



## Permitting for Environmental Results (PER) NPDES Profile: Washington and Indian Country

### PROGRAM RESPONSIBILITY

**State of Washington:** NPDES authority for base program, general permitting, and pretreatment

**EPA Region 10:** NPDES authority for federal facilities and biosolids

**EPA Region 10:** NPDES authority for all facilities in Indian Country

### Program Integrity Profile

This profile characterizes key components of the National Pollutant Discharge Elimination System (NPDES) program, including program administration and implementation, environmental outcomes, enforcement, and compliance. EPA considers profiles to be an initial screen of NPDES permitting, water quality, enforcement, and compliance programs based on self-evaluations by the States and a review of national data. EPA will use the profiles to identify program strengths and opportunities for enhancements. For more information, please contact Nancy Winters, (360) 407-6460, Washington State Department of Ecology, or Michael Lidgard, (206) 553-1755, EPA Region 10.

## Section I. Program Administration

### 1. Resources and Overall Program Management

#### The State of Washington:

The State of Washington was authorized to administer the NPDES program in November 1973. The State was authorized to administer the NPDES pretreatment program in September 1986 and the NPDES general permits program in September 1989. EPA approved the most recent update to the Memorandum of Agreement (MOA) on January 9, 1990. The State does not have NPDES authority for federal facilities or biosolids; EPA Region 10 is the NPDES authority for these programs. Additionally, the Region issues permits to facilities located in Indian Country. Currently, there are 2,089 facilities in the State of Washington managed by both the State and EPA that are covered by 540 permits (530 individual permits and 10 general permits).

The State of Washington currently manages 460 permits issued to 2,009 facilities. Individual permits cover 79 major facilities and 371 minor facilities, and 10 general permits cover 1,559 minor facilities.<sup>1</sup> EPA authorized two Washington State agencies to administer the NPDES program. The Washington State Energy Facility Site Evaluation Council (EFSEC) administers the NPDES program for large natural gas and oil pipelines, thermal electric power plants that are 350 megawatts or greater and their

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<sup>1</sup> The National Data Sources column of the Management Report, measures #2 and #3, show 381 minor facilities covered by individual permits and 1,429 minor facilities covered by non-stormwater general permits. These values are based on PCS data as of June 30, 2004 and ePIFT data as of March 2004, respectively. The values above are based on ePIFT data as of April 1, 2005.

dedicated transmission lines, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields. In addition, energy facilities of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) can opt-in to the EFSEC review and certification process. The Washington State Department of Ecology (Ecology) administers the NPDES program for all other facilities. It also manages approximately 355 individual non-NPDES State permits.

The program is authorized under State law by the State Water Pollution Control Act (Chapter 90.48 Revised Code of Washington [RCW]). This act predates the federal Clean Water Act (CWA) and in some cases, is broader. Under the act, Ecology issues State waste discharge permits for discharges to waters of the State and for some industrial discharges to publicly owned treatment works (POTWs). Waters of the State include all surface and groundwater in the State. Discharges to surface water are issued as joint NPDES and State waste discharge permits. Discharges to groundwater and specific industrial discharges to POTWs are issued State waste discharge permits.

Ecology is authorized by State law to assess annual fees to fund the operation of the Water Quality Wastewater Discharge Permit Program. RCW 90.48.465 (Water Pollution Control) gives Ecology the authority to establish fees that will fund the administration of wastewater discharge permits. The law states that all fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and the reduction of the quantity of pollutants.

The Water Quality Wastewater Discharge Permit Program has been funded through annual fees since 1987, when Senate Bill 6085 was passed authorizing the development and passage of a rule establishing annual permit fees to recover revenue to meet the biennial appropriation established by the Washington State Legislature. Ecology responded to this authorization by developing Chapter 173-224 Washington Administrative Code (WAC) – Wastewater Discharge Permit Fees.

In 1994, voters passed Initiative 601 (I-601) which required that fee increases be linked to the State fiscal growth factor. The average fee increase for the administration of the wastewater discharge permit program since the passage of I-601 has been between two and four percent. Fees paid by holders of wastewater discharge permits are deposited in a dedicated account and not into the State General Fund. Each biennium, the State Legislature authorizes Ecology in the same operating budget to spend fee funds from the permit fee account for fee-eligible activities.

Ecology's permit fee program currently provides funding of approximately \$12 million per year. This funding supports State permitting activities as well as NPDES permitting. Some supporting activities are funded by other fund sources rather than permit fees. As a matter of policy, Ecology has not funded enforcement activities through permit fees. Enforcement activities are funded through the State general fund. Ecology receives a performance partnership grant from EPA which funds such activities as monitoring, total maximum daily loads (TMDLs), and standards development.

Ecology consists of ten major environmental management programs, six of which affect wastewater discharge permits.

The Water Quality Program (WQP) is the designated lead for administering the wastewater discharge permit program within the agency and administers 99 percent of the wastewater discharge permits. The program manager is the designated policy lead of the permit program and shares policy management

with the section managers of each program section and region. WQP has three sections (see below) at headquarters and sections in each of Ecology's four regional offices, as well as the Bellingham and Vancouver Field Offices.

The Program Development Services Section at headquarters is where permit rules are developed. It administers the industrial, construction, and municipal stormwater general permits, develops most general permits, maintains central quality control, and provides permit manager support (e.g., Permit Writer's Manual).

The Watershed Management Section performs the central coordination function for the TMDLs in the State. The section also has lead responsibility for lake TMDLs but works closely with the regional TMDL leads. Most of its duties are non-permit program functions. The work in this section includes maintenance of the water quality standards, water body assessments, and developing policies for managing impaired water bodies.

The third section is the Financial Management Section, which deals mainly with grants and loan (non-permit program) functions. The wastewater/stormwater permit fee administration is also part of this section.

The Water Quality Program also has sections in each of Ecology's four regional offices (Bellevue, Lacey, Yakima and Spokane) as well as two small field offices in Bellingham and Vancouver. Each region issues, manages, inspects, and ensures permittee compliance within its regional boundaries. Water quality regional section managers report to the manager of the WQP at headquarters.

The Solid Waste Services Program at headquarters houses the Industrial Section, which is responsible for permit processing, management, and inspection of 34 wastewater discharge permitted facilities, 26 of which are major industrial facilities. These facilities include mostly pulp and paper mills, aluminum mills (all but one of these mills has ceased operation for an indefinite period of time due to the energy shortage crisis, but none has yet requested termination of permit coverage), and oil refineries. The Industrial Section also has air quality and solid waste permitting responsibilities for these permittees. The Solid Waste Program also manages biosolids with staff in the headquarters and regional offices using a state-wide General Permit.

The Environmental Assessment Program (EAP) is Ecology's in-house environmental monitoring resource. It conducts most detailed environmental surveys and special studies. It also conducts the fieldwork and hydrologic modeling necessary for the development of TMDLs. Based on that work, EAP makes wasteload allocation recommendations to the permitting programs (e.g., Water Quality Program) for establishing effluent limits in permits.

The Toxics Cleanup Program's (TCP) headquarters and regional office sections administer Washington's implementation of the federal Comprehensive Environmental Response, Compensation, and Liability Act (Superfund Act) and the State's Model Toxics Control Act (MTCA). Occasionally, cleanups involving leaking underground storage tanks and other non-independent actions require wastewater discharge permits. In those cases, TCP has lead responsibility for permit processing, management, and inspection. The TCP also has "Urban Bay Action Teams" in the two Western Washington regions for Puget Sound. These teams coordinate major cleanups directly affecting Puget

Sound. These cleanups occasionally involve wastewater discharges. In those instances, TCP has permit processing, management, and inspection responsibilities.

The Nuclear Waste Program (NWP) administers environmental programs related to the Hanford Nuclear Reservation, including the Hanford Cleanup. EPA is responsible for NPDES permitting on the reservation; however, the NWP works with EPA on those permits. The NWP is responsible for permit issuance, management, and inspection of Hanford facilities having a State waste discharge permit from Ecology. Staff located in a Nuclear Waste Program field office in Kennewick conduct permit management.

The Hazardous Waste and Toxics Reduction Program (HWTRP) administers federal and State permit programs related to the handling and disposal of hazardous waste and dangerous wastes. Similar to the Water Quality Program, the HWTRP has sections in each regional office as well as at headquarters. The HWTRP is responsible for permit processing, management, and inspection of wastewater discharge for permits for facilities undergoing corrective actions under the federal Resource Conservation and Recovery Act (RCRA) and State Model Toxics Control Act (MTCA). Presently, few facilities fall under this category.

The Washington State Department of Ecology has approximately 150 full-time staff administering the NPDES program including stormwater management. Of these, approximately 50 full-time equivalents (FTEs) are dedicated to permitting (including NPDES and State permits) and 30 FTEs conduct inspections. Another 30 FTEs are dedicated to program development and technical assistance. The remaining staff provide data management, education and outreach efforts, administer the permit fee program, and provide clerical and supervisory support. Since permit writer turnover is rare in Ecology, permit writers represent a wealth of accumulated knowledge. Many Ecology permit writers do inspections, compliance, and recommendations for enforcement, so the 30 FTEs for inspections and the 50 permit writing FTEs are in reality not separate. In the Eastern Region, permit writers are “facility managers” who do inspections, compliance, and technical assistance as well as permits. In the Northwest Region, industrial permit managers do their own inspections, but municipalities rely on an industrial person to assist them. The Southwest Region also has some dedicated inspectors. About 4 FTEs are involved with the biosolids program.

#### EPA Region 10:

EPA Region 10 currently manages permits for 80 facilities (6 major and 74 minor facilities) in the State of Washington that are all covered by individual permits.<sup>2</sup> The scope of the program includes: permit issuance, pretreatment, consultation with Tribes, Endangered Species Act (ESA) consultation, compliance and enforcement, and data management for these facilities; National Environmental Policy Act (NEPA) compliance for new sources and stormwater programs for federal facilities and in Indian Country; administration of the biosolids program for the State; and oversight of the State administered NPDES program.

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<sup>2</sup> The National Data Sources column of the Management Report, measures #1 and #2, shows 5 major and 73 minor facilities covered by EPA-issued individual permits, based on PCS data as of June 30, 2004. The values above are based on ePIFT data as of April 1, 2005.

NPDES program staff coordinate with the other units within the Office of Water and Watersheds<sup>3</sup> ensuring a holistic approach to water and watershed protection. The program also obtains support from other organizational units within the Region to ensure the best information and expertise is used in making environmental decisions. Due to recent reorganization of staff within the Region, the NPDES Permits Unit is located within the Office of Water while the NPDES Compliance Unit is located within the Office of Compliance and Enforcement. Even though these functions are split between offices, the staff is located in the same area and work very closely in the administration of the program. Refer to the organizational chart at the end of the profile to view the relationship between the NPDES program with other offices and functions throughout the Region.

Since 1997, the NPDES Permits Unit has developed comprehensive plans that cover three calendar years. The Unit Plan is based on national and Regional priorities. The overall goals of the Unit Plan are to focus resources in watersheds or industrial sectors where maximum environmental protection and improvement can be achieved; issue permits on a schedule that minimizes the permit backlog consistent with EPA's; apply technical expertise, innovative methods, and common sense in the decision-making process; integrate the NPDES permits program with other organizational units within and external to the EPA Region 10 Office of Water; build partnerships with States, Tribes, other federal agencies, industry, and the public to facilitate an understanding of the NPDES program and to build capacity; continue to incorporate sludge management, pretreatment, stormwater, and NEPA conditions into NPDES permits; and promote organizational environment that encourages personal and professional growth, honors diversity, supports risk taking, and promotes team building. The long-term focus of the Unit Plans has been reduction in permit backlog. The Region is currently under the third Unit Plan. The Region uses extensive resources in the planning, development, and implementation of the Unit Plan.

The Region takes comments from the States and Tribes in the development of the plan, especially on the list of priority permits to be issued under the Unit Plan, and seeks input from other units in the Office of Water and Watersheds.

