

Response to Comments
Naval Air Station Whidbey Island MS4 Permit (WAS026611)

Introduction

On September 30, 2019, the U.S. Environmental Protection Agency Region 10 (EPA) issued a public notice for the proposed issuance of the National Pollutant Discharge Elimination System (NPDES) Permit for the Naval Station Everett MS4 in Washington. The public comment period closed November 14, 2019.

Based on comments received, EPA made changes to the draft permit that the agency believed warranted a second public comment period. On August 24, 2020, EPA issued a public notice on the provisions of the draft permit that had been modified as a result of the first round of comments. The public comment period closed September 24, 2020.

This document presents the comments received and provides corresponding responses to those comments. Where comments resulted in changes to permit language, those are so noted. Responses to all comments provided below, beginning with comments received during the 2019 public comment period.

The Washington Department of Ecology (Ecology) transmitted its final CWA §401 certification to EPA on June 20, 2019. The certification is included in the Administrative Record for this permit.

On October 23, 2019, EPA submitted its Biological Evaluation for Endangered Species Act Section 7 Consultation on National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permits for Naval Station Everett, Naval Base Kitsap, Naval Air Station Whidbey Island and the Tulalip Tribes to the U.S. Fish and Wildlife Service, and on October 31, 2019 to the National Marine Fisheries Service (collectively, the Services). EPA concluded that discharges from the Naval Air Station Whidbey Island MS4 are likely to adversely affect chinook, bocaccio rockfish, yelloweye rockfish, Pacific eulachon, humpback whale, killer whale, bull trout and marbled murrelet. EPA continues to consult with the Services. See: EPA Region 10 Memorandum, *Subject: Endangered Species Act Section 7(d) Determination with Respect to Issuance of the Naval Air Station Whidbey Island Municipal Separate Storm Sewer System Permit in the State of Washington*. If new information becomes available in the future on pollutants impacting endangered species that warrant changes to the permit, or should the Services provide a Biological Opinion indicating the need for additional permit requirements, EPA will modify the permit as necessary. EPA has included a reopener provision in the permit (Part 6.3) to this effect.

Note: EPA has reproduced comments as accurately as possible in this document. Formatting has been modified in order to fit a single response to comment document format, including removal of footnotes. In converting from pdf formats to incorporate comments into this document, minor errors may have occurred. The original comment letters are included in the Administrative Record for the Final Permit.

Comments Received During the Original Public Notice Period, September 30 to November 14, 2019

During the first public comment period, EPA received comments from the following:

R. Abraham	K. Harold	T. Orr
S. Acheson	M. Henderson	K. Pickard
M. Anderson	E. Hildebrand	S. Schopf
N. Baker	K. Jackson	V. Shininger
M. Bunge	B. Lett	J. St. Clair
B. Christensen	D. MacLeod	T. Verschuyll
S. Erickson	B. Newkirk	D. Wright
K. Felgrath	G. Newkirk	W. Wiegand
		Comments #1 - #3
K. Kinn	Puget Soundkeeper Alliance	Comments #4 - #25
M. L. Bengtson	U.S. Navy	Comments #26 - 73

Response to Comments Received During the Original Public Notice Period, September 30 to November 14, 2019

Comment #1 (multiple commenters¹ - excerpted and summarized)

I and other concerned citizens request an extension of the existing public comment period that began on September 30, 2019 and is scheduled to expire November 14, 2019. If it is not extended, we request that it be re-opened.

EPA Response: None of the requests for an extension of the public comment period provided a reason for the extension, so EPA opted not to extend it. However, by the close of the first public notice and comment period on November 14, 2019, EPA had received adequate information to determine that the draft permit would require substantive changes that would necessitate a second public notice and comment period. EPA opened a public notice and comment period on a revised draft permit on August 25, 2020.

Comment #2 (multiple commenters² - excerpted and summarized)

We ask you to deny this permit and/or not allow toxic/persistent chemical runoff.

EPA Response:

Pursuant to 40 CFR §122.4, EPA has no basis for denying the permit. It is important to note that EPA is issuing a permit that authorizes *ongoing* discharges of municipal stormwater through the Navy's municipal separate storm sewer system (MS4). Thus, denying Naval Air Station Whidbey Island MS4 permit coverage will neither halt the discharges of stormwater nor control the pollutants in them. EPA has specifically determined that the MS4 discharges from Naval Air Station Whidbey Island are a significant contributor of pollutants to Waters of the U.S. (see *Designation of Naval Air Station Whidbey Island as a Small Municipal*

^{1,2,3} R. Abraham, B. Lett, S. Erickson, T. Verschuyll, B. Christensen, K. Harold, K. Felgrath, E. Hildebrand, B. Newkirk, G. Newkirk, K. Jackson, D. MacLeod, M. Anderson, T. Orr, W. Wiegand, V. Shininger, M. Bunge, D. Wright, N. Baker, J. St. Clair, M. Henderson, K. Pickard, S. Schopf, S. Acheson

Separate Storm Sewer System), and has designated the MS4 as a regulated small MS4 that requires a NPDES permit. As such, this will be the first permit to regulate these specific discharges. EPA is including a number of provisions in the permit that will require the Navy to implement controls to minimize the discharge of pollutants via the MS4. EPA has provided explanations for how the provisions in this permit meet the regulatory thresholds for water quality standards and maximum extent practicable (MEP) (see original Fact sheet dated September 30, 2019). Further, the Washington Department of Ecology has certified the permit pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341. Based on all of these reasons, EPA is proceeding with permit issuance.

Comment #3 (multiple commenters³ – excerpted and summarized)

I request that EPA investigate the source and nature of contaminants entering and discharging from the Navy's storm water collection and discharge system.

EPA Response: Changes were made to the permit as a result of this set of comments and these changes were published for a second public comment period on August 25, 2020. See the fact sheet for that draft permit and the responses to the second set of comments for details in the final permit. The requirements in the MS4 permit will advance investigation and implementation of controls on the discharge of contaminants, such as PFAS. This permit will be one part of a more comprehensive approach to PFAS abatement measures for Naval Air Station Whidbey Island.

Comment #4 (K. Kinn, Puget Soundkeeper Alliance)

Section 1.3.1 of the three permits begins with a statement concerning a presumption that discharges do not violate water quality standards so long as all permit conditions are abided. This statement is "If the Permittee complies with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality standards." Soundkeeper objects to this statement as lacking foundation in fact and law.

It is generally acknowledged that discharges from MS4s tend to be highly contaminated with a variety of pollutants at levels likely to cause or contribute to in-stream violations of water quality standards. As described by the draft fact sheets, waters receiving discharges from the three Naval MS4s at issue suffer impairment or contamination issues for pollutants likely to be contained in or affected by MS4 discharges, including sediment, dissolved oxygen, bacteria, temperature, nutrients. It is likely that discharges from the MS4s will contribute to these impairments and water quality issues. The draft permits are based on the implementation of stormwater management programs and best management practices. Soundkeeper is unaware of any information indicating that these controls are likely to maintain a discharge quality ensured not to cause or contribute to violations of Washington State's water quality standards. What factual technical analyses support the presumption asserted by Sections 1.3.1 of the draft permits?

As a legal matter, WAC 173-201A-510(3) addresses implementation of Washington's water quality standards to stormwater pollution. It contains no presumption of compliance with water quality standards when permit terms are abided or when best management practices are implemented. Rather, it specifies that additional best management practices must be applied when a violation of water quality

standards occurs despite the implementation of measures required by permit. WAC 173-201A-510(3)(b). Further, best management practices established in permits are to be reviewed and modified to achieve compliance with water quality standards when necessary.

