Office of Water and Watersheds, Director of EPA Region 10 Office of Compliance and Enforcement, or an authorized representative thereof.**

***Director of the Enforcement and Compliance Assurance Division* means the Director of the Enforcement and Compliance Assurance Division, EPA Region 10, or an authorized representative.**

***Director of the Water Division* means the Director of the Water Division, EPA Region 10, or an authorized representative.**

OO-8-Tacoma: Re: Part 9.12 and 9.15 – Define “contiguous zone.”

Response: *Contiguous zone* means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone. See 40 CFR §122.2. Because this

phrase is included in other terms defined by NPDES regulation, EPA determines it unnecessary to include this definition in the three MS4 permits. No change was made as a result of this comment.

OO-9-Tacoma: Re: Part 9.16 – Definition of EPA - Definition does not include Director Office of Compliance and Enforcement, mentioned many times in this permit and associated with Part 6.1.1 for all submittals. Parts 2.3, 2.3.4.1, 3.3.3.1, 3.4.3.5, 3.6.2.2, 3.6.6.4, 3.7.3.3, 4, 5.2 for example, require Permittee to submit to EPA, however submittal is confusing and unclear as to where and how. Revise permit to clarify where submittals go and use that language throughout the Permit. See also comments regarding Part 8.3.

Response: EPA revised Parts 7 and 8 in all three MS4 permits (Pierce County, Tacoma and WSDOT) to appropriately distinguish between EPA’s Director of the Water Division and Director of the Enforcement and Compliance Assurance Division. Permit Part 6.1.1 is revised to provide appropriate addresses for submitting required documents to the respective office. See CWA §401 Certification Summary Section 2-23 in this Appendix.

OO-10-Tacoma: Re: Part 9.18 Facility - Using the term “*facility*” within the definition of “*facility*” is confusing. The definition of this term is unclear and confusing –what types of activities would be considered facilities? Definition inconsistent with term’s use in Sections 3.6.6.2, 3.7.8.4, 3.7.9., 7.7 for example.

Response: As drafted, EPA included the definition of *facility* from the NPDES regulations at 40 CFR §122.2; the definition is confusing, as noted by the commenter. Each of the three MS4 permits (Pierce County, Tacoma, WSDOT) use the term “*facility*” in a variety of ways, modified by adjectives describing either the unique nature of the individual practice designed for stormwater management (e.g: *treatment Best Management Practices (BMPs) or facilities* in Part 3.6.6.2) or the specific type of property where the Permittee must prevent pollutants from entering the MS4 (for example, *permittee owned material storage facilities requiring SWPPPs* in Part 3.7.8).

Upon further consideration and comparing to WDOE Phase I and WSDOT Permits that do not include a definition of “*facility*,” EPA has deleted the definition from all three MS4 permits.

OO-11, OO-12-Tacoma: Re: Part 9.21 - Illicit Discharge - Revise this definition, it isn’t consistent with discharges allowed under Permit Parts 1.2.1, 3.3.3.3 and 3.3.3.4 which are noted as authorized discharges, allowed discharges, and conditionally allowed discharges. They should not be classified as illicit discharges but are based on this definition.

Clarify whether activities listed are illicit discharges or are part of the exception phrase. For example, remove “~~and discharges resulting from fire-fighting activities~~” add a new sentence that states, “Discharges resulting from fire-fighting activities are not considered illicit discharges.”

Response: EPA declines to add text as suggested, but agrees to revise the definition of *Illicit Discharge* in all three MS4 permits (Pierce County, Tacoma, WSDOT) in a manner that is consistent with both the federal NPDES definition at 40 CFR §122.26(b)(2) and the definition in WDOE Phase I and WSDOT Permits, as follows:

Illicit Discharge is defined at 40 CFR §122.26(b)(2) and means any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, **or of non-stormwater discharges allowed as specified in this Permit (Parts 1.2.1, 1.5, 3.3.3.3 and 3.3.3.4)** except discharges authorized under an NPDES permit (other than the NPDES permit for discharges

from the MS4) and discharges resulting from fire-fighting activities. **See also 40 CFR §122.26(b)(2).**

OO-13-Tacoma: Re: Part 9.23 - Indian Country - Clarify how Puyallup Tribal Reservation relates to the definition of Indian Country. Provide mapped boundary for the Indian Country that is the permit coverage area.