Since the Region is the NPDES program authority for two States, Idaho and Alaska, and the biosolids authority for all 4 States, there are very few resources left for Washington program oversight. The State is very good at raising program issues to the Region, resulting in coordinated and timely resolution of these issues. The State sends copies of their draft permits to EPA for review; however, the Region only reviews about six permits per year due to limited resources. For the most part, the State is doing a good job at managing its program.

As part of the Performance Partnership Agreement (PPA) with the State, EPA will be updating its oversight procedures for State-issued permits. Additionally, it is expected that a comprehensive review of the State's NPDES program will be conducted in the near future.

The Region does not conduct either inspections or oversight of State inspections, except when a State program component is newly authorized. This is primarily to help overlap the transition from EPA

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<sup>3</sup> The Office of Water in Region 10 has currently undergone a re-organization and it now termed the Office of Water and Watersheds to include the addition of the Watershed Protection Unit. Watershed Protection includes the Non-point Source Program, State Revolving Funds (SRF), and Coastal Zone Reauthorization Act (CZRA). NPDES Compliance and the Groundwater Protection Program (including Underground Storage Tank [UST] and Leaking Underground Storage Tank [LUST]) have moved to the new Office of Compliance and Enforcement.

program authority to State authorization. Region 10 performs inspections in Washington when the State requests assistance or on-the-job training. On a case-by-case basis, the Region may choose to perform an inspection at a facility in Washington.

Resources to manage EPA issued permits and conduct oversight in Washington are pulled from Regional resources to operate the NPDES regional program. See the Alaska or Idaho profile for a complete resource breakdown and description for EPA Region 10.

## **2. State Program Assistance**

### EPA Region 10:

The Region has continued to encourage Washington to obtain program approval for federal facilities. The State is evaluating what would be necessary to do so. As a first step, the State and Region have agreed to inventory the federal facilities under permit to determine which ones need permits and which have ceased operation. The State believes all of the program elements are in place for program approval for biosolids. However, the State has not had the resources to spend on a authorization process. The State believes that it continues to implement a strong biosolids program using State authority.

## **3. EPA Activities in Indian Country**

### EPA Region 10:

EPA Region 10 conducts Tribal consultation and coordination with regard to Executive Order 13175, Region 10 Tribal Consultation Policy, and NPDES Permit Unit consultation procedures.

As of April 17, 2001, the NPDES Permits Unit has established consultation procedures for actions taken by the Region that affect Indian Country as well as Tribal resources that are outside of Indian Country (including treaty-protected usual and accustomed hunting and fishing areas and subsistence areas under State and federal jurisdiction). The NPDES Permits Unit consults with Tribal governments during the following: development of the NPDES three-year Unit Plan (which includes the prioritization list of permits to be issued); development, issuance, reissuance and modifications of NPDES permits pursuant to CWA section 402 and CWA section 405 where permits may affect Indian Country or other Tribal resources; approval and authorization of an NPDES program pursuant to CWA sections 307, 402, or 405; and development of EPA-led environmental assessments (EAs) and environmental impact statements (EISs) for new source NPDES permits, wastewater treatment construction grant projects, and special appropriation act funding projects pursuant to NEPA where actions may affect Indian Country or other Tribal resources.

During the development of the NPDES three-year Unit Plan, the NPDES Permits Unit Manager requests that all Tribal environmental departments in Washington, Oregon, Alaska, and Idaho provide a list of wastewater discharge facilities that the Tribes view as priorities for permit issuance/reissuance or indicate interest in consultation on the list within 30 days of notification. A draft prioritization list and a request for additional input are requested within 30 days of notification for all Tribes that indicated interest in consultation. Upon completion of consultation, a copy of the final permit prioritization list will be provided to all Tribal environmental departments.

Prior to the development of NPDES permits or modifications, the NPDES Permits Unit sends a letter to those Tribal environmental contacts that have expressed an interest or are identified by the EPA Tribal

coordinator as possibly being affected by the action. The letter identifies the facility, receiving water, and EPA permit writer, and requests that Tribes respond if they are interested in the permit action and provide any initial concerns with the action within 30 days of notification. The permit writer, upon request or when appropriate, will meet with Tribal environmental staff regarding the action; these meetings generally occur at the same time as site visits or by conference call. The permit writer provides all interested Tribes with preliminary draft copies of the permit and fact sheet three weeks prior to public notice and requests the Tribes provide feedback prior to public notice. Interested Tribes are then provided with copies of the public notice, draft permit, and fact sheet at the commencement of the public notice period for review and comment. When requested by a Tribe, the permit writer will prepare a separate response to the Tribe's comments and send it to the Tribal government.

During any approval and authorization of a NPDES program, affected Tribal governments, identified by the Region 10 Tribal coordinators, will be notified by the Director, Office of Water and Watersheds, via letter of those proposed State, and Tribal NPDES program approvals and authorizations and asked to submit comments.

For Tribal consultation with regard to NEPA, Tribal environmental management, identified by the Region 10 Tribal coordinators, will be notified by the NPDES Permits Unit of the EPA-lead EA and EIS activities and request the Tribe(s) input.

Should disputes arise between one or more Tribes and NPDES Permits Unit staff, the parties will strive to address the matter informally at the staff level. In the event that staff is unable to resolve a dispute, the issue will be presented up the chain-of-command who will attempt to resolve the dispute. If the dispute is not resolved, the Regional Administrator will make the final decision after consulting with the elected leader(s) of the federally recognized Tribe(s).

#### **4. Legal Authorities**

*EPA is conducting a comprehensive review of the State's legal authorities. This review has not yet been completed. As a result, EPA is reserving this section of the profile; when the legal reviews are complete, EPA will update profiles to include the results of the reviews.*

Washington has one active withdrawal petition, submitted by Jerry Lee Dierker, Jr. in 2003. The withdrawal petition deals with issues related to public notice and participation.

#### **5. Public Participation**

*An evaluation of the State's legal authorities regarding public participation will be included in the legal authority review. As noted above, the legal authority review section of this profile is reserved pending completion of the legal authority review.*

##### The State of Washington:

Ecology has published a Guide to Public Involvement, publication # 99-751, June 1999. Their public participation program uses advisory groups, mailing lists (US mail and email), workshops, conferences, public meetings, the internet, the State register, and newspaper advertising to solicit public input. Comments and responses are made available to the public via mailing lists, web posting, and email.

Ecology maintains a standing advisory group called the Water Quality Partnership. The Partnership meets every other month. Meetings are open to the public and all agendas and supporting materials are posted at <http://www.ecy.wa.gov/programs/wq/partnership>.

Washington law (RCW 42.17.250-.340) requires that identifiable public records be made available promptly to members of the public for inspection and copying upon request. Ecology does not have an explicit definition of public, however, does not have any reservations about who is considered public in practice. The State Public Disclosure requirements are broader than the Freedom of Information Act (FOIA). Only records that are exempt by law may be withheld from disclosure. These exemptions are generally intended to prevent invasion of privacy and the use of public records for personal, commercial, or political gain. The State has formal procedures and outreach plans to enhance public understanding and meaningful public participation. The State's public disclosure process is described at <http://www.ecy.wa.gov/services/disclosure/disclose.html>.

Ecology provides a calendar of events and public comment periods on the internet at <http://www.ecy.wa.gov/ecyhome.html>.

Ecology posts draft permits, permits, fact sheets, and responses to comments on the internet at <http://www.ecy.wa.gov/programs/wq/permits/index.html> as they are completed. Over the next 4 years, all permits will be posted as they are renewed. Ecology gives notice of biosolids plans with each general permit renewal. Notice of biosolids sites are issued by the biosolids facility but only (1) for new sites and (2) for a major change in site practices.

Ecology issues press releases for all penalties over \$10,000 and significant orders. Quarterly, Ecology issues a press release and report for all enforcement actions. Annually, the Water Quality Program issues a compliance report describing the compliance history of permitted facilities. All press releases and publications are available on the internet at <http://www.ecy.wa.gov/ecyhome.html>. In addition, reports from Ecology's permitting and compliance database, Water Quality Permit Life Cycle System (WPLCS), are available on the internet so the public can access information about permits, applications, and compliance.

The Water Quality Program (WQP) conducts public participation through education and outreach, workshops, conferences, and advisory committees.

#### EPA Region 10:

Pursuant to the Clean Water Act and the requirements contained in Title 40 of the Code of Federal Regulations (CFR) part 124, Region 10 strives to ensure that the public has an opportunity to participate in NPDES permitting decisions. The Region uses formal and informal mechanisms to encourage public participation. Formal mechanisms include legal notices and public hearings. Informal mechanisms include public meetings, use of the internet, and personal communications.

Legal notices for draft NPDES permits are published in one or more newspapers in the vicinity of the discharge. Where public interest is expressed, EPA holds public hearings and/or public meetings.

In conjunction with public hearings, Region 10 sometimes conducts public meetings. These sessions are more informal, with a question-and-answer format. They can be useful in educating the public on specific issues associated with a particular permit and on NPDES issues in general.



In addition to the above mechanisms, Region 10 posts the draft permit and fact sheet on the Region's Web page at <http://www.epa.gov/r10earth/waterpermits.htm> in PDF format. Also, newly issued permits are posted, along with fact sheets and responses to comments, for six months. The Region 10 Web site provides links to the Permits Compliance System (PCS) database and State databases for information on all NPDES permits in the Region. NPDES permits and facts sheets issued by Washington may be accessed via EPA's Web site by following the instructions available at <http://www.epa.gov/npdes/permitdocuments>. All 10 general permits and 280 individual permits are available.

Region 10 conducts outreach to community groups in areas that could be affected by an NPDES discharge. In addition, staff are available by phone to any member of the public with questions regarding either a specific permit or the NPDES program in general. Such contact provides an important means to educate the public and encourage participation in the permitting process.

Region 10 does not have any restrictions on who is considered "the public". The only legal or procedural barriers to obtaining information are those imposed on Confidential Business Information or Enforcement Confidential Information and those established pursuant to the FOIA.

All written comments provided to the Region during the public comment period are considered in establishing final permit conditions. Region 10 provides written responses to comments and sends the responses with the final permit to the permittee and all persons who commented. The response to comments is also posted on the Region's Web page in PDF format at <http://www.epa.gov/r10earth/waterpermits.htm>. The response to comments is also part of the administrative record.

## 6. Permit Issuance Management Strategy

### The State of Washington:

The State of Washington issues individual permits to 79 major facilities. As of April 1, 2005, 78% of these permits are current.<sup>4</sup> Of the expired permits covering major facilities, 7 permits have been expired more than 2 years but none have been expired more than 10 years.

There are currently 1,930 minor facilities in Washington permitted by the State; individual permits cover 371 facilities and 10 general permits cover 1,559 facilities. As of April 1, 2005, 84% of the minor facilities are covered by current individual or general permits and 80% individual minor permits are current.<sup>5</sup> Of the expired individual permits, 22 have been expired for over 2 years, 3 have been expired for over 10 years. Of the expired general permits, none have been expired more than 2 years.

Ecology permitting units conduct an annual planning process in which permits in the target watershed are prioritized and assigned to permit writers. The permit backlog is monitored and reported quarterly.

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<sup>4</sup> The National Data Sources column of the Management Report, measure #19, shows 67.1% of major facilities covered by current permits, based on PCS data as of June 30, 2004. The 78% mentioned above is based on ePIFT data as of April 1, 2005.

<sup>5</sup> The National Data Sources column of the Management Report, measure #20, shows 81.4% of minor facilities covered by current individual or general permits, based on PCS data as of June 30, 2004. The 84% mentioned above is based on ePIFT data as of April 1, 2005.

Ecology does not differentiate between major permits and minor permits for purposes of addressing backlog. Ecology has reduced its total NPDES individual permit backlog rate over the last two years. This is being done through the development of an annual permit backlog plan and quarterly monitoring and reporting of the backlog rate by management. Reduction of the backlog rate has also come at the expense of inspections and technical assistance.