Nothing else in Washington's regulations or statutes authorizes or indicates the propriety of the asserted assumption. Former RCW 90.48.555 did contain a section about a presumption of compliance with water quality standards for industrial stormwater discharges, which may be the original source of the presumption concept, but that statute expired in 2015 and never applied to MS4 discharges. What is the legal basis for the presumption of compliance with water quality standards language?

EPA Response: Clean Water Act Section 402(p) requires that MS4 discharges implement controls necessary to reduce pollutants in the discharge to the MEP. In addition, to ensure that the discharge meets water quality standards, the permitting authority may include water quality based provisions (*Defenders of Wildlife v Browner*, U.S. Court of Appeals, 9th Circuit, 1999). As explained in the Fact Sheet, EPA has concluded that the permit as a whole meets the MEP standard and WQS. Section 1.3.1 provides that if the Permittee conducts monitoring/sampling and finds that there is an exceedance of WQS, the Permittee must take corrective action (Part 4 of the Final Permit). Ecology has certified that the permit meets Washington water quality standards as well as relevant state law pursuant to Section 401 of the CWA. Further, 40 CFR §122.5(a) stipulates that "...compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405(a)-(b) of CWA." EPA notes that this statement and the one in Part 1.3.1 of the permit, are the starting points for compliance determinations, but do not excuse the Permittee from taking all necessary corrective actions should exceedances of applicable water quality standards be identified, not does it provide enforcement relief.

Comment #5 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits couch prohibitions in vague and unenforceable language. Permit sections 1.3.1, 1.3.2, 1.3.3, and 1.3.4 state that certain discharges "are not authorized" by the permit. Soundkeeper suggests that this language be changed to actually "prohibit" such discharges. The effect of this language would be to enhance the effectiveness of the permits by making the "unauthorized" discharges instead violations of the permit, enforceable under 33 U.S.C. § 1365. As written, unauthorized discharges do not constitute permit violations, but are merely "not authorized" by the permits.

33 U.S.C. § 1342(p)(3)(B)(ii) requires that these permits "include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." The draft language fails to satisfy this requirement.

EPA Response: Discharges not authorized by an NPDES permit are violations of Clean Water Act Section 301. The MS4 permit uses the context of "authorized" and "unauthorized" because there may be some discharges authorized under another NPDES permit, e.g., the Construction General Permit or the Multi-Sector General Permit, which, while not authorized under the MS4 permit are authorized by another permit; therefore, they are not prohibited discharges. Permit Section 1.3.4 identifies specific non-stormwater discharges that may be discharged through the MS4 as long as certain conditions are met. See 40 CFR §122.34(b)(3)(iii). See also response to comment #4 regarding Permit Section 1.3.1.

Comment #6 (K. Kinn, Puget Soundkeeper Alliance) – footnote removed

The draft permits’ provision for implementation of control measures to be developed or implemented during the permit term, section 1.4.3, requires the Permittee’s SWMP documentation to “describe interim schedules for implementation” of such measures. No deadline for implementation of control measures is specified, meaning that the Permittee’s implementation schedule can be of any length. This is inadequate regulation and fails to meet the requirement of 33 U.S.C. § 1342(p)(4) that compliance with requirements, including those necessary to implement both the “maximum extent practicable” and AKART technology standards, must be “provided for” “as expeditiously as practicable, but in no event later than 3 years after the issuance” of the MS4 permit, as well as 40 C.F.R. § 122.42(d).

EPA Response: Implementation deadlines that occur during the relevant permit term are specified in the permit, and are therefore necessarily part of the SWMP documentation. Also, see response to comment #8.

Comment #7 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits’ section 1.4.5 qualifies the requirement that the Permittee provide adequate finances, staff, equipment and other support capabilities to implement permit requirements on non-violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. Soundkeeper is unaware of any Clean Water Act provision allowing exception to compliance with NPDES permit requirements when a Permittee has not been allocated or is unable to obtain or deploy necessary resources. Please explain the legal basis for this provision and its consistency with the Clean Water Act.

EPA Response: EPA received several comments regarding funding obligations and the Anti-deficiency Act (see also comment #66). EPA clarifies: 1) that the permit cannot supersede the Anti-Deficiency Act, nor can it create a recordable financial obligation for the Permittee; as such, there’s no need to cite to it in the permit, and 2) that the requirement for a Permittee to demonstrate adequate funding is an application requirement for large and medium MS4s [see 40 CFR §122.26(d)(2)(vi)], but is not a requirement for small MS4s. Therefore, in response to these comments EPA is simplifying the permit by: removing Part 1.4.5; removing the examples of “circumstances beyond the Permittee’s control”, which includes inadequate funding, from Parts 2.5.1.2 and 2.5.10.1; removing the requirement to certify adequate funding in the annual report from Part 3.8.2.2.4; and by removing the corresponding reporting element 7 in the Annual Report Template.

Comment #8 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits’ section 1.4.6 requires Permittees to implement required control measures of the permit in all areas newly added or transferred to the MS4 as expeditiously as possible but not later than one year from the addition. This is an appropriate requirement. However, the section continues to authorize phased implementation to allow additional time for controls that cannot be implemented immediately. To ensure the prompt implementation of such controls and compliance with the 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d) three year limit on time for compliance, this provision should limit the time available for such phased implementation to three years or less.

EPA Response: 40 CFR §122.34(a)(1) states that “*For permits providing coverage to any small MS4s for the first time, the NPDES permitting authority may specify a time period of up to 5 years from the date of permit issuance for the Permittee to fully comply with the conditions of the permit and to implement any necessary BMPs.*” Consistent with this regulation, EPA is

allowing the Permittee additional time to implement control measures when/if the Permittee adds additional MS4 areas. No change was made to the permit as a result of this comment.

Comment #9 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 1.5.1.2 allows an implementation schedule for equivalent control measures that extends to the permit expiration date, which is five years from permit issuance. To ensure the prompt implementation of such controls and compliance with the 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d) three year limit on time for compliance, this provision should limit the time available for implementation to three years or less.

EPA Response: See response to comment #8. No change was made to the permit as a result of this comment.

Comment #10 (K. Kinn, Puget Soundkeeper Alliance)

Soundkeeper supports the draft permits' section 1.5.2 language that specifically does not stay permit conditions while agencies consider a Permittee's request for approval of equivalent documents, plans, or programs. This provision is important to fill the mandate of 33 U.S.C. § 1342(p)(4).

EPA Response: EPA acknowledges the comment. No change has been made to the permit as a result of this comment.

Comment #11 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' condition 2.3.2.1, listing allowable discharges, should specify that "discharges from emergency firefighting activities" are allowable only during actual emergency firefighting activities, not during cleanup of such activities.

EPA Response: EPA agrees and has made this change to the Permit. This specification has been added to Part 2.3.2.1 of the Final Permit.

Comment #12 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' condition 2.3.2.2 identifies categories of non-stormwater discharges that the Permittee's illicit discharge detection and elimination program may conditionally allow. Draft condition 2.3.2.2.6 provides that "other non-stormwater discharges," presumably including any non-stormwater discharges, may be conditionally allowed by the Permittee into the MS4 so long as such discharges are "in compliance with the requirements of a pollution prevention plan reviewed by the Permittee which addresses control of such discharges." Soundkeeper objects to the breadth of this provision as it implies that the Permittee can authorize a point source discharge of pollutants to navigable waters via the Permittee's MS4 in violation of the 33 U.S.C. § 1311(a) prohibition. Non-stormwater point source pollutant discharges violate the Clean Water Act unless authorized by an NPDES permit. The draft permits should be wholly consistent with this foundational requirement of the Clean Water Act.