Response: Regarding how the Puyallup Reservation relates to the definition of Indian Country, see Response 6-C-1. Regarding map of the Indian Country lands of the Puyallup Reservation, see Response Section 8-E.

In all three MS4 permits (Pierce County, Tacoma and WSDOT) EPA made several changes as indicated below: 1) EPA revised the Part 9 definition of *Indian Country* 2) EPA added to Part 9 definitions for the *Land Claims Settlement Agreement (1988)* and *Puyallup Tribe of Indians Settlement Act of 1989*; and 3) EPA added definition of *Land in Trust Status and/or Trust Land*.

... Indian Country as **defined** indicated by 18 U.S.C. § 1151 **and 40 CFR §122.2**, means:

- (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
- (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and,
- (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

For the purposes of this permit, see also: *Land Claims Settlement Agreement (1988)* and *Puyallup Tribe of Indians Settlement Act of 1989*.

....*Land Claims Settlement Agreement and/or 1988 Land Claims Settlement Agreement* means the August 27, 1988 agreement resolving land claims and other issues amongst the signatories and entitled “*Agreement between the Puyallup Tribe of Indians, local Governments of Pierce County, the State of Washington, the United States of America, and certain private property owners*” that was codified in the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. § 1773.

... *Land in Trust Status and/or Trust Land* is defined in the 1988 Land Claims Settlement Agreement and means land or any interest in land the title to which is held in trust by the United States for an individual Indian or Tribe; restricted land or land in restricted status means land the title to which is held by an individual Indian or a Tribe and which can be alienated or encumbered by the owner only with the approval of the Secretary of the Interior, because of limitations contained in the conveyance instrument pursuant to federal law or because of a federal law directly imposing limitations. Wherever the term *trust land* is referred to in this Permit, it means both trust and restricted lands.

....*Puyallup Tribe of Indians Settlement Act of 1989, or 1989 Land Claims Settlement Act*, means Public Law 101-41, 25 U.S.C. § 1773.

OO-14-Tacoma: Re: Part 9.32 - Method Detection Limit- Revise definition to comply with updated language. EPA updated the 40 CFR Part 136 MDL definition in 2017 and now reads, "The method detection limit (MDL) is defined as the minimum measured concentration of a substance that can be reported with 99% confidence that the measured concentration is distinguishable from method blank results."

Response: EPA revised definition of *Method Detection Limit* in all three MS4 permits (Pierce County, Tacoma, WSDOT) as suggested by the commenter.

OO-15-Tacoma, Pierce: Re: Part 9.35 – MSGP- Delete, as the term is not used in the Permits. Clarify whether referenced permit expired June 2020 – has it been reissued? If so, update reference.

Response: Because the EPA-issued *Multi-Sector General Permit for Stormwater Discharges from Industrial Activity* is not explicitly referenced in the permit text, EPA deleted the definition of MSGP from all three MS4 permits (Pierce County, Tacoma, WSDOT).

OO-16-Tacoma: Re: Parts 9.41, 9.45, and 9.56 - Post-construction stormwater management, post-construction controls and stormwater facility - Delete 9.41, 45 and 56 as they are not used in the Permit. A term used often in the permit body is "*stormwater treatment and flow control BMPs/facilities.*" That term is also a defined term in the WDOE Phase I Permit. Add definition of stormwater treatment and flow control BMPs/facilities, using the WDOE Phase I Permit definition as follows: "Stormwater Treatment and Flow Control BMPs/Facilities means detention facilities, permanent treatment BMPs/facilities; and bioretention, vegetated roofs, and permeable pavements that help meet minimum requirement #6 (treatment), #7 (flow control), or both."

Response: EPA agrees that the terms *post-construction stormwater management*, *post-construction controls*, and *permanent stormwater management controls* are not used in the body of the permits. EPA deleted these definitions in all three MS4 permits (Pierce County, Tacoma, WSDOT).

EPA declines to include the definition of "*stormwater treatment and flow control BMPs/facilities*" as defined in the WDOE Phase I Permit. Instead, EPA has included the following definitions that are consistent with the 2019 SWMMWW for the terms: *stormwater facility*; *treatment BMPs or facilities*; and *flow control BMPs or facilities*. See Responses 23-FF-3 and 32-OO-21.