Ecology has also streamlined its permitting process to reduce the backlog rate. In the past, all of Ecology's permits were reissued with a de novo review. The permit writer would recalculate all reasonable potential analyses, effluent limitations, etc. Ecology has now developed a process to prioritize permits. Lower priority permits for facilities where the discharge and the receiving water are essentially unchanged can be "reauthorized" without being completely re-worked. In reauthorizing these permits, Ecology reissues the permit by updating any needed changes but not recalculating everything from scratch. Ecology's process for prioritizing permits takes into account changes in the facility, concerns about the receiving waters, and the last time the permit was subject to a complete de novo review.

Ecology began implementation of watershed permitting in 1995 by adjusting periods and sequencing permits to fit watershed schedules. Oil refineries, pulp and paper mills, and aluminum smelters are not included in this process because they are handled by a separate permitting unit. Since 2000, when issuance of permits was fully synchronized on a watershed basis, the State has issued 66 major and 333 minor individual NPDES permits. Each of the four regions of the State is divided into five permitting watersheds. The process includes an annual planning process to prioritize and select permits to be issued in the next years target watershed.

Ecology has developed NPDES general permits for sand and gravel facilities, boatyards, fruit packers, dairies, upland fish hatcheries, aquatic pesticides and water treatment plants, and 3 stormwater general permits for industrial, construction, and municipal permittees. Ecology's general permit process is established by regulation (WAC 173-226). The general permit process closely follows the rulemaking process in terms of public involvement and comment opportunities. General permits are issued as joint NPDES/State waste discharge permits and expire after 5 years. The biosolids general permit was last reissued in 2005.

**Table 1: Percentage of Facilities Covered by Current Permits in Washington**  
(State-issued permits)

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	50%	74%	55%	76%	62%	83%	70%	84%
Minor Facilities Covered by Individual Permits	34%	69%	23%	73%	18%	79%	71%	81%
Minor Facilities Covered by Individual or Non-Stormwater General Permits	50%	N/A	55%	N/A	62%	85%	70%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (Values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

EPA Region 10:

EPA Region 10 permits 6 major facilities, all with individual permits. As of April 1, 2005, 33% of these permits are current.<sup>6</sup> Of the expired permits covering major facilities, 3 have been expired more than 2 years but none have been expired more than 10 years.

The Region issues individual permits to 74 minor facilities in Washington. As of April 1, 2005, 7% of these permits are current.<sup>7</sup> Of the expired individual permits, 34 have been expired for over 2 years, and 29 of these have been expired for over 10 years. Thirty-two facilities have submitted applications, but are currently unpermitted.<sup>8</sup> The Region has not issued any general permits in Washington.

When the Region developed the current operating plan covering calendar years 2003 through 2005, the goal was to reduce the backlog of total facilities in Washington to below 10% by the end of 2004. This goal was based on the expected availability of 11 experienced permit writers. However, the lowering of experience levels of permit writers and the diversion of resources to oversight of approved State programs have severely affected the Region's ability to reach the national backlog goal of 10% for 2004. It is now the Region's goal to reduce the backlog of total facilities issued by the Region in Washington to below 15% by the end of 2005. The program will be utilizing various means, including streamlining efforts, to move the permit issuance process forward in an expeditious and efficient manner.

**Table 2: Percentage of Facilities Covered by Current Permits in State**

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	N/A	74%	N/A	76%	17%	83%	30%	84%
Minor Facilities Covered by Individual Permits	N/A	69%	N/A	73%	10%	79%	7%	81%
Minor Facilities Covered by Individual or General Permits	N/A	N/A	N/A	N/A	10%	85%	7%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (Values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

<sup>6</sup> The National Data Sources column of the Management Report, measure #19, shows 60.0% of major facilities covered by current EPA-issued permits, based on PCS data as of June 30, 2004. The 33% mentioned above is based on ePIFT data as of April 1, 2005.

<sup>7</sup> The National Data Sources column of the Management Report, measure #20, shows 9.6% of minor facilities covered by current EPA-issued permits, based on PCS data as of June 30, 2004. The 7% mentioned above is based on ePIFT data as of April 1, 2005.

<sup>8</sup> The National Data Sources column of the Management Report, measure #18, shows 33 applications pending. This data was not broken down into EPA and State activity due to the difficulty of doing so on a national basis.

## 7. Data Management

### The State of Washington:

Washington manages permit data in its own State data system, the WPLCS, and does not use the PCS. WPLCS is an Oracle based system that collects data on facilities, permits, compliance, inspections, and enforcement for all NPDES and State waste discharge permits that the Department of Ecology issues. Since Washington has a number of State requirements that differ from federal requirements, PCS does not meet Washington's needs for data management. Washington's system has the capability to be used as an efficient means of tracking and extracting data for permitting and compliance purposes.

Until 1999, EPA was entering information on Ecology issued permits into PCS. Due to resource cuts at Region 10, EPA stopped entering information on minor permits in 1998, stopped entering updated major permits in 2000 and now has ceased entering Ecology information into PCS. Despite repeated attempts by Ecology to develop an interface between WPLCS and PCS, EPA did not support an interface until 2003 when Washington began using the Interim Data Exchange Format (IDEF) to link their State database with the national PCS database.

Currently, EPA Region 10 and Washington State Ecology are working together with EPA headquarters to establish an electronic link between WPLCS and PCS via IDEF. When the project is completed, new or updated WPLCS data will be uploaded twice a week to PCS. The project has had some delays due to loss of an experienced programmer on Ecology's side and error problems on the PCS side that EPA is working on. Currently facility and permit information can be loaded from WPLCS to PCS, however, due to the staffing issue, this is not currently taking place. However, pipe data, parameter limits, and actual reported discharge monitoring report (DMR) values cannot be loaded due to an issue with the parameter limit in PCS. EPA has not been able to identify the root source of the problem, but is working on it. Ecology is working to establish a contract for programming support on Ecology's side. The current plan is upload data from 2003 forward. If additional resources are available, historical information can be added. Once this system is in place, the data in PCS will be complete and accurate.

Ecology's data system provides reliable permitting, compliance, inspection, and enforcement information. All WENDB data elements are required items. Ecology collects latitude and longitude data at the facility and pipe level for individual permit holders and for many general permit holders. The latitude and longitude data is fairly complete for the individual permits. This data has not been entered into PCS recently due to resource limitations. WENDB data will be uploaded to PCS once the data link is in place as described above.

Latitude and longitude data is validated in three ways:

- Computer check to ensure the latitude and longitude values are within Washington
- Map check to ensure the latitude and longitude values are correct on the map
- Check with global positioning system (GPS) unit during site inspections

Data are validated as business needs dictate or time allows. Most individual permit data are validated. The 2002 revision of the industrial stormwater general permit required all permit holders to submit current latitude and longitude data which were validated. The construction stormwater general permit is currently being reissued. Once it is reissued, current latitude and longitude data will be submitted and validated for those permittees and the data will be essentially complete.

The State ensures the quality of the data reported on Discharge Monitoring Reports (DMRs) by requiring dischargers to certify each submittal of data.

#### EPA Region 10:

The Region uses the national PCS database as its NPDES management tool. In addition to the national PCS database, the Region uses the following data systems to manage the NPDES program: ePIFT to track the permit backlog and report it to headquarters; Enforcement and Compliance History Online (ECHO); Online Tracking Information System (OTIS); permit prioritization database and spreadsheet forecasting tool for permit planning; database to track permit applications; database to track public notices and other newspaper advertisements; and database to track permit issuance progress.

The Region currently does not enter all the WENDB data elements. The Region recently developed a PCS Plan for Improvement, which refocuses the Region's PCS data entry for all Region 10 States to only those permits where EPA is the permitting authority (i.e., Alaska, Idaho, Federal and Indian Country facilities in Washington, and Indian Country facilities in Oregon). The Region is currently working with the States of Oregon and Washington to assume PCS data management for those facilities where the State is the permitting authority. Until this occurs, PCS data entry for EPA issued permits in Washington does not meet the PCS Data Quality Targets. Even though the Region does not enter all WENDB data elements at this time the Region is confident it can produce accurate counts for the WENDB data elements the Region does enter into PCS in a timely manner. These WENDB elements are: 1) the number/types of permits issued in Washington; 2) EPA enforcement actions; and 3) EPA conducted inspections. The following table provides the categories of WENDB data elements that are entered into PCS for various types of the facilities in Washington, and these reflect the WENDB data elements that are required to be entered into PCS for all facilities. Table 3 describes the WENDB data elements.

**Table 3: WENDB Data Elements**

Information Type	Major facilities	Minor facilities	
		PL 92-500	Other
Permit Facility Data	✓	✓	✓
Permit Event Data	✓	✓	✓
Inspection Data	✓	✓	✓
Parameter Limits and Pipe Schedule Data	✓		
Significant Compliance Data	✓	✓	
Compliance Schedule Data	✓	✓	
DMR Measurement Data	✓		
Enforcement Action ( <i>Enforcement Action Data, Compliance Schedule Data, and Interim Limits Data from all active formal enforcement actions and Enforcement Data from all active informal enforcement actions</i> )	✓		
Enforcement Action ( <i>Enforcement Action Data from all active formal and active informal enforcement actions</i> )		✓	
Enforcement Action/Administrative Penalty Order <sup>1</sup>	✓		
Pretreatment Approval <sup>2</sup>	✓	✓ <sup>3</sup>	✓ <sup>3</sup>
Single Event Violation Data	✓	✓ <sup>3</sup>	✓ <sup>3</sup>
Pretreatment Compliance Inspection (PCI)/Audit	✓	✓ <sup>3</sup>	✓ <sup>3</sup>
Pretreatment Performance Summary	✓	✓ <sup>3</sup>	✓ <sup>3</sup>
1. These data elements are required specifically for administrative penalty orders. Entry of these data elements is only required for EPA actions. 2. Pretreatment program required indicator data element PRET. 3. Only for minor POTWs that are pretreatment control authorities.			

The Region enters the latitude and longitude data from permit applications into PCS. In general, the latitude and longitude data are not verified.

The Region does not use data entry quality control protocols for data entered into the national PCS database. The Region does perform a periodic PCS cleanup to remove or inactivate entries for facilities that are no longer discharging pollutants to waters of the United States. To ensure that data is reported in a timely manner, the Region relies on PCS to flag DMRs that are not entered or submitted. If DMRs are late, the first step is to contact the facility. If the DMRs were not submitted, then the NPDES Compliance Unit prepares an appropriate enforcement response.

## **Section II. Program Implementation**

### **1. Permit Quality**

#### The State of Washington:

Permits are developed according to guidance in the State's Permit Writer's Manual. To help ensure the consistent development of quality permits, Ecology uses permitting tools that include permit templates, spreadsheets for determining reasonable potential and calculating limits, and a peer review process. Permit templates are formatted documents containing hidden text instructions for permit writers that guide them through the development of the permit.

These procedures and spreadsheet formulas were adopted from EPA's Technical Support Document for water quality-based effluent limits (TSD). Ecology permit writers use agency spreadsheets for determining water quality criteria, estimating dissolved oxygen (DO) sag, estimating final pH, determining reasonable potential calculating water quality-based effluent limits, and calculating performance-based limits.

Ecology has developed permit shells which contain "boilerplate" special and general conditions. These shells include information on the choices for permit writers and how to determine the appropriate choice. All deviations from the shell must be approved by the manager with signature authority. The spreadsheets described above and the shells result in high quality permits.

Ecology has a Permit Writer's Group that serves as a forum for difficult permit issues and for discussions to ensure consistency. Each permitting section sends a representative to this group. Issues are discussed and resolved or forwarded to management for resolution.

As a check on the procedures outlined above, Ecology conducts a peer review process within the agency. Each permitting section conducts a peer review process on draft permits within their section. The Permit Writer's Group is working on a formal process of permit review that may expand the process to other regions.

Permit writers are trained using the State Permit Writer's Manual, EPA's NPDES Permit Writers' Training Course, and annual two day training by senior permit writers in a seminar format. The State has provided ongoing permit writer training for its own permit writers since 1992. Ecology regional representatives discuss issues in a monthly Permit Writer's Workgroup to maintain standardization of policies.