EPA Response: EPA agrees with this comment and has removed the original Part 2.3.2.2.6 from the Final Permit. The Navy has already identified the "other" non-stormwater discharges they would like included in this section, i.e., utility vaults (Part 2.3.2.2.5) and secondary containment structures (New Part 2.3.2.2.6). Should the Navy identify other categories of discharges for which they would like conditionally allowable discharge authorization, they can request that EPA modify the permit.

Comment #13 (K. Kinn, Puget Soundkeeper Alliance) – footnote removed

The draft permits' conditions 2.3.3.2.1 and 2.3.3.2.2 concern timing for non- stormwater discharges from stormwater outfalls during dry weather. Screening is required to begin two years from the effective permit date and at least 75% of MS4 outfalls must be screened no later than 180 days before the permit expiration. Soundkeeper urges that these requirements be tightened. Screening should begin within a year of permit issuance and 90% of outfalls should be screened by the end of the permit term.

EPA Response: The commenter does not provide a reason for why the schedule should be accelerated. This requirement is consistent with a similar requirement in all Western Washington MS4 permits, including the Joint Base Lewis McChord MS4 permit, which establishes a MEP baseline for a military installation Illicit Discharge Detection and Elimination Program at this point in time. No change was made to the permit as a result of this comment.

Comment #14 (K. Kinn, Puget Soundkeeper Alliance) – footnote removed

The draft permits' condition 2.3.3.3 requires characterization of the nature of, and any potential public or environmental threat posed by, illicit discharges. For this, "procedures must address the evaluation of whether the discharge must be immediately contained..." What is the standard to be applied by these procedures and evaluation?

EPA Response: EPA agrees with this comment and has made relevant changes to the Final Permit. Specifically, EPA has added language to specify that investigations should include identification of pollutant volumes/loads and potential impacts, as well as immediately containing spills or other illicit discharges and implementing clean-up measures.

Comment #15 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' condition 2.4.4 requires Permittees to identify Early Action Projects within one year of the permit's effective date, but imposes no reporting deadline before that for the fourth annual report. Why is there no requirement for Permittees to report their Early Action Project identifications shortly after the one-year deadline?

EPA Response: The Final Permit has been revised to clarify that the annual report must include a summary of all Early Action Projects planned and implemented and the status of the Stormwater Infrastructure investment Plan.

Comment #16 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 2.5.2.1 allows a Permittee to reduce the frequency of otherwise annual inspections of all Permittee owned or operated permanent stormwater facilities used for flow control and treatment, other than catch basins "if maintenance and inspection records support such action." What does this mean? What is the standard that the records must show it met to allow a reduction in inspection frequency?

EPA Response: The Permittee has been accorded some discretion to make these determinations, which should be very straightforward for a stormwater manager who can readily assess whether a stormwater facility is in need of maintenance.

Comment #17 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 2.5.1.2 requires a Permittee to perform maintenance when indicated by adopted maintenance standards "within 2 years for maintenance that requires capital construction of

less than \$25,000.” This implies that there is no time limit for performance of maintenance involving greater capital construction costs. What is the basis for the \$25,000 capital construction cap? How does this lack of a requirement to implement larger projects needed to meet maintenance standards comport with the 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d) mandate that standards be met within three years of permit issuance? The draft fact sheets’ section discussing this condition state that “[t]he EPA does expect the Permittee to undertake maintenance as expeditiously (sic) in all cases.” EPA’s “expectation” is not enforceable and does not satisfy the mandates of NPDES permitting.

EPA Response: The maintenance schedule categories are consistent with the maintenance requirements in all Western Washington MS4 permits, including the Joint Base Lewis McChord MS4 permit, which establishes a MEP baseline for military installation Illicit Discharge Detection and Elimination Programs at this point in time. A schedule reporting requirement has been added to the Final Permit for maintenance projects requiring capital construction of \$25,000 or more.

Comment #18 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits’ section 2.5.3 concerning spot check inspection of permanent stormwater facilities should include a maximum time allowable for the Permittee’s repair or other appropriate maintenance action to address problems identified by inspection.

EPA Response: As discussed in the previous comment, these schedules are specified in Part 2.5.1.2 of the permit. See response to comment #17.

Comment #19 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits’ section 2.5.4 requires the Permittee to “clean catch basins if inspection indicates cleaning is needed.” What is the standard for whether inspection “indicates cleaning is needed”?

EPA Response: Catch basin cleaning is required when solids and liquids have accumulated to a level that requires removal. The Permittee will determine specific capacity thresholds based on how frequently they plan to undertake catch basin clean-outs.

Comment #20 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits’ section 2.5.9 requires Permittees to develop and implement stormwater pollution prevention plans (“SWPPPs”) for areas of industrial activities they own, which are not already regulated under the MSGP, within two years of the permit effective date. This is too lengthy a timeline for this important requirement.

While, at least, this condition requires implementation of non-structural BMPs immediately after SWPPP development, it requires merely a schedule for installation of any necessary structural BMPs to be included in the SWPPP. The permit should include a requirement that structural BMPs needed for implementation of AKART or MEP be implemented within three years of permit issuance to adhere to the three-year compliance deadline of 33 U.S.C. § 1342(p)(4) and 40 C.F.R. § 122.42(d).

EPA Response: Note: This is Part 2.5.10 of the Final Permit. The commenter does not provide a reason for why two years is too lengthy a time line for development of SWPPPs. See also response to comment #8. No change has been made to the permit as a result of this comment.

Comment #21 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 2.5.10.1 requires Permittees to document in annual reports circumstances beyond their control that prevent required maintenance activities from occurring. This condition further states that circumstances beyond the Permittees' control "may include but are not limited to denial or delay of necessary funding approvals, and unexpected reallocations of maintenance staff or resources to perform emergency work." This is unacceptable, as the Clean Water Act provides no exception to the mandates for timely implementation of AKART and MEP due to funding shortfalls. This provision is particularly inappropriate in these draft permits because the Navy is the true Permittee in each instance and, by this provision, can call its own decisions to deny funding or resources for permit compliance activities "circumstances beyond the Permittee's control." This is legally unsupportable and unworkable as a practical matter.

EPA Response: Note: this is Part 2.5.11.1 in the Final Permit. EPA agrees with this comment for reasons explained in response to comment #7. The Final Permit does not retain examples of "circumstances beyond the Permittee's control", but leaves it to the Permittee to provide the necessary explanation, should a relevant circumstance occur.

Comment #22 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 2.5.10.2 appears to contain a typographical error ("document summarize").

EPA Response: Note: this is Part 2.5.11.2 in the Final Permit. This error is corrected in the Final Permit with removal of the word "document".

Comment #23 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 3.1 requires a Permittee to at least once per year "evaluate its compliance with these Permit conditions and report on progress toward achieving the control measures." "Evaluate its compliance with these Permit conditions" is vague in that it is unclear what "evaluate" means and it is unclear which permit conditions are referenced.

EPA Response: The permit specifies numerous monitoring, record-keeping and reporting requirements, which collectively should provide a reasonably clear picture of compliance. Section 3.1 of the Final Permit requires the Permittee to review the actions it is taking to meet the permit conditions and provide a summary of those actions to meet the schedule set forth in the permit for compliance with various components of the stormwater management program. For clarity, the Final Permit uses the word "all" rather than "these" to refer to Permit conditions.