OO-17-Tacoma, WSDOT: Re: Part 9.46- Receiving Waters - Definition of receiving waters includes the sentence "*See also waters of the Tribe and waters of the United States.*" Clarify how this sentence relates to the definition of *receiving waters* or remove this sentence.

Revise definition consistent with WDOE Phase I Permit definition as follows: "... means naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, or groundwater, to which a MS4 discharges."

Revise definition consistent with definition in WDOE WSDOT Permit, as follows: "Receiving waterbody or receiving waters means naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, to which a discharge occurs via an outfall or via sheet/dispersed flow. Receiving waters may also include ground water to which a discharge occurs via facilities/BMPs designed to infiltrate stormwater."

Response: EPA revised the definition of *receiving waters* in all three MS4 Permits to delete phrase *Waters of the Tribe*. See Response 32-OO-24. *Receiving waters*, as used in each Permit, is directly analogous to waters of the U.S.

However, as drafted, EPA's definition was incorrect, insofar as it also referred to groundwater. The Clean Water Act does not allow EPA to authorize discharges to groundwater; therefore, EPA has revised its definition to delete the erroneous reference.

EPA confirms that the term *receiving waters* in Washington State resulted from a 2014 settlement agreement (*Stipulation and Agreed Order of Dismissal*) resolving the appeal of the 2013 Phase II Municipal Permit for Western Washington. See WDOE Response to Comments 2014 and WDOE Response to Comments 2019. Further, there are minor differences in how *receiving water* is defined between the WDOE Phase I Permit and WDOE WSDOT Permit (as illustrated by the two comments here); in addition, both WDOE definitions include mention of groundwater.

To be consistent with both WDOE definitions, and accurately reflect EPA's CWA authority, EPA also revised the Part 9 definition of receiving waters in all three MS4 Permits (Pierce County, Tacoma, WSDOT) as indicated below; see also Response U-4, regarding definition of *surface water*:

In Pierce County and Tacoma permits:

Receiving waters means **naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, to which a MS4 discharges.** ~~means bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow. For the purposes of this Permit, receiving waters also means ground water to which surface runoff is directed by infiltration. See also waters of the Tribe and waters of the United States.~~

In WSDOT permit:

Receiving waters means **naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, to which a discharge occurs via an outfall or via sheet/dispersed flow.** ~~means bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow. For the purposes of this Permit, receiving waters also means ground water to which surface runoff is directed by infiltration. See also waters of the Tribe and waters of the United States.~~

OO-18-Tacoma: Re: Part 9.52 - Stormwater and stormwater runoff - It appears that the intent of this item is to define stormwater as the definition provided in 40 CFR 122.26(b)(13). If so, remove 2nd second sentence as it is inconsistent with 40 CFR 122.26(b)(13). As an alternative, use definition of stormwater and runoff from WDOE Phase I Permit.

If 2nd sentence is included, it appears that only flows going into a "defined surface water channel or a constructed infiltration facility" would be part of this definition. "Defined surface water channel" is not a defined term but seems very limiting and therefore the terms stormwater and stormwater runoff will have a very restricted definition and may limit applicability of the Permit.

Response: It is not EPA's intention to limit the definition of *stormwater*. EPA agrees to revise this definition in all three MS4 permits (Pierce County, Tacoma, WSDOT) to include only phrasing from current WDOE Phase I Permit, WDOE WSDOT Permit, and the federal definition found in 40 CFR §122.26(b)(13). Note that EPA's definition intentionally differs from that used by WDOE insofar as it does not include reference to "interflow".

Revised text in all three MS4 permits (Pierce County, Tacoma, WSDOT) now reads as follows:

Stormwater, and *stormwater runoff* as used in this Permit means runoff during and following precipitation and snow melt events, including surface runoff and drainage, as defined at 40 CFR §122.26(b)(13). ~~Stormwater means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed infiltration facility.~~

OO-19-Tacoma: Re: Part 9.53 - Stormwater Control Measure - Delete this term, it is only used in this section and not in the Permit or Appendices. If not deleted, it is confusing to include “See best management practices (BMPs)” at the end, as the definitions are not the same. It includes phrases such as, “in conjunction with effluent limitations” and “practices to control plant site runoff”.