Pretreatment staff is kept abreast of developments in indirect discharge standards by regular updates sent out through e-mail. This is also the route of distribution of new tools for development of local limits, conducting industrial users (IU) Surveys, and other pretreatment tasks. Pretreatment staff at the State and local level are encouraged to go to regional training events such as the Northwest Pretreatment Conference which is held on an annual basis. Training for tasks required of non-approved POTWs is provided to all non-approved POTWs every two years. This one-day course is essential to obtaining good quality IU Surveys and data for development of technically based local limits.

Facility location maps, site maps, and facility flow schematics are typically included in engineering reports. Washington State regulations require that an engineering report be submitted for most permitted facilities. The engineering reports are reviewed and approved prior to issuing a permit. Engineering report information is available to the public on request.

Note: In developing the “permit quality” section of the program profile, State permits were not independently evaluated or compared to a national “standard.” Rather, the discussion is based primarily on an assessment of the quality assurance/quality control procedures established by Washington and routine permit quality reviews performed by EPA Region 10.

Washington has a nationally recognized whole effluent toxicity (WET) program for acute and chronic biomonitoring. The program is codified in Washington’s statutes and regulations (RCW 90.48.520 and WAC Chapters 173-201A, 173-220-130, and 173-205). Ecology’s narrative WET regulation complies with the national WET policy, but it is also innovative in containing incentives to reduce toxicity beyond what is necessary to meet WET limits. A WET limit will be eligible for removal upon permit renewal if the permittee has consistently attained a level of toxicity so low that no reasonable potential exists to violate water quality standards. All major and most minor dischargers are required to characterize for WET. WET testing usually begins with an effluent characterization in the first year of the permit term. Characterization establishes the baseline toxicity level and determines the need for WET limits. Characterization may be completed with the application for permit renewal, in which case WET limits would be placed in the permit, if necessary.

The permit requires that the permittee determine at the end of effluent characterization whether the WET performance standards have been met for acute and chronic toxicity. Those permittees who meet the performance standards will not get WET limits or compliance monitoring. Those permittees who do not meet a performance standard during effluent characterization receive WET limits immediately, which trigger further requirements for compliance monitoring and toxicity reduction measures. All facility changes must be evaluated for increases in toxicity. If changes have occurred which might increase toxicity, then the next permit issued to the facility will contain a requirement for a new effluent characterization.

Ecology maintains a database of WET test results which helps interpret results and determine trends either in a facility, an industry sector, or a laboratory.

Ecology actively works to improve its WET program. Ecology has promoted and funded the development of herring toxicity tests for use in marine waters where Washington has a significant herring population.

#### EPA Region 10:

Since 1995, all permits issued by the Region contain comprehensive requirements, including WQBELs, whole effluent toxicity requirements, best management practices, quality assurance plan requirements, special effluent sampling, receiving water monitoring, pretreatment requirements, and special studies.

The Region ensures appropriate water quality and technology-based permitting through a variety of measures. These measures include training, mentoring, and technical leads (e.g., State water quality standards, water quality permitting, modeling, WET, and industrial sectors).



Region 10 has a well-established implementation program for WET. Region 10 has relied on the guidance jointly developed by Region 10 and Region 9 to implement a WET Program. Region 10 worked with Region 9 on the guidance for State and Regional permit writers. The guidance included sections on determining what kind of WET testing conditions should be included in permits, and made recommendations on when testing should be included, as well as the types of tests and species. The guidance made recommendations for both marine and freshwater testing. Since that time, EPA is developing a national guidance on reasonable potential for WET, which Region 10 has reviewed and provided comments.

The Region routinely includes reasonable potential analyses for WET in most major permits.

## 2. Pretreatment

### The State of Washington:

EPA authorized the Washington Department of Ecology to implement its State pretreatment program on September 30, 1986.

When the State program was authorized, 10 municipalities were required to develop pretreatment programs. These larger cities with mature programs work closely with the State to prevent potential adverse effects from industrial discharges. Regular inspections and annual reports from approved POTWs repeatedly show that all significant industrial users (SIUs) are permitted upon discovery and those permits are kept current.

Ecology audits the 10 approved POTW pretreatment programs once every five years. The NPDES Management Report identified 90% of the programs have been audited. The 90% audit rate reflects the State's work priorities. In other words, the State chose to conduct fewer audits than anticipated. Generally, State audit reports are issued within three months of the fieldwork. Ecology requires POTWs to correct deficiencies detected in pretreatment audits by the shortest reasonable schedule stipulated in the audit report. Where a POTW cannot comply with that schedule, the POTW may request an extension for cause, which is quite rare. Ecology also reviews all annual reports, and notifies the POTWs when reports are determined to be deficient. Washington State's largest municipality (Metro/King County) was awarded the Pretreatment Excellence award in November 2003 in part for its excellent compliance record.

Ecology's program allows municipalities to voluntarily develop pretreatment programs. No municipalities have volunteered. Ecology's regional offices monitor the numbers of SIUs to determine when it is more efficient to require a municipality to develop a program than to administer the program at the State level. Ecology has the authority to require additional municipalities to develop local programs when necessary, but to date, no municipalities beyond the original 10 have been required to do so. At this time, the State has determined that all of the POTWs that might require pretreatment programs have them.

The State identifies SIUs in non-approved cities by requiring POTWs without approved pretreatment programs to conduct IU Surveys via NPDES permit conditions. One staff member at each State regional office is assigned the responsibility for review and approval of the resulting tabulated results of such IU Surveys. In addition, in 2002, EPA assisted Ecology by conducting a statewide IU survey.

The State maintains updated guidance for these POTWs to use in performing IU Surveys, which is available through any of the State regional Pretreatment Specialists. The latest assessment identified that all SIUs have a current control mechanism in place within the approved POTWs.

When a new IU that is potentially an SIU is identified as discharging to a POTW without an approved pretreatment program, Ecology's permit writers follow a well-established stepwise process. First they obtain an accurate permit application and determine whether treatment is required. If it is, they require an Engineering Report, Plans, and Specifications for the system (including a capacity rating), and an Operations and Maintenance Manual. After these documents have been submitted, the permit is written and issued. Opportunity for public comment is provided through notification in the newspaper of the availability of a permit application and draft permit, and notification of issuance of the permit. A public notice is also provided whenever a renewed permit authorizes new or increased pollutant discharges to a POTW. Ecology issues State waste discharge permits to SIUs discharging to POTWs without approved pretreatment programs.

At any given time, Ecology has issued permits to about 99% of the SIUs identified as discharging to POTWs without approved pretreatment programs. The remaining 1% are those that have been identified, but a permit has not been issued yet. Once an SIU is identified, Ecology requires them to apply and issues a permit but that process takes time. Categorical industrial users (CIUs) are expected to comply with pretreatment regulations regardless of the presence of approved pretreatment programs. As of December 31, 2002, Ecology had issued 192 SIU permits.

There are 246 SIUs in Washington (192 from approved programs and 54 from non-approved programs).<sup>9</sup> One hundred percent of SIUs in approved POTW pretreatment programs (192) have control mechanisms; only about 99% of SIUs in non-approved POTW pretreatment programs (53 out of 54) have control mechanisms. Therefore 99.6% of the SIUs across the State have permits.

#### EPA Region 10:

EPA authorized the Washington Department of Ecology to implement its State pretreatment program on September 30, 1986. EPA's role is to provide oversight of Ecology in the performance of its duties.

Currently, EPA is the control authority for Chehalis Generation Facility (CGF). The CGF produces electrical power on a year-round basis through the combustion of primarily natural gas and occasionally fuel oil. This facility discharges to the City of Chehalis POTW. By law CGF is not regulated by the Washington Department of Ecology (DOE) but rather by the Washington EFSEC. CGF was permitted for construction and operation by the EFSEC. Since the State of Washington has not approved a pretreatment program for the City of Chehalis, EPA is the control and approval authority for CGF.

EPA oversees the Washington pretreatment program by tracking the annual committed audits and PCIs. The Region also provides outreach and technical assistance to Ecology.

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<sup>9</sup> The National Data Sources column of the Management Report, measures #9 and #24, shows 238 SIUs, with 98.7% having control mechanisms. These values are based on data related to inspections of POTWs with pretreatment programs in PCS as of June 12, 2004. Some of the data relate to inspections conducted many years ago and so do not reflect up-to-date numbers of SIUs and SIUs with control mechanisms.

Currently, Region 10 is not implementing any pretreatment program in Indian Country or federal facilities. If there arises the need to implement a program in Indian Country or federal facilities, Region 10 will work with the appropriate stakeholders to implement pretreatment program(s). Currently, Region 10 has only one SIU with control mechanism in Washington. That facility is CGF, and is discussed above. Washington DOE is the primary agency that has been authorized to implement the pretreatment program in the State of Washington.

### **3. Concentrated Animal Feeding Operations**

#### The State of Washington:

In 1998, Washington State enacted the Dairy Nutrient Management Act. This law, designed to manage dairy waste, required that all dairy farmers develop nutrient management plans and certify compliance with the plans. These current nutrient management plans had to be consistent with Natural Resources Conservation Service (NRCS) standards and were approved by conservation districts. The 103 dairies discharging wastewater to surface waters were required to obtain coverage under the dairy general NPDES permit. The 17 non-dairy concentrated animal feeding operations (CAFOs) were required to obtain individual NPDES permits.<sup>10</sup>

In June 2003, the State passed legislation directing that authority for animal feeding operations be moved to the WSDA from the Washington Department of Ecology. The State is currently considering a formal revision to the approved NPDES authorization to address the new State legislation. Washington requires a statutory revision in order to move delegation to the Department of Agriculture. Through a MOA between the agencies, the WSDA is responsible for inspecting these facilities and Ecology will issue NPDES permits. No statutory or regulatory changes were required to implement the new CAFO regulations.

The general permit expired March 31, 2005. Washington developed a general NPDES permit for CAFOs under the new CAFO rule. Statewide public hearings were completed in January 2005, and the general permit was ready to be issued in April 2005. It included the new federal requirements of EPA's final CAFO rule. A preliminary draft permit was shared with various stakeholders including the regulated community and EPA Region 10. Ecology performed a media blitz, including mass mailings, e-mails, and display ads, to ensure that all CAFOs submit notice of intent (NOI) by April 2006.

The final permit was ready to sign when the decision by the 2<sup>nd</sup> circuit court of appeals was announced. Currently Ecology is working with EPA, the attorney general's office, and the WSDA to determine how to proceed with the permit since portions of the federal CAFO rule were vacated.

#### EPA Region 10:

In Indian Country, the Region inspects animal feeding operations (AFOs) on a case by case basis to ensure that facilities are in compliance with the new CAFO rules. The actual number of AFOs is not known at this time, but based on previous inspections, it is anticipated that there are very few large

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<sup>10</sup> The National Data Sources column of the Management Report, measures #11 and #26, show 159 CAFOs, with 97% covered by NPDES permits, based on the CAFO Implementation report for the first quarter of 2004. The numbers are ultimately based on a US Department of Agriculture (USDA) Agricultural Census conducted in 1997, which the Region has been reporting for the purposes of the quarterly Implementation report. The 120 CAFOs, all covered by NPDES permits, described above are based on more recent information.

AFOs (ie. > 700 mature dairy cows, > 1,000 beef cattle) in Indian Country. Consequently, individual permits may be an option to address these few facilities which are by definition considered CAFOs.

#### 4. Stormwater

##### The State of Washington:

Washington has three general permits for Phase I stormwater discharges, namely, industrial stormwater discharges, Phase I construction stormwater discharges, and three general permits for Phase I municipal separate storm sewer systems (MS4s). The industrial and construction permits are current; the municipal permits have been administratively extended.<sup>11</sup>

Since Washington has implemented a general permit-based stormwater program, the only stormwater facilities covered under individual permits are those with unique circumstances that make a general permit inappropriate. Washington has implemented the certification of no exposure provisions of EPA's Phase II rules. Certification is through internet application. General permits are tracked in Ecology's WPLCS system and will be uploaded to PCS when the data link is active as described in section I.7 of this profile.