Comment #24 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 3.3.5 describes monitoring option 1 requirements for monitoring pollutants of concern. It is unclear what it means that the Permittee "shall consider the pollutants of concern" identified in Table 3.3.5. Also, this condition appears to allow cessation of monitoring for a particular pollutant of concern if it is not detected in an unspecified number of monitoring events. Cessation of monitoring should not be allowed until a statistical analysis contemplating anticipated variations in monitoring results supports a conclusion that the pollution is unlikely to be present in detectable concentrations.

EPA Response: Part 3.3.5 of the permit is clear that the Permittee must screen for pollutants of concern and that those pollutants of concern may be dropped from additional monitoring efforts if they are not detected in MS4 discharges. The Permittee must describe the details of

the monitoring in a Plan that will be submitted to EPA for approval, per Part 3.3.1 of the permit. EPA will require modifications to any element of the monitoring Plan found to be inadequate, including screening methods.

Comment #25 (K. Kinn, Puget Soundkeeper Alliance)

The draft permits' section 4.4.4 concerns annual reporting requirements associated with EPA action on additional BMP requirements in response to notice of violations of water quality standards. It provides that EPA may determine that modification of BMPs or a specific implementation schedule is necessary. However, this section and the following section 4.4.4.1 seem to contemplate modification of permit terms to effect these changes in requirements. It is unclear why EPA's determination that BMPs should be modified or implemented on a specific schedule would require modification of permit terms. Indeed, it would appear that EPA could impose these requirements either on the basis of the permit as written (which provides for EPA to impose additional requirements in response to violation notices) or in an administrative order. The suggestion that permit modification is necessary to allow EPA to make these specifications is confusing.

EPA Response: Decisions about whether a change in a permit condition qualifies as a corrective action already consistent with existing permit provisions, or constitutes a formal permit modification will be made on a case-by-case basis. The language in Part 4.4.4 is simply noting that either situation may arise and EPA will act accordingly.

Comment #26 (M. L. Bengtson, U.S. Navy)

Front page. Please remove "including groundwater". The Clean Water Act does not extend to discharges to groundwater (per 40 CFR 122.2).

EPA Response: This provision is included in Washington Department of Ecology's Water Quality Certification Statement, and is therefore incorporated into the permit pursuant to CWA Section 401(d) which allows the State to include conditions in a 401 certification that are necessary to ensure compliance with other appropriate requirements of state law.

Comment #27 (M. L. Bengtson, U.S. Navy)

1.2. Please remove "and to groundwater of the State of Washington".

EPA Response: See Response to Comment #26.

Comment #28 (M. L. Bengtson, U.S. Navy)

1.3.1. Please remove "groundwater standards {Chapter 173-200 WAC), sediment quality standards (Chapter 173-204 WAC)." The CWA does not extend to discharges to groundwater. Likewise, the CWA does not address sediment in the context included in the draft permit.

EPA Response: See Response to Comment #26.

Comment #29 (M. L. Bengtson, U.S. Navy)

1.3.1. Please delete "and other appropriate requirements of State law." The scope of the statement is ambiguously broad. Nor do we see this requirement in the 401 Certification.

EPA Response: See Response to Comment #26.

Comment #30 (M. L. Bengtson, U.S. Navy)

1.3.1. Please change this section to: "If the Permittee complies with the terms and conditions of this Permit, the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality standards. If the Permittee finds that there has been a discharge that clearly has degraded water quality, the required response by the Permittee is set forth in Part 4 (Required Response to Violation of Water Quality Standards.)" Water quality standards apply to the whole of a water body. "Connecting" water quality standards to a sole Permittee/discharge is an unreasonably large burden for the Permittee. The role of the permit is to link the broader water quality standards to specific point source discharge.

EPA Response: See response to comment #4. There is nothing in the permit that holds the Permittee responsible for pollutant contributions from other sources.

Comment #31 (M. L. Bengtson, U.S. Navy)

1.3.3. Please delete this section. It holds equally true if included in the permit or not. There is no functional reason to include.

EPA Response: Part 1.3.3 establishes a discharge prohibition of industrial and/or construction stormwater through the MS4 unless it is permitted by another NPDES permit. No change has been made to this permit as a result of this comment.

Comment #32 (M. L. Bengtson, U.S. Navy)

1.3.4.2 Please edit to read "not after the emergency has ceased as determined by the Fire Chief or On-scene leader". The Fire Chief or On-scene leader manages emergencies and has the knowledge to determine when the emergency has ceased.

EPA Response: Note: this is Part 1.3.5.2 of the Final Permit. EPA has clarified in Part 1.3.5.2 of the Final Permit that cessation of emergency firefighting activities is a determination of the emergency on-scene coordinator.

Comment #33 (M. L. Bengtson, U.S. Navy)

1.5.1.4 This section requires Ecology approval of equivalent documents. Please delete the Ecology approval requirement. Approval is a function of NPDES program primacy, which Ecology does not have.

EPA Response: This provision is included in the Washington Department of Ecology's Water Quality Certification Statement, and is therefore incorporated into the permit pursuant to Clean Water Act Section 401(d). EPA agrees that Ecology does not have NPDES program primacy; however, pursuant to Ecology's Water Quality Certification Statement, EPA will consult with Ecology in determining whether a document/plan/program is functionally equivalent to a condition in the permit.

Comment #34 (M. L. Bengtson, U.S. Navy)

1.5.2. Please remove this section. Covered under Section 6.13, Re-Opener clause.

EPA Response: EPA disagrees that these 2 provisions are redundant. The Re-opener Clause in Part 6.13 is the general re-opener provision. Part 1.5.2 is a specific step in the process stipulated in Part 1.5 concerning the proposal, review, approval and incorporation of equivalent

documents, plans and programs. No change has been made to the permit as a result of this comment.

Comment #35 (M. L. Bengtson, U.S. Navy)

1.5.3. Please remove this section. Covered under Section 6.13, Re-Opener clause.

EPA Response: See response to comment #34.

Comment #36 (M. L. Bengtson, U.S. Navy)

2.1.2 Please change "ongoing" to "annual" in the two instances it occurs in this section. "Ongoing" can imply a steady level of involvement throughout the year. "Annual" is more in-keeping with the effort the Navy envisions.

EPA Response: This program is not intended to be an occasional, recurring event, but a program that matures over time with the eventual identification of specific implementable solutions. As such, the word "ongoing" is more appropriate and provides the Permittee with adequate flexibility for determining specific timeframes. No change has been made to the permit as a result of this comment.

Comment #37 (M. L. Bengtson, U.S. Navy)

2.1.2 Please change the sentences starting with "The program should..." Please remove "3) identify and facilitate robust and implementable solutions." This statement does not track with an outreach and education effort. Additionally, it is premature since the Biological Opinion is not complete.

EPA Response: Part 2.1.2 of the Permit requires the Permittee to develop and implement an educational program that focuses on the impacts of stormwater discharges to the Southern Resident Killer Whale. This provision provides a list of items that the Permittee should consider when developing this program. One of the items that should be considered are implementable solutions. The Permittee should consider that measures identified as part of this effort may qualify as Early Action Projects and/or Stormwater Infrastructures Investment Plan activities or controls, per Part 2.4.4 of the Final Permit. No change has been made to the permit as a result of this comment.

Comment #38 (M. L. Bengtson, U.S. Navy)

2.2.1 Please delete this section since it holds equally true if included in the permit or not.

EPA Response: 40 CFR § 122.34(b)(2)(i) states that a Permittee must "comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program." Section 2.2.1 reflects this requirement. No change has been made to the permit as a result of this comment.