Response: EPA deleted the definition of *stormwater control measure* from all three MS4 permits (Pierce County, Tacoma, WSDOT).

OO-20-Tacoma: Re: Part 9.54 - Stormwater Discharge Associated with Construction Activity - Delete - It appears phrase is only in definition 9.5, as the title of Construction General Permit.

Response: EPA declines to delete this definition, the phrase is used in Part 1.5. No change was made in response to this comment. See Response 13-J-2.

OO-21-Tacoma: Re: Part 9.56 - Stormwater Facility - Define stormwater drainage system. Add the word “*inlets*” after the phrase “catch basins”. Define sediment basins.

Define retention basins; the term “retention” is no longer a typically used stormwater term.

Define modular pavement. This phrase is not a standard stormwater term and may not be a stormwater facility. Or perhaps replace “modular pavement” with the term “permeable pavement”?

Remove the last sentence reference to stormwater management controls.

Response: EPA agrees to revise the definition of *stormwater facility* to better match the 2019 SWMMWW. As drafted, EPA’s definition of *stormwater facility* was derived from National Research Council’s report Urban Stormwater Management in the United States, October 2008. While largely the same as definition in the 2019 SWMMWW, EPA agrees to revise as suggested.

Consistent with the 2019 SWMMWW, EPA revised all three MS4 permits (Pierce County, Tacoma, WSDOT) specifically by deleting references *sediment basins* and *modular pavement*, revising text to refer instead to *detention ponds* and *retention ponds*, and deleting the “*See also..*” sentence. EPA declines to add the word *inlets* as suggested. See Response 32-OO-16.

Revised text in all three MS4 permits (Pierce County, Tacoma, WSDOT*) now reads as follows:

Stormwater Facility means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins ~~ponds~~, retention basins ~~ponds~~, constructed wetlands, infiltration devices, catch basins, oil/water separators, ~~sediment basins~~, and ~~modular pavement~~ **biofiltration swales**. See **2019 Stormwater Management Manual for Western Washington**. See also ~~permanent stormwater management controls and/or post-construction stormwater management controls~~. ***See 2019 WSDOT Highway Runoff Manual .**

The term *stormwater drainage system* is defined by the 2019 SWMMWW. For clarity, EPA also agrees to add definition of phrase *stormwater drainage system* to all three MS4 permits (Pierce County, Tacoma, WSDOT) as follows:

Stormwater drainage system means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter stormwater. See 2019 *Stormwater Management Manual for Western Washington*.

OO-22-Tacoma: Re: Part 9.57 - Stormwater Management Practice - Delete this term, it is not used in body of the permit. The term stormwater management control is used in Part 2.1, but its use isn't consistent with this definition. Based on the context of Part 2.1, it does not seem that a definition is needed for this phrase.

Response: EPA declines to remove the definition of stormwater management practice from the permit(s) because it is a phrase that is used in the definitions of other terms (e.g, treatment and low impact development) that are used in the body of the permit(s). No change was made as a result of this comment.

OO-23-Tacoma: Re: Part 9.61- Treatment- Why is treat in quotations? What is definition of treat? Does treat mean compliance with Minimum Requirement 6 of the WDOE Phase I Permit?

Response: EPA removed the quotation marks from the word *treat*. The meaning of treat in this context means compliance with Minimum Requirement 6 of the WDOE Phase I Permit.

OO-24-Tacoma: Re: Part 9.64 – Waters of the Tribe - As currently written, this term is only in the Definitions section. Should this term be used in the discussion of permit coverage area? If this term is only used in the definition section, remove it.

Tacoma requests a map and GIS shapefile that shows the locations of *Waters of the Tribe*.

Response: EPA agrees to delete the phrase *Waters of the Tribe* from all three MS4 permits (Pierce County, Tacoma, WSDOT).

Although EPA refers to *Waters of the Tribe* in its Fact Sheet, the phrase *Waters of the United States* sufficiently identifies the receiving waters to be protected by these MS4 Permits and is defined by federal regulation at 40 CFR §120.2.

EPA will work with Puyallup Tribe to provide Permittees with a map of surface waters where the *Water Quality Standards for Surface Water of the Puyallup Tribe* apply. See Response Section 8-E.