Washington has delayed re-issuance of the Phase I MS4 permit and issuance of the Phase II MS4 permits and small construction permits due to litigation over the currently issued industrial and construction stormwater permits, and based on direction from the legislature to provide an agency report on how Ecology intends to regulate municipal stormwater. During the 2004 legislative session, the legislature passed stormwater legislation, ESSB6415, to clarify the interaction between State and federal law on stormwater regulation. This legislation included authority to increase permit fees for industrial and construction permits, and provides significant new resources for stormwater inspections and permit management. The litigation against Ecology was dropped in April 2004 due to the legislation, although it is ongoing against other entities. Ecology is currently beginning work on the municipal permits. Ecology will issue 4 municipal permits:

- A Phase I MS4 general permit
- A combined Phase I/II permit to the Washington State Department of Transportation
- A Western Washington Phase II MS4 general permit
- An Eastern Washington Phase II MS4 general permit

The detailed schedule is still under development. Ecology tentatively plans to issue the Phase I and Western Washington Phase II general permits in March of 2006, the Department of Transportation permit in the summer of 2006 and the Eastern Washington Phase II general permit in June of 2006. The construction general permit, which applies to both large and small construction sites, will be issued by December 2006.

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<sup>11</sup> The National Data Sources column of the Management Report, measure #28, shows 4 Phase I stormwater permits issued but not current, based on information as of July 1, 2004. The industrial permit has since been reissued and is now current.

EPA Region 10:

EPA Region 10 retains NPDES permitting authority for stormwater discharges from federal facilities and from sources located within Indian Country in Washington. Federal and Tribal operators of construction activities can currently obtain permit coverage under EPA's general permit for stormwater discharges from construction activities; industrial operators can obtain coverage under the multi-sector general permit for stormwater associated with industrial activities. EPA has no Phase I municipalities in its jurisdiction in Washington, however, Region 10 will issue five individual permits (4 federal, 1 Tribal) for regulated small municipal separate storm sewer systems within the Puget Sound area, in accordance with the Phase II stormwater requirements.<sup>12</sup> The earliest issuance for the Phase II federal MS4 permits would be in 2006. Department of Ecology is provided the opportunity to certify all EPA-issued permits as allowed under CWA Section 401. EPA oversees Ecology's stormwater program through occasional participation in State-hosted stakeholder meetings, conversations with State staff and management, and discretionary review of State-drafted NPDES permits.

## 5. Combined Sewer Overflows/Sanitary Sewer Overflows

The State of Washington:

There are 11 Combined Sewer Overflows (CSO) municipalities in Washington. Ecology refers to the long-term control plan (LTCP) as the CSO Reduction Plan. All CSO municipalities were required under Ecology's CSO policy and regulation to submit a CSO Reduction Plan by January 1, 1998. All CSO municipalities have developed and received approval of their CSO reduction plans from Ecology in accordance with the State CSO regulation. EPA is reviewing whether CSO reduction plans developed to meet the State CSO regulation also conform to EPA's CSO Control Policy. CSO reduction plans are modified and updated every 5 years. Public participation is required when the plans are updated. Ecology requires post-construction compliance monitoring. Facilities are required to meet a performance-based standard of no more than one overflow per year. Ecology deems the municipalities to be in compliance with water quality standards if they meet this requirement. To meet State CSO regulations, a treated overflow event is not required to receive primary clarification prior to the actual discharge; instead Ecology applies the requirement for primary clarification of CSOs on an annual basis.

Typically, the implementation of the CSO Reduction Plans (LTCPs) exceeds the NPDES permit term of 5 years. During each permit term, the appropriate components of the CSO Reduction Plan are included in the permit and the permit addresses implementation of the nine minimum controls.

Most of the municipalities are working to implement the nine minimum controls. Ecology is currently pursuing enforcement action against one city that has failed to implement the nine minimum controls. Lack of resources for local governments presents the greatest barrier to implementation of LTCPs.

CSO Events: As a permit condition, Ecology requires the CSO community implement a public notification process to inform the public of CSO events. Ecology also requires the CSO cities to notify public health authorities of CSO events. In general Ecology requires posting of signs at the CSO outfalls "where outfalls are visible and the affected shoreline areas are accessible to the public" and the CSO

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<sup>12</sup> The National Data Sources column of the Management Report, measure #30, shows that EPA has not issued a Phase II stormwater small MS4 permit, based on the assumption that a general permit would be issued. The Additional Data column reflects the decision to issue individual permits.

communities have been complying with that requirement. The CSO community and the public health authority are responsible for public notification.

All cities either are below Ecology's definition of 1 event per year threshold for CSO Reduction Plans or have developed LTCPs. Ecology has issued administrative orders enforcing the terms of the LTCPs. Each permit term, the appropriate components of the LTCPs are included in the permit. Some of these plans are in the process of being updated. As stated above, the State is pursuing an enforcement action against one community.

A treated CSO event that meets the requirements of the Washington CSO Control Policy is not comparable to a treated CSO event that meets the requirements of EPA's CSO Control Policy. Under the Washington CSO requirements, individual "treated" CSOs are not required to receive primary treatment. Washington has defined the performance standard for primary treatment of CSOs to be "the removal of at least 50 percent of TSS from the wastestream and less than 0.3 mL/L/hr of settleable solids in the discharge." This performance standard is not part of Washington's approved water quality standards. Many CSO permittees have applied this performance standard on an annual basis to individual CSO outfall through the construction of storage units at the outfall locations. Hence, during a storm event, any flow at a CSO outfall location that is temporarily stored then reenters the collection system for treatment at the wastewater treatment facility, applies toward solids removal "credit."

At the end of each year, compliance with the primary treatment requirement at the individual CSO outfall is calculated on an annual basis assuming:

- no solids removal for CSOs discharged through the CSO outfall
- an assumed solids removal at the municipality's wastewater treatment plant (based on past plant performance) for CSOs that are stored then reenter the collection system and are discharged at the municipal wastewater treatment plant outfall.

As NPDES permits are issued for completed CSO projects, water-quality based effluent limits are required at the outfalls. Development of the permit limits needs to include a determination whether the discharge has the potential to exceed water quality standards. If it does, a water quality-based effluent limit needs to be developed and included in the permit.

SSO Events: Ecology requires the permittee to report Separate Sewer Overflows (SSOs) to Ecology and the Washington Department of Health within 24 hours of an SSO event. Public notification occurs through the shellfish protection program when the SSO has the potential to impact shellfish beds. The State has no procedures in place to notify public health authorities and citizens of other SSO events but will be exploring options in the future.

No trends have been observed with CSO and SSO events.

#### EPA Region 10:

There are no CSO or SSO communities in the State of Washington under EPA's authority. The region provides limited oversight due to lack of resources. The Region does provide Ecology with assistance when requested.

## 6. Biosolids

### The State of Washington:

In Washington, 81% of biosolids are being land-applied or distributed for reuse.

Ecology has authority under State law to administer the biosolids program, as does the State Department of Health. Ecology has a statewide general biosolids permit. Washington regulates biosolids land spreading with a solid waste general permit, which relies on review and approval of site plans and land application plans at the NOI stage. Individual permits are also available. Washington has not been authorized the biosolids program under the federal program and is not planning to seek authority at this time.

### EPA Region 10:

Region 10 implements 40 CFR part 503 for biosolids use and disposal through individual permits. Region 10 plans to also use biosolids-only general permits. A few of the individual permits have expired.

EPA has no biosolids joint operating agreement with the State of Washington.

EPA uses a spreadsheet to track receipt of annual biosolids reports in all States. Only receipt of reports is tracked. Rule compliance is not tracked (e.g. report contents). PCS is used to track receipt of permit applications.

## **Section III. NPDES Compliance Monitoring and Enforcement Response**

*In a separate initiative, EPA's Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and the Environmental Council of the States have developed a tool for assessing State performance in enforcement and compliance assurance to ensure that States meet agreed-upon minimum performance levels and provide a consistent level of environmental and public health protection nationwide. OECA will use the State profiles to focus these efforts and identify areas needing further discussion and evaluation.*

### **1. Enforcement Program**

#### The State of Washington:

Ecology describes requirements in formal enforcement actions for specific sources by establishing milestone dates, and specific corrective actions in administrative orders, and settlement agreements.

The State has a written enforcement management system to guide appropriate enforcement response and escalation of enforcement responses.

The State's penalty policy, including the Penalty Calculation matrix used to calculate the amount, is in the Compliance Assurance Manual, and Water Quality Program guidelines. Each time a penalty is calculated using the Penalty Calculation matrix, economic benefit is a factor that is considered. The following range of consideration leads to a determination of the final penalty amount:

Did the facility benefit economically from non-compliance?

- Answer "no" if it is clear that no one obtained an economic benefit.
- Answer "possibly" if the facility might have benefitted.
- Answer "probably" if the facility benefitted, but the benefit is not quantifiable.
- Answer "definitely" if the economic benefit is quantifiable.

If the answer to question is "definitely," the estimated dollar amount of economic benefit determined by the EPA BEN computer model or other appropriate method is included, and calculations are attached. The use of the BEN model is optional and not required. The total penalty amount cannot exceed \$10,000.00 per day, per violation.

It is the Water Quality Program's objective to acknowledge all violations. When determining which types of violations take priority in enforcement, Ecology uses the following criteria. Generally, Category 1 receives the highest priority attention while Category 3 receives the lowest priority.

- Category 1 violations: Actual, imminent or acute threats to public health, the environment, and/or species listed under the Endangered Species Act.



- Category 2 violations: Chronic or potential threat to human health, the environment, and/or species listed under the Endangered Species Act.
- Category 3 violations: Low potential for threat to public health and/or the environment.

Ecology considers the past history of the facility and if it has been subject to previous formal enforcement in deciding whether to pursue a penalty order for violators. Issuance of civil penalties is mandatory in the following general instances.

- Any Category 1 violation. Category 1 violations pose an actual, imminent or acute threat to public health and/or the environment.
- A Category 2 or 3 violation that is repeated within two (2) years of issuance of a notice of correction, technical assistance site visit notice, penalty, notice of violation or order.
- The discharge causes upset or interference with a publicly owned treatment works or causes contamination of treatment plant sludges.
- A knowing violation, such as falsification of records, or a flagrant disregard of reporting requirements.

For continued noncompliance at a facility that has already received a formal State enforcement response there is a progressive escalation of enforcement responses to ongoing or repeat violations at the same facility. Generally this starts with an Informal Enforcement response (telephone call, warning letter) and increases in severity until the noncompliance is resolved. Following the informal response, the level of the response is escalated using tools such as the Notice of Correction, Notice of Violation, Administrative Order, and Penalty.

This establishes a “paper trail” of responses and demonstrates a continuing pattern of noncompliance that justifies an escalated response. Escalated responses are used for reoccurring violations or any continued pattern of noncompliance.

The exceptions to escalating a response occur when a facility is diligently working to timely resolve the noncompliance voluntarily, the facility is under (and in compliance with) an administrative order to resolve the noncompliance, or the permit needs revision.

In determining whether to take an informal or formal enforcement response for repeat significant violators, the State considers the past history of the facility and whether it has been subject to previous formal enforcement. If it has, the State’s policy advises staff to consider escalating the level of enforcement. Examples of escalation are larger penalties and/or other sanctions.

The State has not taken any judicial actions (referrals to the State’s Attorney General’s office) over the past three years. The State has recently (July 2003) developed a new procedure for collecting unpaid penalties that refers delinquent parties to the State Attorney General’s Office. This will involve the State Attorney General’s Office filing a complaint in Superior Court to see a judgment that can be assigned to a collection agency.

Compliance with orders is tracked using the WPLCS database.

The State monitors and measures compliance with enforcement requirements through required submittals and follow-up inspections. Ecology monitors all enforcement actions to determine the need for follow-up.