Comment #39 (M. L. Bengtson, U.S. Navy)

2.2.4. Please include the Kitsap Water Festival and Earth Day events as an example volunteer activity. These are local activities already familiar to the Navy.

EPA Response: The Kitsap Water Festival is relevant to the Naval Base Kitsap MS4 Permit. Earth Day events have been added to Part 2.2.4 of the Final Permit for Naval Air Station Whidbey Island.

Comment #40 (M. L. Bengtson, U.S. Navy)

2.3.1. Please include “as appropriate given allocated resources and in consideration of water quality impacts” after the statement “must be mapped for all known outfalls...”

EPA Response: As written, this provision provides flexibility for elements of the mapping program that may not be possible to complete during this permit term, e.g., “known MS4 outfalls”. This provision reflects MEP for MS4s located within Western Washington. The original language is retained in the Final Permit.

Comment #41 (M. L. Bengtson, U.S. Navy)

2.3.2.2.5. Please include discharges from secondary containment units (berms) with this section. Discharges from these units, after sampling and visual inspection, are unlikely to cause water quality impairment.

EPA Response: Secondary containment areas are designed to capture pollutants from spills and leaks, and waters collecting in these area are highly likely to contain residues of those pollutants. However, controlled discharges of stormwater from secondary containment areas are appropriate following sampling to verify that no pollutants occur at concentrations that will cause or contribute to water quality impairments. EPA is including secondary containment structures in Part 2.3.2.2.6 of the Final Permit, but clarifies that (unlike one-time only sampling for utility vaults) the sampling must occur after any event during which contaminated materials accumulate in the secondary containment structure.

Comment #42 (M. L. Bengtson, U.S. Navy)

2.4. The terms New Development and Redevelopment are applicable to public entities such as cities and counties. Since we own and operate our facilities, the terms are not applicable to the Navy. No change requested.

EPA Response: The terms *New Development* and *Redevelopment* have been defined in the permit and used in the permit to apply to relevant activities at Naval Air Station Whidbey Island.

Comment #43 (M. L. Bengtson, U.S. Navy)

2.4.2. Please remove this section (2.4.2, 2.4.2.1, and 2.4.2.2). We are the sole owners and operators of our facilities. Enforcement authority is implicit in facility ownership. Furthermore, in this context, the Navy would refer to this type of direction as an "Instruction". Please include language acknowledging both terms as equivalent.

EPA Response: The requirements included in Parts 2.4.2, 2.4.2.1 and 2.4.2.2 of the permit (e.g., site planning, BMP design criteria), are fundamental elements of a stormwater program for development, new development and construction; they are retained in the Final Permit. The provision to use an “enforceable mechanism” to provide accountability around these requirements is sufficiently general to allow the Permittee to determine what the mechanism(s) should be. EPA understands that the Navy’s sole ownership/operatorship of activities at the Naval facility differs from a municipal framework where codes, ordinances and by-laws are necessary enforceable mechanisms. However, this does not mean that accountability mechanisms aren’t necessary, e.g., contract terms for contractors or subcontractors undertaking relevant activities at Naval Air Station Whidbey Island. The existing language does not limit the

Permittee in anyway and the language allows the Permittee to implement an enforceable mechanism that is appropriate under the laws and procedures at a particular facility. The original language is retained in the Final Permit.

Comment #44 (M. L. Bengtson, U.S. Navy)

2.4.2.3. Please remove this section (regarding airport operations) for Naval Base Kitsap and Naval Station Everett. Neither conducts air operations. For Naval Air Station Whidbey Island, we will consult the noted reference but our overriding policy is, and will continue to be, Navy air operation policy.

EPA Response: This provision is included in Washington Department of Ecology's Water Quality Certification Statement, and is therefore incorporated into the permit pursuant to Clean Water Act Section 401(d). No change has been made to the permit as a result of this comment.

Comment #45 (M. L. Bengtson, U.S. Navy)

2.4.4. The word "Investment" is in the title and "Improvement" in the text. Please edit for consistency. Note, permit is unclear on how Permittee shall record identified EAPs within one year of the effective permit date. Per Navy discretion, identified EAPs shall be included in the SWMP.

EPA Response: EPA has corrected any inconsistent uses of these terms in the Final Permit.

Comment #46 (M. L. Bengtson, U.S. Navy)

2.4.4.1. We are concerned this section will result in disagreement with the parties mentioned and make Plan finalization challenging. Possibly pushing us into a non-compliance position. We would like to discuss ways to accomplish the intent of this section in a way to minimize disagreement and/or delay. The Navy may need to rely on "to the extent possible" to get this complete within the time frame specified.

EPA Response: Language in the Final Permit has been modified to reflect that the Permittee should consider input from the Services (NOAA Fisheries and the U.S. Fish and Wildlife Service) rather than consult with them. EPA does not intend for the Services to have controlling input on the Navy's MS4 program, but the Permittee should consider that the Services can provide informed suggestions which could improve environmental outcomes for endangered species.

Comment #47 (M. L. Bengtson, U.S. Navy)

2.4.4.2. This section, particularly Table 2.4.4, is premature since the Biological Opinion is not complete/available. We suggest deleting this section and instead holding a meeting of EPA, Navy, and the Services once the Biological Opinion is complete. At that meeting, we will define pollutants of concern. Following the meeting, the Navy will determine how to address them. After the meeting, the Navy will finalize the Plan and submit it to EPA.

EPA Response: The Services have reviewed the list of pollutants of concern. If new information becomes available in the future on pollutants impacting endangered species that warrant changes to the permit, EPA will modify the permit at that time; in fact, EPA has included a reopener provision in the permit (Part 6.3) to this effect. EPA will continue to work with the Services to complete consultation on issuance of this permit.

Comment #48 (M. L. Bengtson, U.S. Navy)

2.4.4.3. While we understand the intent of this and section 2.4.4.4, the Navy is concerned it is not achievable. It is big technical/scientific step to: (1) examine a variety of stormwater data sources, (2) determine our water quality impacts, and then (3) determining necessary structural stormwater control measures. Even if we were to hire a consultant, the task is complex and perhaps the result would lack the connections the permit seeks. We would like the permit to specify a partner in this effort or perhaps a strategic meeting to help us get on the smart path.

EPA Response: The objective of the MS4 program is to implement pollution control measures that reduce the discharge of pollutants to the MEP. The program is adaptive in nature and EPA realizes that it may take several permit terms to fully implement a full suite of stormwater control measures. The permit reflects this and allows the Permittee to establish priorities and propose schedules that will be implemented in this and future permit terms. The plan itself will be modified over time, consistent with the adaptive management approach.

Comment #49 (M. L. Bengtson, U.S. Navy)

2.4.5. Please change "all" to "key" staff. "Key" is more appropriate since our staffing in this area is large and we may choose to target training to staff that hold directive authority.

EPA Response: The full context of this requirement is "...all staff whose primary job duties are implementing the program...", which accurately reflects EPA's intent. The Permittee has adequate latitude to customize the content and identify staff, but emphasizes that it is just as important for on-the-ground and in-the-field staff, such as those undertaking maintenance or landscaping activities, for example, to be properly educated on stormwater management measures as it is for in-the-office managers. No change has been made to the permit as a result of this comment.

Comment #50 (M. L. Bengtson, U.S. Navy)

2.5.1.3. The Navy inherently has this enforcement mechanism in-place since we own and operate our facilities. Please remove this section.

EPA Response: See response to comment #43.