33. Regarding Permit Appendix A – Annual Report

PP-1, PP-2-WSDOT: Re: Appendix A – Revise consistent with WDOE WSDOT Permit Sections S5.A.1 and S8.B. Revise Annual Report Due Date (and associated updated SWMP Document submittal) from March 31 to October 31. As written, and according to the Schedule of Submissions (pg.5), the Annual Reports are due on March 31 each year. Under WSDOT's existing Municipal Permit issued by Ecology, the Annual Reports and SWMP updates are due October 31 each year.

Revise compliance date for posting SWMPs and ARs to the website to December 31 if the due date for the Annual Report and SWMP updates is adjusted to October 31. Suggested edit: *“The Permittee must make the SWMP Document required by Part 2.3.1 and Annual Reports required by Part 6.2 available to the public on the Permittee’s website no later than December 31st of each year.”*

Response: For WSDOT permit only, EPA has revised Appendix A and Part 6.2 to reflect state fiscal years for reporting periods, and the requested deadline for submitting the Annual Reports and SWMP document. EPA also revises WSDOT permit Appendix A and Permit Part 3.2.3 to change the

compliance date for posting SWMP and Annual Report Documents to the WSDOT website as requested. See also Responses LL-6 and LL-7.

PP-3-Pierce: Re: Appendix A – Is the Annual Report format required for submittal of information? Is this the same format as WebDMR? Will attachments need to be listed as appendices? Commenter provides comments on annual reporting are in a separate document.

Response: Appendix A is an optional format provided by EPA that may be used by the Permittee to submit its Annual Report. EPA will update Appendix A as part of developing the final permit terms and conditions. No, Permit Appendix A is not the same format as WebDMR.

See also Response Section 29-LL. No, EPA does not currently have a dedicated web-based platform for MS4 permit reporting; such a dedicated platform will not be in place until Calendar Year 2023. EPA revised Part 6.1 to direct the Permittee regarding the submittal of all documents including the Annual Report and associated attachments that the Permittee may include to demonstrate compliance during the reporting period.

PP-4 WSDOT: Re: Appendix A – Revise Annual Report template as needed based on changes made to the permit due to public comments.

Response: EPA has revised the Appendix A-Annual Report template based on these public comments and will continue to refine it as needed until the permit is issued as final.

PP-5, PP-6, PP-7-Tacoma: Re: Appendix A – Replace entire Appendix A with WDOE Phase I Permit Appendix 3 and allow one comprehensive submittal for Tacoma’s entire MS4. Annual Report as written requires a large additional effort by Tacoma to complete. EPA staff have said the intent is to not create an extra burden on Tacoma for EPA Permit reporting.

If EPA declines request to use WDOE’s Appendix 3 Annual Report as requested, Tacoma provides Attachment 2 *Specific Comments to the EPA Appendix A Annual Report*, including the estimated additional level of effort required to provide information required in EPA Appendix A versus for WDOE Phase I Permit.

Revise the Annual Report format because information on activities, inspections, maintenance of private facilities or other requirements on private parcels can’t be provided in Tacoma’s Annual Report unless Puyallup Tribe chooses to participate. Tacoma does not have the authority to compel the Puyallup Tribe to allow access or provide information.

Response: See Response 29-LL-1. EPA will update the Annual Report template as needed to match the final permit terms and conditions. EPA will consider WDOE’s Phase I Permit Appendix 3 format as a model but declines to use it to completely replace Permit Appendix A in its entirety. EPA disagrees that its Appendix A - Annual Report template is overly burdensome, and notes that the Permittee is free to attach and submit any preexisting documentation it chooses to submit to document its compliance during the reporting period. EPA expects the Annual Report to address SWMP implementation in those areas draining to the MS4 outfalls in the Permit Area defined in revised Part 1.1.

34. Regarding Permit Appendix B – Stormwater Monitoring Report

QQ-1-Pierce: Re: Appendix B – Stormwater Monitoring - Choose one location at outfall to Puyallup River for the first term of the permit. Tacoma and Pierce County will combine sampling. This is a huge workload not required by WDOE Phase I Permit and not in line with a programmatic permit. Sampling will determine if any of the many parameters, (none of which are currently required to be sampled for by WDOE Phase I Permit), are present. In future, sampling then could be limited to parameters that are present and at levels of concern.