#### EPA Region 10:

The Region does not have its own formal policy to identify, prioritize, and ensure corrective measures are taken to address non-compliance problems. To identify sectors or facilities that have non-compliance problems the Region will use a mixture of closely looking at priority sectors and utilizing PCS for the rest of the universe. The Region considers a mixture of national policies, national priorities, and regional priorities to ensure non-compliant facilities are addressed. Newer or priority sectors are often handled using an integrated strategy. The integrated strategy is a phased approach in dealing with the compliance of a specific sector by first performing outreach and compliance assistance, then moving towards compliance monitoring and enforcement, with an escalation of enforcement as the sector moves farther from the compliance assistance and outreach phase. Discretion or a phased escalating approach is used for sectors that lack sophistication and/or are newly regulated. Other sectors receive phased escalation or discretion if those sectors had not had the attention of EPA for a long period of time. A reason why a certain sector has not been given appropriate attention for some time is because the Region changes its focus on what sectors receive the most compliance monitoring and enforcement targeting. This change in focus occurs every two to three years. This ensures that the Region will be able to utilize its limited resources in a way that will reach every sector in the Region, if not on a yearly basis at least on a consistent cycle. An example of a national policy that the Region uses to address non-compliant facilities and violations is the national Enforcement Management System (EMS) for NPDES and any associated sector specific enforcement guidance that OECA offers to the Regions.

The Region attempts to have a 6-month time frame for addressing facilities with enforcement actions starting with the date of violation (e.g., inspection violations start date is the date of inspection). The Region uses the national EMS, and any sector related guidance, as guides for appropriate enforcement response and escalation of enforcement responses. The EMS includes guides that the Region uses to escalate enforcement and penalties if a facility continues to be in noncompliance. To ensure noncompliant facilities receive the appropriate penalties, the Region utilizes the Interim Clean Water Act Settlement Penalty Policy.

In any enforcement action, Region 10 reserves the right to refer cases to the Department of Justice and will do so if the violations are severe or numerous. The Region refers cases to the Department of Justice if: 1) a facility continues to violate the CWA after a penalty order or if a facility violates conditions of its compliance order; 2) if there is a need for injunctive relief; and/or 3) if the nature of the violations(s) is (are) egregious.

With respect to minor discharges, the Region had tracked violations of minor facilities utilizing an internal database called NPDES Compliance Evaluation Program (NCEP). Recently, the decision has been made to begin tracking minor facilities in PCS and manually pulls quarterly non-compliance reports for these facilities.

For minor stormwater facilities, the Region has developed an integrated strategy consisting of two phases: Phase I is outreach and compliance assistance and Phase II is inspections to measure success of Phase I. The Region has completed Phase I and is now entering Phase II.

Compliance tracking with enforcement orders is generally done by requiring the facility to report to EPA when they complete tasks. Currently, effluent discharge violations for both major and minor facilities are tracked using PCS through the quarterly reports, if a facility has recently received an enforcement action or a compliance order and the facility has a series of effluent or schedule violations escalation of enforcement can proceed if warranted. Similarly, each compliance officer is responsible in tracking their enforcement actions and ensures the facility is completing the provisions in the enforcement action in a timely manner.

## 2. Record Keeping and Reporting

### The State of Washington:

Ecology will be able to provide timely reporting of relevant data to the national data systems once the direct data link between WPLCS and PCS is established, as discussed in the section on data management. A project is currently underway to electronically update PCS from Ecology's data system. The name of this project is IDEF. Data from this interchange will be accurate, reliable, and complete.

Ecology maintains file services for paper documents. These paper documents are the source materials for permitting and compliance performance.

### EPA Region 10:

The PCS database is available to the public through Envirofacts and ECHO located at the EPA's Web site: <http://www.epa.gov>. The central file system is located in the Seattle Regional Office.

Currently, the records in PCS for the State of Washington are not up-to-date and the Region does not check to ensure the quality of the data entered into the PCS database. An effort is underway to correct this and enter all 2005 WENDB data elements. In the past, the Region has directly entered data for all Region 10 NPDES facilities however the Region does not have the resources to continue doing this. Recently, the Region has developed a PCS Plan for Improvement that refocuses the Region's PCS data entry work for all Region 10 States to the EPA administered permits. The objective of the PCS Plan for Improvement is to increase the accuracy and timeliness of data entered into PCS for all regulated entities including EPA administered permits.

The central file system maintains the administrative records, inspection reports, correspondences, and documents submitted by the permittee (e.g., DMR). The system has not been well maintained for a long period of time resulting in missing files, reports, etc. The Region is currently re-structuring the file system and utilizing the federal process for archiving files to ensure that the in-house records are accurate, up-to-date, and available to the public. It is anticipated that the new file system will be complete in 2005.

### 3. Inspections

#### The State of Washington:

Ecology targets inspections based on complaints, prior lack of compliance, and industry sweeps or geographic sweeps.

According to the PPA, there is a trade-off of major inspections for minor facilities; i.e. two minor inspections equal one major inspection. Ecology has always exceeded the number of required inspections. In inspection year 2003 (7/1/02 – 6/30/03), Washington inspected 95% of major facilities.<sup>13</sup> Also, 79% of the inspections conducted by the State were at minor facilities.<sup>14</sup> The numbers of inspections are reported annually to EPA and in our annual compliance report which is available on the internet at <http://www.ecy.wa.gov/pubs/0410060.pdf>.

It is the Water Quality Program's objective to acknowledge all violations. When determining which types of violations take priority in enforcement, the State uses the following criteria. Generally, Category 1 receives the highest priority attention while Category 3 receives the lowest priority.

- Category 1 violations: Actual, imminent or acute threats to public health, the environment, and/or species listed under the ESA.
- Category 2 violations: Chronic or potential threat to human health, the environment, and/or species listed under the ESA.
- Category 3 violations: Low potential for threat to public health and/or the environment.

#### EPA Region 10:

The Region's inspection targeting and monitoring strategy is implemented on an annual basis. Targeting criteria are: facilities required to be inspected by the CWA statute; national priority facilities; regional priority facilities; facilities located within impaired watersheds; facilities about to be issued a permit; facilities with a history of noncompliance; facilities that have current or past effluent violations that are known to be toxic; and, complaints from the public. During inspection year 2003, EPA conducted inspections at 4% of Washington's major facilities, and 77% of EPA inspections in Washington were at minor facilities.

National priorities, in which the Region actively participates, are set primarily in consideration of risk to public health and the environment. For example, the wet weather priorities (CSO/SSO, stormwater, CAFO) were selected because the CSO/SSO and CAFO sectors produce the most exposure to pathogens when violations occur and stormwater causes the most sediment, temperature, nutrient, and pesticide contamination to water bodies. Regional priorities are based on which industries in the Region pose the most risk to public health and the environment, as well as what watersheds are in at most risk

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<sup>13</sup> The National Data Sources column of the Management Report, measure #32, shows 49% of major facilities inspected, based on data from PCS. Data entry into PCS is generally incomplete (see section I.7), and the 95% inspection rate cited above is based on data from Washington's WPLCS.

<sup>14</sup> The National Data Sources column of the Management Report, measure #33, shows 0% of State inspections conducted at minor facilities. Minor inspections are not entered into PCS, and the 79% was calculated using numbers of inspections at minor facilities from Washington's WPLCS.

(i.e. mining, oil and gas, and base program implementation). The NPDES Compliance Unit's (NCU) priorities are a reflection of what National and Regional priorities best represent those sectors NCU has committed to work on. For example, given the Region's extensive salmon habitat, EPA believes that the construction stormwater sector provides the most risk to public health and the environment, and is a national priority, which NCU has committed to work on during fiscal year FY2005 – FY2007.

The majority of the sectors, facilities, pollutants, or geographic locations (i.e. impaired water bodies) are chosen by NCU's inspection-targeting process. The inspection list is constructed by considering National, Regional, and watershed priorities, as well as those priorities of the NPDES Compliance and Permits Unit. The Region typically keeps up to date with National priorities and initiatives, and will participate in those as they come up and resources allow.

#### **4. Compliance Assistance**

##### The State of Washington:

Ecology's most stringent pollution prevention requirements are written in its industrial permits. These require monitoring and reporting for source reduction and are developed on a case by case basis. Permit writers have standard pollution prevention language also available at their discretion.

Ecology quarterly tracks the number of repeat violators. Repeat violators are defined as facilities with 5 or more DMR violations in the last year. There were 254 repeat violators in June 2003. By December 2004, this number was reduced to 206. This represents a 19% reduction over 18 months. Ecology's compliance assurance activities contribute greatly to this reduction. Ecology is exploring additional outcome measures to better reflect the results of the compliance assurance activities.

##### EPA Region 10:

The Region uses the following innovative strategies, compliance assistance, pollution prevention, and sustainable management practices to assist the regulated community:

- Provide information in a format that the regulated community will read (many pictures with titles and short paragraphs);
- Contact planning departments throughout the State to ask their assistance in handing out the EPA brochures to local builders;
- Supply the regulated entities and local trainers copies of EPA brochures;
- All permittees receiving permits, either for the first time or for renewal of a permit, are given notice and explained what they should do when the permit arrives;
- Provide compliance workshops and site visits to help permittees understand regulations;
- Use an integrated strategy approach for new or newly scrutinized sectors.

The Region has been behind the curve on measuring our compliance assistance outcomes due to lack of resources (i.e., one person running the program). The Region did not do much compliance assistance until about two years ago when the position was requested from EPA Headquarters. Measurement has

not been the Region's focus; it has focused on building internal/external networks, national coordination, Regional planning for compliance assistance, State support and coordination, coordination with Regional assistance programs (pollution prevention, small business, and environmental justice), a Regional integrated strategy, developing and delivering assistance tools to the regulated community, reporting to EPA Headquarters, and most recently reporting into ICIS.

Changes in understanding reflect an increased knowledge of regulatory and nonregulatory environmental issues, including reporting and monitoring requirements, regulatory schedules, and pollution prevention opportunities. An example of changes in understanding includes measuring the percentage of facilities receiving assistance that indicate an improved understanding of environmental regulations or the number of facilities attending a workshop that gained knowledge about pollution prevention or control technologies. Changes in understanding can most effectively be measured by testing knowledge before and after the workshop.

Behavioral changes represent actual changes that a regulated entity has undertaken as a result of compliance assistance. Examples of behavioral changes include the number of facilities that submitted required permit application or notification forms because of a training program, or the number of facilities that adopted recommendations discussed during an onsite visit. Behavioral changes can be voluntary (e.g., voluntary implementation of pollution prevention technologies as a result of publication of pollution prevention guidance documents or fact sheets) or regulatory (e.g., facilities reporting overlooked chemicals as a result of the publication of regulations).

Environmental and human health improvements are measures of environmental and human health improvements at specific facilities resulting from compliance assistance activities. Examples of environmental and human health improvements would be the number of pounds of pollutant emission reductions at a facility that adopted a control technology explained in a training video, or the number of facilities reducing chemical exposure to workers as a result of practices presented at a workshop.

## **Section IV. Related Water Programs and Environmental Outcomes**

### **1. Monitoring**

#### The State of Washington:

Washington performs monitoring to assess program effectiveness through a variety of different monitoring efforts. Washington is actively working to coordinate monitoring efforts across agencies and levels of government to implement a monitoring program as cost-effectively as possible. Washington performs sediment, water column, fish tissue, and biota sampling in marine and freshwaters. The sampling is conducted under different programs that address:

- Rotating ambient monitoring;
- Receiving water studies for discharges;
- TMDL effectiveness monitoring;
- Trend analysis; and
- Watershed assessment.

Ecology conducts monthly water quality monitoring at 82 stations; 20 are “basin” stations monitored for one year, and 62 are “long-term” stations monitored every year. These stations are primarily on larger rivers and streams and they collect water column chemistry parameters (e.g., temperature, suspended solids, phosphorus, pH, fecal coliform, dissolved oxygen (DO)). The purpose of this data is to assess water quality conditions and trends at these sites, provide data for TMDL models, and provide a basis for compliance with water quality standards. Ecology also monitors physical, chemical, and biological condition of small streams for specific studies.

Ecology has developed an Environmental Information Management (EIM) system to manage the data collected for various purposes. This database helps prevent duplication of sampling efforts and allows aggregation of data. Ecology is working to get data collected by permit holders incorporated into the database.

Ecology conducts the sediment component of the Puget Sound Ambient Monitoring Program (PSAMP) using a Marine Sediment Monitoring Team with guidance from stakeholders. This is a very comprehensive effort; data is used by a wide variety of constituents. The State also has conducted marine water quality monitoring at a number of stations in Puget Sound, Grays Harbor, and Willapa Bay. About 40 stations are monitored for water column parameters each year on a monthly basis. Some stations are monitored every year while some are monitored on a rotating schedule. The monitoring data are used to assess marine water quality. In addition, Ecology has conducted physical, chemical, and biological at randomly selected coastal sites.