Comment #51 (M. L. Bengtson, U.S. Navy)

2.5.5. Please remove "total universe of." This language is unnecessary.

EPA Response: This phrase has been removed from the Final Permit.

Comment #52 (M. L. Bengtson, U.S. Navy)

2.5.6. Please remove "including the development of nutrient management and integrated pest management plans." We have/implement pest management plans but not nutrient management plans. Application of pesticide/herbicide to waters of the US would require a separate NPDES permit, which we have obtained in the past. While the scope of an Integrated Pest Management plan includes water quality concerns, their scope is much broader. Requiring it is beyond the scope of this permit. Is there a specific nutrient concern? If not please remove the requirement for developing the plans.

EPA Response: Following discussion with the Navy over the relevance of this language, this phrase has been removed from the Final Permit.

Comment #53 (M. L. Bengtson, U.S. Navy)

2.5.8. Please remove "on-going" as it implies a higher level of involvement than the balance of the section indicates.

EPA Response: The intent of the wording in this provision is to ensure that the Permittee continues to provide the necessary training when there are staff turn-overs, new policies and/or technologies, and changes in standard operating procedures related to stormwater management. No change has been made to the permit as a result of this comment.

Comment #54 (M. L. Bengtson, U.S. Navy)

2.5.9. Most (perhaps all) of our equipment maintenance yards are already included in our industrial SWPPPs. Any that are not will likely be included in our industrial SWPPPs when updated next. No change requested.

EPA Response: EPA acknowledges the comment.

Comment #55 (M. L. Bengtson, U.S. Navy)

3.2. Please modify this section so we can switch between Options 1 to Option 2 at any time during permit term with prior notice to EPA. Option 2 is our preference, but it will be a challenge to join. The extra time/flexibility would be beneficial for us to implement a monitoring option that will work.

EPA Response: The Final Permit is revised to include the following in Part 3.2: *Should the Permittee opt for participation in SAM later in the permit term, the Permittee shall notify EPA of this decision and include a specific schedule for transitioning from Monitoring Option 1 to Monitoring Option 2.*

Comment #56 (M. L. Bengtson, U.S. Navy)

3.3.5. Add "if long term monitoring... are not detected at levels of concern in MS4 discharges." Many of the pollutants of concern can be detected at very low (trace) levels and not be a concern. In such a case, it will be most effective to stop long term monitoring and concentrate efforts on higher priority pollutants.

EPA Response: Language in the Final Permit has been modified to reflect that infrequent detection in only trace amounts may be justification for reducing or eliminating monitoring of a particular pollutant of concern.

Comment #57 (M. L. Bengtson, U.S. Navy)

3.3.5. Please remove flow as a pollutant of concern. Flow values could be helpful in evaluating other pollutants of concern but flow is not inherently a pollutant. An additional concern is that stormwater flow is variable and hard to measure.

EPA Response: EPA agrees that flow, *per se*, is not a pollutant in this context. For similar reasons, neither is hardness. However, both are necessary parameters to include in a monitoring program in order to interpret other monitoring data. EPA has asterisked these parameters in Table 3.3.5 to clarify that these are interpretive parameters rather than pollutants.

Comment #58 (M. L. Bengtson, U.S. Navy)

3.3.6.1. Requesting additional language for the ability to estimate flow versus measuring it. Estimating flow is a more achievable output for the Navy while maintaining the intent of this section for monitoring.

EPA Response: In this context, relevant methods for determining flow are “estimates” rather than “measures”. The permit requires the use of an approved method, but has left selection of a specific method to the discretion of the Permittee. If this comment is suggesting the use of modeled estimates versus the use of a meter or a weir method, then EPA notes that this is not an approved method for the purposes of this monitoring program. No change has been made to the permit as a result of this comment.

Comment #59 (M. L. Bengtson, U.S. Navy)

3.3.9. Please remove the details of what must be included in the QAPP. The referenced documents are specific. Please remove the reference to Ecology document 04-03-030. The Navy is concerned about conflicting guidance and prefers EPA guidance documents.

EPA Response: The comment/request provides no rationale for removal of quality assurance requirements, which are critical to ensuring that the monitoring program produces quality data. The manuals are referenced only with respect to chain-of-custody requirements, not all QAPP development requirements. No change has been made to the permit as a result of this comment.

Comment #60 (M. L. Bengtson, U.S. Navy)

3.3.9.2. Please remove guidelines for preparing QAPP.

EPA Response: See response to comment #59.

Comment #61 (M. L. Bengtson, U.S. Navy)

3.4.1. Please add verbiage so we can participate in the SAM program at any point during the permit term. We favor this option, however, joining SAM will be difficult and we would appreciate more time to join. Please also remove the last phrase of the paragraph starting "and be a fully participating member of SAM within 1 year..." for similar reasons.

EPA Response: See response to comment #55.

Comment #62 (M. L. Bengtson, U.S. Navy)

3.6. Please remove "Freedom of Information Act" wording. The language is true regardless of inclusion in the permit.

EPA Response: This provision provides clarity to anyone who may request information, that the permit is not establishing a records access process separate from the Freedom of Information Act (FOIA). This language is intended only to provide clarity, and does not place any requirements on the Permittee. EPA recognizes that the Permittee may charge fees for copies of the documents in response to requests from the public. No change has been made to the permit as a result of this comment.

Comment #63 (M. L. Bengtson, U.S. Navy)

3.7.2.2.4. Please include the following for this section: "Provisions herein should not be interpreted to require obligations or payments of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341." The Navy will commit to complying with this permit with the funds and resources it is allocated.

EPA Response: Note: this is Part 3.7.1.2.4 in the revised permit. See response to comment #7.

Comment #64 (M. L. Bengtson, U.S. Navy)

4. The notification threshold of "credible site-specific information" is sufficiently ambiguous that we could incur liability based on supposition. Please remove section 4. Section 5 addresses the specifics of the permit and outlines what will happen if we falter. We have control of specific permit conditions and if we achieve them adequately will address water quality concerns. As section 1.3.1 states, "if the Permittee complies with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an exceedance above the State of Washington's water quality standards."

EPA Response: Per follow-up conversation with the Navy, EPA is retitling Part 4, *Required Responses to Violations of Water Quality Standards* to *Required Responses to Exceedances of Water Quality Standards* as the latter more accurately reflects the purpose of this section, i.e., determining thresholds for Permittee reporting/response rather than thresholds for determining permit violations. EPA does not agree that the term "credible site-specific information" is ambiguous in this context, since the Permittee has full discretion to notify EPA at any time regardless of how robust the available information may be. In addition, there is no justification for removing Part 4, which specifies appropriate responses to discovering exceedances of water quality standards.

Comment #65 (M. L. Bengtson, U.S. Navy)

5.5. Please remove this section as it conflicts with section 2.5.1.2 and appears to be related to wastewater treatment plant operations.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #66 (M. L. Bengtson, U.S. Navy)

5.6. Please remove, as EPA cannot implement this requirement without modifying the permit.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #67 (M. L. Bengtson, U.S. Navy)

5.7. This permit will regulate a variety of stormwater infrastructure. That infrastructure requires somewhat frequent planned changes. Please clarify the second bullet so we can more confidently provide notification at a standard that EPA intends. Perhaps a dollar threshold of \$50,000 for an individual treatment device is applicable. Suggest that storm sewer piping system work would not require notification.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #68 (M. L. Bengtson, U.S. Navy)

5.10. Stormwater treatment devices have, by design, built in bypass mechanisms. Request this section acknowledge that. Please include a statement that by-design bypass is not subject to this section.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #69 (M. L. Bengtson, U.S. Navy)

5.11. This section is applicable to wastewater treatment plants not stormwater infrastructure. Please delete this section.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #70 (M. L. Bengtson, U.S. Navy)

6.10. This section is equally factual if included in the permit or not. Please delete.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #71 (M. L. Bengtson, U.S. Navy)

6.11. This section is equally true if included in the permit or not. Please delete.

EPA Response: All provisions in Parts 5 and 6 of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits. No change has been made to the permit as a result of this comment.