Response: The monitoring requirements outlined in Part 5, and the content of the stormwater monitoring report outlined in Appendix B, are directly comparable to WDOE Phase 1 Permit S8.C.2 and Appendix 9. As a condition of the Puyallup Tribe's CWA Section 401 Certification, revised Part 5.2 requires the Permittee to submit a draft QAPP for Puyallup Tribe review and approval no later than six months from the permit effective date. See CWA §401 Certification Summary Section 2-22 in this Appendix. The Permittee may begin at to discuss with Puyallup Tribe a potential monitoring location at any time, as well as any intended cooperative monitoring arrangements with Tacoma. Part 5.1.5.3 states that Permittee may discontinue monitoring of parameters that are below minimum levels (MLs) after two years of data collection. No change was made in response to this comment.

35. Regarding Permit Appendix C – Minimum Technical Requirements

RR-1-Pierce: Re: Appendix C - Revise to reference current documents, as in WDOE Phase I Permit. Clarify whether EPA will determine equivalency of documents, or will this be left to WDOE? Multiple permits requiring manual updates could cause confusion. There will likely be overlap of manual versions between EPA and WDOE permits. Clarify how County can address conflicting timelines and potential conflicting direction for revisions. Suggested edits:Pierce County is meeting permit requirements of Parts 3.4.3, 3.6.3, and 3.7.2, and achieves equivalency with Ecology's 2012 2019 Stormwater Management Manual for Western Washington as Amended in December 2014 by adopting and implementing the regulations and rules listed below.

- Pierce County Code Title 17A, as effective on ~~December 5, 2015~~ July 1, 2021 (ordinance No. 2021-45).
- Pierce County Code Title 17B, as effective on ~~December 5~~ February 1, 2021, 2015. (ordinance No. 2020-102s)

Response: EPA revised Pierce County permit Appendix C to reference current Pierce County documents. See Response 35-RR-2; EPA also revised Appendix C in both Tacoma and WSDOT permits to reference their current documents.

EPA will not review Pierce County or other local MS4 management documents to determine equivalency with the 2019 SWMMWW. Such decisions remain WDOE's responsibility.

The Puyallup Tribe WQS for stormwater specifically states that the 2019 SWMMWW predecessor, the 1992 *Stormwater Manual for Puget Sound*, establishes All Known Available and Reasonable Methods of Prevention, Control and Treatment (AKART). EPA recognizes that WDOE's subsequent updates to the stormwater manual for Western Washington, including the 2019 SWMMWW, constitutes current AKART for controlling stormwater discharges to Puget Sound.

EPA will continue to recognize WDOE's assessment of AKART via the 2019 SWMMWW. When WDOE updates their manual, and makes future determinations of equivalency, EPA will work with the Puyallup Tribe to subsequently acknowledge such decisions and EPA will modify the permit(s) as necessary; such updates will likely occur during the permit renewal process.

EPA, in consultation with the Puyallup Tribe, retains responsibility to determine whether the local MS4 program documents comply with the federal MS4 permit standard as established in each permit.

RR-2-WDOE: Appendix C in each permit should reference the 2019 SWMMWW or current equivalent; don't rely on 2014 SWMMWW versions. Require the thresholds, definitions, and runoff controls for new/redevelopment and construction sites that are equivalent to 2019 SWMMWW or an equivalent manual approved by WDOE. WDOE completed its equivalency review of Tacoma and Pierce County local programs to control runoff, and after a public review process, both programs were approved in October 2021.

Response: EPA revised Appendix C in all three MS4 permits (Tacoma, Pierce County, WSDOT) to reference the 2019 SWMMWW and appropriate equivalent documents for each Permittee, as suggested.

RR-3-Tacoma: Regarding Appendix C. Delete Appendix C and use appropriate references to Tacoma's enforceable documents. For example, see specific comments on Parts 3.4.1, 3.4.3.1, 3.4.3.2, 3.6.3.1, 3.7.2.

Response: EPA chooses to retain Appendix C in each permit as a single location to name appropriate local documents. Tacoma permit Appendix C is revised to refer to the specific WDOE -approved equivalent documents, as suggested; See Response 35-RR-2.