Ecology also conducts trend monitoring for the marine water sediment and benthic community. Ten historical stations have been sampled annually since 1989 in the Puget Sound. Sediment chemistry, toxicity, and infaunal community structure also are evaluated using 40 sediment samples collected annually, alternating 7 years of regional sampling in a rotating schedule with 3 years of focused embayment sampling or specialized projects. Data generated is summarized annually to spatially characterize the sediments in each monitoring region, the strata within each region, and, ultimately, Puget Sound as a whole. Newly conducted regional data will be compared with historical data to determine changes between sampling periods.

Ambient monitoring data is published annually in a report entitled “Condition of Fresh Waters in Washington State” with related technical appendix. The stream biological monitoring program routinely visits ten sites throughout the State to evaluate the long term picture. The sites are intended to be representative of wadeable stream types in each of the natural resource settings found throughout the State.

Ecology is in the process of developing a State monitoring strategy following the “Elements of a State Water Quality Monitoring Program” guidance that was sent out in March of 2003 (EPA document #841-B-03-003). The strategy should enhance the State monitoring and assessment program.

## **2. Environmental Outcomes**

### The State of Washington:

The total miles of rivers and streams in Washington are 73,886. There are 4,174 lakes in the State, with a total area of 249,277 acres. The total area of marine estuaries is 2,943 square miles. According to the 2002 CWA section 305(b) report, 98% of streams and 100% of estuaries have been assessed. 642 streams and lakes were listed on the 1998 CWA section 303(d) list, many of which with numerous segments monitored for more than one pollutant parameter. The 1998 CWA section 303(d) list is the most recently EPA approved list. A breakdown for CWA section 303(d) listed river miles, lake acres, and estuaries is not available.

## **3. Water Quality Standards**

### The State of Washington:

The new water quality standards were adopted by the State July 1, 2003. They were submitted to EPA Region 10 on August 1, 2003. Federal regulations require that State water quality standards be reviewed and approved by EPA to determine compliance with the federal rules. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service must be consulted prior to EPA’s approval of the water quality standards. The new water quality standards will not be used for CWA actions until EPA has approved them.

Washington’s water quality standards and NPDES sections are contained within the same program and agency. The common managerial oversight provides both a motive and an opportunity to ensure coordination occurs. An integral step in developing water quality standards is to involve permit writers in an effort to identify how a standard will be used in permitting. Additionally, EPA Water Quality Standards Unit shares the draft standards provided by Ecology with the EPA NPDES Permits Unit to involve Region 10 permit writers an opportunity to identify how a standard will affect NPDES permits in the State of Washington.



Standards that are difficult to implement typically involve those that have multiple sources and far-field effects (such as dissolved oxygen) and thus require more sophisticated and basin wide modeling, or those that involve the use of method detection levels that are above the criteria themselves (such as mercury and dioxin).

Only recently has Ecology proposed Use Attainability Analyses (UAAs) as a mechanism for adjusting the water quality goals for Washington's waters. To date only one draft UAA has been submitted and it was returned to the proponent for some additional considerations. At least one other UAA is being conducted and is expected to be submitted this year. Ecology anticipates that considerably more UAAs will be developed in the future.

The State standards include some provisions for implementation of the criteria and for implementing antidegradation provisions. The standards also include formal allowances for compliance schedules and describe how milestones and adaptive management are to be included to bring about compliance with the standards.

Washington starts its triennial reviews regularly, sometimes immediately after completing a rule revision, but the time necessary to actually develop new criteria and have the changes adopted into the water quality standards regulation is taking more than 3 years. A plan is under development, however, to bring about a more timely system for conducting triennial reviews and for adopting changes into the standards. This plan combines realistic work-load planning for individual topics with an assessment of the relative environmental and administrative value the topic will provide. This plan will be used to create a long term plan for the standards and will be considered for possible inclusion in the State and EPA agreement. Region 10 will be working with the State to develop a strategy for regular triennial reviews.

Washington just completed a review of its bacteria criteria and monitoring data in marine waters. The review showed that when fecal coliform concentrations for shellfish harvesting are at 14/100 ml (fecal coliform count of 14 in a volume of 100 milliliters) or less, enterococci concentrations were almost always at 35/100 ml or less. Based on that monitoring data, Washington concluded that the use of a fecal coliform criterion of 14/100 ml ensures that enterococci concentrations are below the levels in EPA's 1986 recommended bacteria criteria. Washington already has water quality standards in place for fecal coliform at a level of 14/100 ml in waters where shellfish harvesting occurs and those waters include all marine waters designated for primary contact recreation use (i.e., coastal recreation waters). EPA determined that Washington's fecal coliform criterion of 14/100 ml is as protective of human health as EPA's recommended bacteria criteria of 35/100 mL enterococci. Therefore, Washington was not included in EPA's final rule for bacteria criteria for coastal recreational waters.

Washington recently adopted enterococci criteria to protect secondary contact recreation in marine waters. In Washington's fresh waters, Ecology believes that using fecal coliform criteria numbers that are lower than the EPA E. coli recommendations are more protective. According to the State, E. coli comprises almost all (95-98%) of the fecal coliform colonies enumerated.

The State has submitted a nutrient plan to the Region describing the process that they propose to follow in developing nutrient criteria. Currently, the State does have nutrient criteria for lakes that are eco-region-based, but the criteria are quasi-numeric/narrative.

## 4. Total Maximum Daily Loads

### The State of Washington:

Ecology has developed an “interim permitting” policy to guide the development of NPDES permits being written for facilities discharging to impaired waters when a TMDL has not yet been developed for those waters. This interim policy holds existing dischargers to their existing loads until a TMDL is completed and a wasteload allocation (WLA) is assigned. NPDES permits for new dischargers are not issued unless the effluent meets water quality standards. Region 10 reviewed this policy and had significant concerns with it. The Region sent a letter to Ecology dated June 25, 2002, outlining these concerns.

Ecology and EPA have agreed to monitor the implementation of the policy through permits to see if EPA’s concerns are valid.

Ecology has developed a 5-year rotating watershed management approach that coordinates data collection, NPDES permit issuance, and TMDL development in each Washington watershed. Ecology TMDL staff work with State NPDES permit writing staff to develop WLAs, and WLAs are incorporated directly into NPDES permits. A 1997 MOA between EPA and Ecology contains an agreement to evaluate whether or not WLAs are being incorporated into NPDES permits. Ecology and EPA completed their first evaluation in February 2005. The evaluation focused on TMDLs submitted to EPA from January 1, 1998 through July 31, 2003. Point source dischargers were found to be a source of pollution in half of the 28 TMDL project areas. The type of point sources that received WLAs included 29 municipal or industrial dischargers, 9 MS4 permit areas, and a number of CAFOs. In reviewing the NPDES permits for each of the dischargers, we found that WLA had been incorporated into 24 NPDES permits. The following WLAs have not yet been incorporated into NPDES permits:

- The metals WLA for 4 dischargers to the Spokane River in eastern Washington were going to be incorporated in the NPDES permits in 2004. Reissuance of the permits has been delayed, however, until the TMDL for DO is completed.
- The MS4 phase 1 and phase 2 permits receiving WLAs in TMDLs have not yet been reissued (phase 1) or issued (phase 2).
- Three municipalities receiving temperature WLAs in the Chehalis Basin did not receive temperature limits in their NPDES permits. One municipal discharger will no longer discharge to the river during the critical period (summer), and meets the WLA requirements during the non-critical (winter) period; the WLA will be incorporated in the NPDES permit when that permit is reissued in 2009. The second discharger has changed its discharge location and will receive a temperature WLA when the permit is reissued in 2007. The third discharger’s permit will be reissued in 2005.
- Numerous NPDES permits have not yet incorporated the WLA because the permits have not been reissued since the TMDLs were approved. For each of those permits, the WLA will be incorporated upon reissuance of the permit.

Washington follows the guidance in EPA’s Technical Support Document for Water Quality-based Toxics Control (TSD, 1991) to calculate reasonable potential for dischargers to cause excursions of water quality standards and to calculate WQBELs. The State has developed spreadsheets based on the

TSD to make the permitting process more consistent statewide. The spreadsheets can be found on Ecology's Web site at the address below:

<http://www.ecy.wa.gov/programs/eap/pwspread/pwspread.html>

Washington's TMDL schedule was established in 1998, and requires completion of 1,566 TMDLs by 2013.<sup>15</sup> Ecology is currently on schedule for TMDL completion, and completed over 300 of the TMDLs on the schedule at the close of the Washington State FY2004 (June 30, 2004), including 108 completed during FY2003.<sup>16,17</sup> Ecology has experienced very little delay in the completion and approval of TMDL projects and is on schedule with the settlement agreement. Those delays that have occurred are in watersheds where controversy over the implementation of the TMDL (e.g., potential treatment plant upgrades that may be required by a WLA; impact to a fish hatchery; removal of cattle from streams) requires a more lengthy public education and involvement process.

According to the February 2005 biennial status report submitted to the plaintiffs by EPA, 354 TMDLs have been developed for Washington waters since the settlement agreement was signed on December 19, 1997. Washington is currently exceeding the TMDL development pace set out in the settlement agreement; the settlement agreement goal of developing 322 TMDLs by July 30, 2005, was exceeded in 2004.

## 5. Safe Drinking Water Act

### The State of Washington:

At this point, there is very limited coordination between the Safe Drinking Water Act (SDWA) program and the NPDES Program. The Region and State will work together in the future to define a process. The Washington State Department of Health is responsible for implementation of the Safe Drinking Water Act with the exception of the Underground Injection Control program, which is the responsibility of Ecology. The Departments of Health and Ecology are working to improve coordination in several areas including SDWA.

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<sup>15</sup> The Management Report, measure #41, shows 2,195 TMDLs in the docket at the end of FY2003. This value is based on the number of water body-pollutant combinations listed as impaired in the 1998 CWA section 303(d) list, while the TMDL schedule was based on impairments on the 1996 CWA section 303(d) list.

<sup>16</sup> The Management Report, measure #54, shows 521 TMDLs completed through the end of FY2003. This value includes TMDLs completed before the TMDL schedule was established.

<sup>17</sup> The National Data Sources column of the Management Report, measure #55, shows 76 TMDLs completed in FY2003, based on data reported by the Region on June 1, 2004. The National TMDL Tracking System (NTTS) shows 108 TMDLs completed in FY2003.

## **Section V. Other Program Highlights**

### The State of Washington:

Effluent Trading: The State is exploring a pilot water quality based trading program in two areas of the State. One area is being considered for stormwater trading around Lake Whatcom that is a drinking water supply. The other consideration is along the Chehalis River, where the City of Centralia is building a treatment plant would like to consider temperature trading. We are currently waiting for funding opportunities to explore these further.

Electronic Reporting: Ecology has developed a process for registering passwords that require designee signatures. Once the registration process is complete, the appropriate designees may enter DMRs online.

Permit Applications: The State has initiated electronic applications for aquatic pesticide application and eventually construction stormwater general permits. These opportunities let the applicant enter the data into the Web page, allowing the State to store the information electronically, and then the applicant prints the application, signs it, and sends it in.

The State has also implemented a Certificate of No Exposure for the industrial stormwater facilities that do not need to be covered under the general permit. This is an online application that has been in place since July 2003 and allows an applicant to fill out the form online, then print it and post in their office. The State stores the data but does not require any verification.

Permit Writer's Manual: Ecology has developed a Water Quality Program Permit Writer's Manual. This manual is a technical guidance and policy manual for permit writers who develop wastewater discharge permits in Washington State. Developing this manual was specified as task element P5 in the 1987 Puget Sound Water Quality Management plan and subsequent amendments. Maintenance and improvement of the manual is recommended in the final report of the Commission for Efficiency and Accountability in Government (1990).