Comment #72 (M. L. Bengtson, U.S. Navy)

Appendix B. Annual Report Template. Please include a not applicable check box "N/A" for item 15.

EPA Response: Item 15 refers to the requirement in Part 2.2.2 (staff coordination), which is always applicable. The original yes/no response options are retained in Item 15 of the Annual Report Template.

Comment #73 (M. L. Bengtson, U.S. Navy)

Appendix D. Section D.2 Please change "connected to a Public Owned Treatment Works (POTW)" to "connected to a Public Owned Treatment Works (POTW) or Navy Owned Treatment Works (NOTW)".

EPA Response: The Final Permit provides this clarification.

Comments Received During the Second Public Notice Period, August 24 to September 24, 2020

During the second public comment period, EPA received comments from the following:

K. Pickard	Citizen	Comment #74
G. Newkirk	Citizen	Comments #75 - #82
B. Newkirk	Citizen	Comments #75 - #82
J. Kotschwar	Attorney representing the Anderson Estate	Comments #83 - #90
M. Gehrman	U.S. Navy	Comments #91 - #97
M. Edain	Whidbey Environmental Action Network	Comments #98 - #101

The numbering system picks up where comment responses from the 2019 public comment period end.

Response to Comments Received During the Second Public Notice Period, August 24 to September 24, 2020

Comment #74 (K. Pickard)

Please don't allow Navy Permittee to monitor or evaluate their compliance with their storm water discharge permit. I personally have witnessed the navy consistently lie regarding other adverse environmental impacts. They are fraudulent and completely untrustworthy. 3rd party independent monitoring is required. They are the single biggest polluter in the world.

EPA Response: Monitoring and reporting are standard elements of the NPDES framework. Regulations requiring the establishment of monitoring and reporting conditions in NPDES permits are at 40 CFR §§122.44(i) and 122.48. There are penalties associated with falsifying reports which are set forth in the permit at Part 5.2.3.4. To ensure that permittees are complying with the terms of their permit, EPA can conduct inspections, compliance monitoring and comparison to data and information collected through other programs, e.g., Superfund, etc.

Comment #75 (G. Newkirk and B. Newkirk)

I am against this storm water permit #WAS026611 for the following reason below. The Navy can not be trusted to look out for the best interest of the environment or the best interest of civilian population that live and farm in the Dugualla Bay valley as the navy NASWI has a poor track record of complying with state and federal laws pertaining to the environment.

EPA Response: Denying Naval Air Station Whidbey Island MS4 permit coverage will neither halt the discharges of stormwater nor control the pollutants in them. Further, pursuant to 40 CFR §122.4, EPA has no basis for denying the permit. EPA is issuing a permit that authorizes ongoing discharges of municipal stormwater through the Navy's municipal separate storm sewer system (MS4). EPA specifically determined that the MS4 discharges from Naval Air Station Whidbey Island are a significant contributor of pollutants to Waters of the U.S. (see *Designation of Naval Air Station Whidbey Island as a Small Municipal Separate Storm Sewer System*), and designated the system as a small MS4 in order to regulate the MS4 discharges. This will be the first permit to regulate these specific discharges. EPA is including a number of provisions in the permit that will require the Navy to implement controls to minimize the discharge of pollutants via the MS4. EPA has provided explanations for how the provisions in this permit meet the regulatory thresholds for water quality standards and maximum extent practicable (see original Fact sheet dated September 30, 2019), and the Washington Department of Ecology has certified the permit

pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341. Based on all of these reasons, EPA has decided to move forward with permit issuance. See also response to comment #74.

Comment #76 (G. Newkirk and B. Newkirk)

We are requesting the NAVY to have an Open Public Meeting on this Storm Water Permit #: WAS026611 as NASWI has greatly increased the non pervious ground on the base which has increased the amount of water being discharged. so there is now more water than ever being moved down thought slough to the basin and it seems that NASWI is not adequately maging this water as it floods our fields more and more every year and know we have found out this water is heavily contaminated with PFAS & PFOS and we don't know what else contamination is in the water.

EPA Response: In response to comments received during the initial public comment period EPA modified the permit to include additional permit conditions that require the Navy to provide additional notification to downstream users affected by the MS4 discharges from Naval Air Station Whidbey Island as well as to engage those users in establishing priorities for the stormwater program. The permit requires the Permittee to keep downstream users of relevant aquatic resources informed about pollutant discharges and relevant activities, so that those users can make informed decisions about utilization of such resources for drinking water, crop irrigation, livestock watering, fish and shellfish harvesting and other likely uses (Part 2.3.3.4 of the permit). The draft permit also requires the Permittee to engage these downstream users, as relevant, in setting certain priorities for the Naval Air Station Whidbey Island storm water management program (Part 2.2.2 of the permit). The permit does not specify formats for these interactions, e.g., public meetings, but expects that the mechanisms will be appropriately matched to the type of interaction, e.g., notification, discussion, request for input. The Navy is required to report on all of these interactions in their annual reports.

Comment #77 (G. Newkirk and B. Newkirk)

We would like EPA to require the Navy to have proposed a cleanup plan and timeline for any and all known and unknown emerging contamination cleanup of clover valley creek and slough and Basin.

EPA Response: MS4 permits require the implementation of controls on pollutants and sources of pollutants that discharge via the MS4 to waters of the U.S. This includes, for example, clean-out of contaminated solids from conveyance systems such as pipes and ditches that have been discharging those contaminants to receiving waters. Specific information on these strategies, including schedules, must be included in a regularly updated publicly available Stormwater Management Plan (Part 1.4.3). In addition, the Navy must implement an ongoing program to detect and address non-stormwater discharges, spills and illicit discharges into the MS4 (Part 2.3.3). In the event discharges outside the scope of the provisions in this permit are discovered, the Navy must notify EPA and adapt the Stormwater Management Program; as appropriate EPA may also modify the permit (Part 4). Note that some aspects of contaminant remediation at Ault Field are not addressed in this permit since they are outside the scope of MS4 regulatory authority (e.g., remedial activities in the slough). Other programs, such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), often referred to as the Superfund program, also have roles to play in abatement activities. EPA is aware of the important links between these programs in order to adequately address this complicated issue and is taking steps to ensure the appropriate level of coordination among the relevant federal programs.

Comment #78 (G. Newkirk and B. Newkirk)

Testing should be performed by an independent agency every quarter for the length of this permit if issued at these locations.

- A. Before Whiskey Creek.
- B. The end of Navy property that conveys what the Navy calls (Clover Valley Creek)/Slough.
- C. The Navy Pier in the Basin.
- D. The NAVY and EPA to Inform the Public and Property owners-Diking District III in writing and hold Public meetings every quarter for all known and unknown emerging contamination in the Clover Valley Creek/Slough and Basin.

EPA Response: See response to comment #74. Parts 2.3.3 and 3 of the permit require investigation and monitoring activities that will consider a wide array of sampling locations and select those that will most accurately characterize pollutant discharges while also identifying sources and sinks of pollutants. Per monitoring option 1 (Part 3.3), based on available information the Navy will propose sampling locations in their monitoring plan and EPA will review and approve the plan. Also, see response to comment #77; other EPA programs such as Superfund will also oversee sampling programs that will gather additional data not collected as part of the MS4 program; the Superfund program does hold public meetings.