36. Regarding Permit Appendix D – Street Waste Disposal

SS-1-Tacoma: Revise Appendix D to reference "City of Tacoma Stormwater Management Manual – July 2021 Edition or the most up to date version of the City of Tacoma Stormwater Management Manual." Delete references to "Department of Ecology's 2012 SWMMWW as amended 2014 or any documents approved as functionally equivalent by the Department of Ecology (See APPENDIX C/ B) on pages 71-72."

Response: Tacoma permit, Appendix D, Paragraph 5, revised as follows:

...Neither Washington Department of Ecology nor EPA will generally require waste discharge permits for discharge of stormwater decant to sanitary sewers or to stormwater treatment BMPs that are constructed and maintained in accordance with the **City of Tacoma Stormwater Management Manual – July 2021 Edition or current version of the City of Tacoma Stormwater Management Manual as referenced in Department of Ecology's 2012 SMMWW as amended 2014 or any documents approved as functionally equivalent by the Department of Ecology (See Appendix C).**

Tacoma permit, Appendix D. Paragraph 1, revised as follows:

...The discharge is to a Basic or Enhanced Stormwater Treatment Facility as described by the **City of Tacoma Stormwater Management Manual – July 2021 Edition or current version of the City of Tacoma Stormwater Management Manual as referenced in Appendix C.** ~~Department of Ecology's 2012 SMMWW as amended 2014 or any documents approved as functionally equivalent by the Department of Ecology (See APPENDIX C).~~

EPA also revised comparable statements in both Pierce County & WSDOT Permits Appendix D, to reference updated manual versions/equivalency.

SS-2-Tacoma: Re: Appendix D - Define the following terms or use previously defined terms - *stormwater treatment facility, stormwater treatment BMP and stormwater treatment structure* are used in this Appendix but are not defined. Are these terms intended to be analogous?

Response: See Response 23-FF-3 for revised definitions in Permit Part 9 for *treatment BMP or facility*. EPA's use of the term stormwater treatment structure is identical to its use in WDOE Phase I Permit Appendix D. No change was made in response to this comment.

SS-3-Tacoma: Re: Appendix D page 71- Add "*stormwater treatment facility/BMP/Structure*" to Option 1. As written, only includes catch basin decant liquids. Why is option not available for liquids collected from SW treatment facility/BMP/Structures? This is confusing since Option 2 states "*Discharge of catch basin decant liquids may be allowed into a Basic or Enhanced Stormwater Treatment BMP, if option 1 is not available.*"

Response: EPA revised all three MS4 permits (Tacoma, Pierce County & WSDOT) Appendix D to add **stormwater treatment facility/BMP/Structure/** as suggested.

SS-4-Tacoma: Re: Appendix D Pg 72, 1st paragraph; add "*visible*" before word *seen* in last sentence.

Response: EPA revised all three MS4 permits (Tacoma, Pierce County & WSDOT) Appendix D to add **visible** as suggested.

SS-5-Tacoma: Re: Appendix D, pg 72 last bulleted paragraph in Option 2, states "*Flocculants for the pretreatment of catch basin decant liquids must be non-toxic under the circumstances of use and must be approved in advance by EPA.*" What is the procedure for this approval? Permit has one form of communication, which is mail per Section 6.1.1. Would a written request be mailed to that address?

Response: A written request to use flocculants for the pretreatment of catch basin decant liquids must be sent to EPA Water Division Director and Puyallup Tribe at the addresses provided in Part 6.1.1. The request should include all specific facts regarding the use of flocculants, including whether such use has been previously approved by WDOE under the WDOE Phase I Permit.

EPA revised Appendix D in all three MS4 permits (Tacoma, Pierce County, WSDOT) to clarify this process, as follows:

Flocculants for the pretreatment of catch basin decant liquids must be non-toxic under the circumstances of use and must be approved in advance by EPA **Water Division Director and Puyallup Tribe of Indians. Requests for approval must be submitted to the addresses provided in Part 6.1.1 at least 30 days in advance of expected use and describe all relevant details regarding the intended use of flocculants, including whether the Permittee has previously received approval for such use from Washington Department of Ecology.**

37. Regarding Permit Appendix E – Monitoring Parameters and Minimum Levels

TT-1-Pierce: Re: Appendix E – Monitoring Parameters and Minimum Levels (ML) regarding Fecal Coliform - do we need to address if FC is >2,000,000 CFU? Fecal coliform minimum level 2-2x10⁶ CFU – CFU usually reported per unit volume? Typically, 100 to 200 per 100 mL.