The first version of this manual was issued in June of 1989. A 23-member advisory committee assisted the Department of Ecology for one year on policy issues identified in the manual. The advisory committee represented those interested in wastewater permits. An internal work group also assisted in the development of this manual.

The primary purposes of this manual are to enhance the quality and consistency of the wastewater discharge permits issued by Ecology and to improve the efficiency of the permitting process. The new sections of the revised 2002 manual include:

- Chapter VI Section 3.3.11 – Discharges to Impaired Waters
- Chapter VI Section 3.3.18 – Flow Adjusted Limits
- Chapter VII Section 3.0 – DeMinimis Application of Food Process Wastewater
- Chapter V Section 5 – Biosolids (Sludge)
- Chapter II Section 11 – Permit Shield Policy

Permit Writer's Training: Ecology provides annual two-day training by senior permit writers in a seminar format.

Laboratory Certification Program: Washington has established a laboratory certification program. The laboratory must submit an application and Quality Assurance Manual to Ecology and pay annual fees. Ecology uses a checklist and conducts an on-site audit to ensure that the laboratory meets the appropriate criteria. Accreditation is good for one year; renewal of accreditation requires submittal of an application and fee in the same manner as above, copies of current performance evaluation study results (two per year), and changes to the Quality Assurance manual. Ecology's Lab Accreditation Section sends out a notice letter, an application, and a report of the currently accredited parameters and methods approximately 45 - 50 days before a lab's accreditation expires.

Watershed Permitting: Watershed permitting started in 1995 by sequencing permits to fit the watershed cycles. Oil refineries, pulp and paper mills, and aluminum smelters are not included because they are handled in a separate permitting unit. Each of the four regions in the State is divided into five permitting watersheds. The process includes an annual planning effort to prioritize and select permits to be issued in the next year's target watershed.

Permit Writers Group: A group of experienced permit writers meet monthly to discuss problems and solutions to permit related issues. This has resulted in an efficient, effective program but the primary obstacle is lack of resources to process improvements.

Whole Effluent Toxicity: Washington's rule complies with national WET policy but is innovative in containing incentives to reduce toxicity beyond what is necessary to meet WET limits. A WET limit will be eligible for removal upon permit renewal if the permittee has consistently attained a level of toxicity so low that no reasonable potential exists to violate water quality standards.

State Environmental Policy Act (SEPA): New source dischargers in Washington have to go through the SEPA process, as do projects and activities. Since SEPA was originally modeled after NEPA, the policies as well as the intent of the two laws are very similar:

- Integrate environmental review with other agency review processes;
- Integrate environmental review into early planning and use these reviews as the basis for analysis of future projects;
- Combine environmental documents with other documents;
- Use existing environmental information through incorporation by reference or adoption;
- Use categorical exclusions (exemptions) for actions that do not have a significant effect on the environment and, therefore, do not require environmental review;
- Involve the public and other agencies in the review process;
- Write environmental impact statements in plain language that focus on significant issues and only briefly discuss nonsignificant issues; etc. (40 CFR parts 1500.4 and 1500.5)

Reissuance or modification of permits is exempted from SEPA as long as the permits contain conditions no less stringent than federal effluent limitations and/or State rules and regulations. Some projects may

require approval from both federal agencies and State or local agencies, thus requiring compliance with both NEPA and SEPA. For example, a major dredging operation might need approvals from the U.S. Corps of Engineers, Washington Department of Ecology, and from the county or city. Since both Federal and State/local licenses are required, compliance with both NEPA and SEPA would be needed.

Agencies are encouraged to issue combined documents that meet the requirements of both NEPA and SEPA. For example, when an EIS is needed for a proposal, the NEPA and SEPA lead agencies may agree to be co-lead agencies and issue a joint NEPA/SEPA EIS. The EIS will discuss all issues needed to meet the needs of both agencies. SEPA allows the use of NEPA documents to meet SEPA requirements [WAC 197-11-610]. A NEPA document (EA or EIS) may be adopted or incorporated by reference.



# Region 10 Organizational Structure

October 5, 2005

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Marie Jennings  
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Christine Psyk  
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Deb Yamamoto  
Emergency Response Unit  
Chris Field  
Brownfields & Site Clean-Up  
Unit 1  
Dave Croxton  
Site Assessment &  
Cleanup Unit 2  
Sylvia Kawabata  
Site Cleanup Unit 3  
Sheila Eckman  
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Aquatic Resources Unit  
Gary Voerman  
NEPA Review Unit  
Christine Reichgott  
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Keven McDermott  
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Linda Anderson-Carnahan, Dir.  
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Gerald Dodo

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October 5, 2005

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# NPDES Management Report, Fall 2005

## Washington

			National Data Sources				Additional Data		
			Profile Section	GPRA Goal	Nat. Avg.	State Activities	EPA Activities	State Activities	EPA Activities
<b>NPDES Progress</b>									
Universe	1	# major facilities (6,690 total)	I.1		n/a	79	5		6
	2	# minor facilities covered by individual permits (42,057 total)	I.1		n/a	381	73	386	74
	3	# minor facilities covered by non-storm water general permits (39,183 total)	I.1		n/a	1,429	0	766	
	4	# priority permits (TBD)	I.6			--	--		
	5	# pipes at facilities covered by individual permits (142,761 total)	I.7		n/a	657	--		
	6	# industrial facilities covered by individual permits (32,505 total)	I.1		n/a	232	73		
	7	# POTWs covered by individual permits (15,197 total)	I.1		n/a	221	6		
	8	# pretreatment programs (1,482 total)	II.2		n/a	10	--		
	9	# Significant Industrial Users (SIUs) discharging to pretreatment programs (22,158 total)	II.2		n/a	238	--	192	
	10	# Combined Sewer Overflow (CSO) permittees (831 total)	II.5		n/a	11	--		
	11	# CAFOs (current and est. future) (17,672 total)	II.3		n/a	159	--	120	
	12	# biosolids facilities (TBD '05)	II.6			--	--		
NPDES Program Administration	13	State or Region assessment of State NPDES program (none (N)/assessment (A)/profile (P))	I.1	50 states 2004	n/a	A, P	P		
	14	% pipes at facilities covered by individual permits w/ lat/long in PCS	I.7		46.3%	9.9%	--		
	15	State CAFO legal authority expected (mo/yr)	II.3	2005	n/a	2/05	n/a		
	16	# Withdrawal petitions/legal challenges (22 total)	I.4		n/a	1	n/a		
	17	DMR data entry rate	I.7		95%	11%	--		
	18	# permit applications pending (1,011 total)	I.6		n/a	33	--	1	32
NPDES Program Implementation	19	% major facilities covered by current permits	I.6	90%	83.7%	67.1%	60.0%	78.0%	33.3%
	20	% minor facilities covered by current individual or non-storm water general permits	I.6	90% 12/04	87.0%	81.4%	9.6%	84.0%	7.0%
	21	# major facilities w/permits expired >10 yrs. (56 total)	I.6		n/a	0	0		
	22	% priority permits issued as scheduled (TBD '05)	I.6	95% 2005		--	--		
	23	% pretreatment programs inspected/audited during 5 yr. inspection period	II.2		85.3%	90.0%	--		
	24	% SIUs w/control mechanisms	II.2		99.2%	98.7%	--	100.0%	
	25	% of CSO permittees with long-term control plans developed or required	II.5	75% 2008	82.2%	100.0%	--		
	26	% CAFOs covered by NPDES permits	II.3		35%	25%	--	100%	
	27	% biosolids facilities that have satisfied part 503 requirements (TBD '05)	II.6			--	--		
	28	# Phase I storm water permits issued but not current (76 total)	II.4		n/a	4	0	3	
	29	# Phase I storm water permits not yet issued (5 total)	II.4		n/a	0	0		
	30	Phase II storm water small MS4 permits current (Y/N/D (draft) (35 States)	II.4	100% states 2008	n/a	N	N		0/5/0
	31	Phase II storm water construction permit current (Y/N/D (draft) (49 States)	II.4	100% states 2008	n/a	N	Y		
NPDES Compliance Monitoring and Enforcement Response	32	% major facilities inspected	III.3		71%	49%	1%	95%	4%
	33	(inspections at minors) / (total inspections at majors and minors)	III.3		76%	0%	89%	79%	77%
	34	% major facilities in significant non-compliance (SNC)	III.1		20%	5%	--		
	35	% SNCs addressed by formal enforcement action (FEA)	III.1		14%	50%	--		
	36	% SNCs returned to compliance w/o FEA	III.1		70%	50%	--		
	37	# FEAs at major facilities (666 total)	III.1		n/a	3	0		
	38	# FEAs at minor facilities (1,660 total)	III.1		n/a	0	1		

### Explanation of Column Headers:

**Profile Section:** For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

**National Data Sources:** The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NTS as national databases.

(2) Other tracking information maintained by EPA Headquarters for program areas such as CAFOs, CSOs, and storm water.

The [definitions document](#) accompanying this Management Report provides a detailed definition of each data element in the National Data Sources columns.

**Additional Data:** These columns provide additional data in cases where information from other data sources differs from information in the National Data Sources column for reasons such as different timing of the data "snapshot." Additional data should generally adhere to the same narrative definitions as data in the National Data Sources, and should be derived using similar processes and criteria. Our goal is to work with the States on these discrepancies to ensure consistent and accurate reporting. A State contact is available who can respond to queries. The profiles discuss each additional data element.

**State Activities:** Information in these columns reflects activities conducted by the State program. (Shaded cells in these columns indicate that the work may not be entirely the State's responsibility, but a breakdown of the data into EPA and State responsibilities is unavailable.)

**EPA Activities:** Information in these columns reflects activities conducted by the EPA Region within the State.

# NPDES Management Report, Fall 2005 Washington

		Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data		
					State Activities	EPA Activities	State Activities	EPA Activities	
<b>Water Quality Progress</b>									
Universe	39	River/stream miles (3,419,857 total)	IV.2		n/a	73,886	n/a		
	40	Lake acres (27,775,301 total)	IV.2		n/a	249,277	n/a		
	41	Total # TMDLs in docket at end of FY 2003 (52,795 total)	IV.4		n/a	2,195	--		
	42	# TMDLs committed to in FY 2003 management agreement (2,435 total)	IV.4		n/a	115	26		
	43	# Watersheds (2,341 total)	IV.2		n/a	--	--		
Water Quality Administration	44	On-time Water Quality Standards (WQS) triennial review completed (42 States)	IV.3		n/a	Y	n/a		
	45	# WQS submissions that have not been fully acted on after 90 days (32 total)	IV.3	<25% submissions	n/a	n/a	2		
Water Quality Implementation	46	State is implementing a comprehensive monitoring strategy (Y/N) (TBD)	IV.1	all states 2005	--	--	--		
	47	% river/stream miles assessed for recreation	IV.2		13.8%	98.0%	n/a		
	48	% river/stream miles assessed for aquatic life	IV.2		22.0%	98.0%	n/a		
	49	% lake acres assessed for recreation	IV.2		49.4%	--	n/a		
	50	% lake acres assessed for aquatic life	IV.2		48.5%	--	n/a		
	51	# outstanding WQS disapprovals (23 total)	IV.3		n/a	0	n/a		
	52	WQS for E. coli or enterococci for coastal recreational waters (12 States)	IV.3	35 states 2008	n/a	N	n/a		
	53	WQS for nutrients or Nutrient Criteria Plan in place (13 States)	IV.3	25 states 2008	n/a	N	n/a		
	54	Cumulative # TMDLs completed through FY 2003 (10,807 total)	IV.4		n/a	521	--		
	55	# TMDLs completed in FY 2003 (2,929 total)	IV.4		n/a	76	0	108	
Environmental Outcomes	56	# TMDLs completed through FY 2003 that include at least one point source WLA (5,036 total)	IV.4		n/a	348	--		
	57	% Assessed river/stream miles impaired for swimming in 2000	IV.2		--	12.0%	n/a		
	58	% Assessed lake acres impaired for swimming in 2000	IV.2		--	--	n/a		
	59	# Watersheds in which at least 20% of the water segments have been assessed and, of those assessed, 80% or more are meeting WQS (440 total)	IV.2	600 2008	n/a	--	--		

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