Revise Table 1 to use *E. coli* rather than fecal coliform for bacteria analysis as accurate indicator of pathogen risk and as changes to recreational guidance and standards.

Response: EPA revised Appendix E Table 1 to replace fecal coliform with *E. coli*, and to add text reflecting that the ML is based on the analytical method used.

TT-2-Tacoma: Re: Appendix E –Revise Tables 3-1 and 3-2 to use surface water (Table 3-1) and sediment (Table 3-2) detection levels presented in Tacoma’s QAPP approved for compliance with WDOE’s Phase I Permit: *Thea Foss and Wheeler-Osgood Waterways Stormwater Monitoring Quality Assurance Project Plan* (2020 Ecology Permit QAPP) dated July 2020. (Commenter attached relevant tables in their comments). Note that all reporting levels in these July 2020 Tables are equal to or lower than those presented in Appendix E.

Response: No change is needed in response to this comment. EPA recognizes that the *Thea Foss and Wheeler-Osgood Waterways Stormwater Monitoring Quality Assurance Project Plan* is approved by WDOE, and that QAPP incorporates reporting limits (aka, minimum levels, MLs) that are equal to or lower than the MLs in EPA’s Permit Appendix E-Table 1. If the Permittee uses those MLs in the QAPP to be developed by the Permittee as required by Part 5, they will comply with the Permit as written. See Responses 27-JJ-5 and 37-TT-3.

TT-3-Tacoma: Re: Appendix E – Revise Table 1 title to “Stormwater Monitoring Parameters and Detection Levels”.

Revise title of 2nd column, Table 1 from “Minimum Level” to “Detection Level”.

Revise to substitute Total Persulfate Nitrogen Method rather than TKN Method. Total Persulfate Method is a more efficient method with greater analyte recoveries. TKN may be calculated and reported if necessary.

Revise PAH reporting to report Benzo(b) - and Benzo(k) - fluoranthene as the combined parameter Benzo(b,j,k)fluoranthene. Benzo(b), (j), and (k) coelute and are generally indistinguishable using approved analysis methods including EPA8270E used by Tacoma.

Same comment for Benzo-fluoranthene as above.

Re: App E – Table 2 -Phenolics: Revise to report m,p cresol as a combined parameter instead of p-cresol. Meta and para fractions coelute making it difficult to distinguish between the two analytes.

Re: App E – Table 2 - Propose to analyze PCBs as congeners by method 8270E as is consistent with Tacoma’s current WDOE-approved QAPP for Thea Foss Waterway (Table 3-2).

Response: For clarity, EPA agrees to revise the title of the Appendix E Table 1 to reflect *Stormwater Monitoring Parameters* in all three MS4 permits (Tacoma, Pierce County, WSDOT).

EPA declines to include the term *detection level* in Appendix E title or as 2nd column heading, as suggested by the commenter. The definition of *Minimum Level*, and application of those levels cited

in Table 1 of Permit Appendix E, are identical to the “reporting limits or lower limit of quantitation” cited in WDOE Phase I Permit Appendix 9 Table A9-2.

EPA Region 10 uses the term Minimum Level (ML) in its NPDES permits. EPA explains in the preamble to its rulemaking entitled *NPDES Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting*:

“The term “minimum level” refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL).... For the purposes of this rulemaking, EPA is considering the following terms related to analytical method sensitivity to be synonymous: “quantitation limit,” “reporting limit,” “level of quantitation,” and “minimum level.”

See: 79 FR 49001 (09/18/2014) at page 49003; <https://www.federalregister.gov/d/2014-19265/p-42>

EPA declines to otherwise revise Appendix E-Table 1 or Appendix E-Table 2 as requested by the commenter. The Permittee should discuss such issues with the Puyallup Tribe during development of their QAPP. The Puyallup Tribe requires review and approval of the QAPP – see CWA §401 Certification Summary Section 2-22 in this Appendix; as such, the Tribe may consider deviations from the requirements of Part 5 and Appendix E when approving the QAPP. As drafted, Permit Part 5 and Appendix E are comparable to the WDOE Phase I Permit Appendix 9. No other change was made in response to this comment.