Comment #79 (G. Newkirk and B. Newkirk)

There are property owners (Anderson Estate is one) that have irrigation rights from the state of Washington Whiskey Creek and Slough to irrigate crops & water cattle that are sold directly to the public which could be polluted with no fault or knowledge of the property owner.

EPA Response: See responses to comment #76 and #77. Issuing this permit will impose stormwater management requirements on Naval Air Station Whidbey Island to address these pollutant discharges.

Comment #80 (G. Newkirk and B. Newkirk)

This storm water permit affects the salmon restoration project from the Davis slough bridge project and all marine mammals in the Salish Sea/orcas migrating north and south through the straits which need to be protected.

EPA Response: Per Section 7(a) of the Endangered Species Act, EPA is required to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Services (collectively, the Services) on all permitting actions. ESA consultation is intended to provide a mechanism for the Services to provide a Biological Opinion (BiOp) on any federal action that they believe has the potential to have an effect on endangered species or critical habitat, including salmon, orcas and other species. The permit includes a number of provisions identified by the Services in an informal letter in October 2018 as important to mitigating stormwater pollution effects on identified species. Further, EPA submitted a detailed analysis of likely effects on endangered species and critical habitat to the Services in October 2019. To date, the Services have not acted on this evaluation. However, if the Services provide EPA with a Biological Opinion that identifies additional measures, EPA will review the Biological Opinion to determine whether it is necessary to modify the permit to incorporate those requirements in the permit (Part 6.13).

Comment #81 (G. Newkirk and B. Newkirk)

We need to have another dialog with the navy to not flood properties that are within Diking District III that seem to be more prevalent every year.

EPA Response: EPA supports additional and meaningful discussions between the Navy and downstream neighbors. This request is outside the jurisdiction of a NPDES permit.

Comment #82 (G. Newkirk and B. Newkirk)

Last dialog with the Navy and EPA was to keep the level of the basin at 13ft during the heavy rain season. The navy has been negligent in maintaining this level during the heavy rain season for the past several years.

EPA Response: The NPDES permit authorizes discharges from the Navy's MS4 to waters of the U.S. See response to comment #81.

Comment #83 (J. Kotschwar, representing the Anderson Estate)

I represent the Estate of Vivian Anderson, deceased. The personal representatives of the estate, Bonnie Newkirk and Mari Anderson have asked me to comment for the record as to the proposed Stormwater Permit by Naval Air Station Whidbey Island. The Anderson Estate owns several parcels of real property adjoining or near to the Naval Air Station on Whidbey Island in the Dugualla Bay area that would be affected by the proposed discharge of stormwater.

At this time, the personal representatives of the Anderson Estate have the following concerns about the permit, which should be considered prior to issuing the permit:

There are a number of property owners, including the Anderson Estate, who have rights from the State of Washington to draw water from Whiskey Creek and Slough to irrigate crops and water livestock that are sold directly to the public. Pollution of the water and/or crops could result without the fault or knowledge of the property owners.

EPA Response: See response to comment #79.

Comment #84 (J. Kotschwar, representing the Anderson Estate)

The proposed stormwater permit could negatively affect the salmon restoration project from the Davis Slough Bridge Project and could have a negative effect on marine mammals in the Salish Sea, including Orcas migrating north and south near Whidbey Island.

EPA Response: See response to comment #80.

Comment #85 (J. Kotschwar, representing the Anderson Estate)

The proposed stormwater permit could increase flooding of the properties lying within Diking District III, which already seems to worsen year by year.

EPA Response: While flood management is outside the scope of this permit, many of the requirements in this permit, while focused on water quality, will also function to reduce runoff/discharge amounts. See the provisions of Part 2.4 of the permit, which includes flow volume reduction requirements as an approach to also reduce pollutant discharges.

Comment #86 (J. Kotschwar, representing the Anderson Estate)

Previous communication with the Navy and EPA led to an understanding that the level of the basin would be kept to thirteen feet during the heavy rain season. For the past several years, the Navy has not maintained this level during the heavy rain season.

EPA Response: See response to comment #82.

Comment #87 (J. Kotschwar, representing the Anderson Estate)

In connection with the proposed permit, the Anderson Estate would request the following:

That action be delayed until there could be an open public meeting to discuss the permit and its environmental impact on affected properties.

EPA Response: EPA declines the request, as the commenter has not provided a reason that would suggest that a public meeting would provide any new or unique data to help inform the permit.

Comment #88 (J. Kotschwar, representing the Anderson Estate)

That a condition to the proposed permit be that the Navy would be required to establish a plan and time frame for the cleanup of any contamination of Clover Valley Creek, Slough, and Basin.

EPA Response: See responses to Comments #77 and #101.

Comment #89 (J. Kotschwar, representing the Anderson Estate)

That, if the permit is granted, independent testing be required to be performed quarterly for contamination of the following areas:

1. Whiskey Creek;
2. the area of Navy property that is commonly referred to as the Clover Valley Creek/Slough;
3. the Navy Pier and Basin;

EPA Response: See response to comment #78.

Comment #90 (J. Kotschwar, representing the Anderson Estate)

That, if the permit is granted, there be a Public meeting every quarter with respect to contamination in the Clover Valley Creek/Slough and Basin, with public notice and written notice provided to the owners of properties lying within Diking District III.

EPA Response: See response to comment #76.

Comment #91 (M. Ghermann, U.S. Navy)

Section 2.3.1. Map of MS4 Areas. Remove "toxic and bioaccumulative" and replace with PFAS, also remove "usage and contamination" from the statement and replace with storage. Areas of past contamination are monitored and mapped under CERCLA. Finally remove the word "all" from the statement.

Revised statement would read "Locations of Permittee owned or operated industrial facilities, maintenance/storage facilities, snow disposal sites that discharge directly to the Permittee's MS4, areas of known PFAS materials storage, and/or waters of the U.S."

EPA Response: In the context of identifying locations of pollutant sources, sinks and pathways for the purpose of developing a stormwater management plan, the broader requirements are entirely appropriate. These are not specific requirements for implementing controls, nor is there an expectation that the Permittee must map locations of contaminants that have not been identified/verified.

Comment #92 (M. Ghermann, U.S. Navy)

Section 2.3.3.4.1. Remove term “immediately” from Section 2.3.3.4.1.

EPA Response: Given the potential human health and environmental effects of certain types of spills and other non-stormwater discharges, it is important for the Navy to notify downstream users as soon as possible. EPA also notes that the larger context of this requirement is for the Permittee to develop procedures for notifying affected parties, thus the Navy has the discretion to outline specific timelines for different types of spills/releases and specific mechanisms for notifying different downstream users. No change has been made as a result of this comment.

Comment #93 (M. Ghermann, U.S. Navy)

Section 2.3.3.4. Also remove “drinking water systems (public or private)” as the CWA does not extend to groundwater. Additionally, drinking water concerns are covered under CERCLA programs.

EPA Response: EPA declines to remove this notification requirement given the possibility that certain spills and releases into surface waters may affect certain sources of drinking water. As noted in the prior response, the Navy has the discretion to establish different procedures, as appropriate, for different situations. Notification procedures for discharges from the MS4 are squarely within the authority of the Clean Water Act. See also response to comment #92.

Comment #94 (M. Ghermann, U.S. Navy)

Revise section for specific focus on PFAS and create a new section for non-PFAS spills and illicit discharges, Section 2.3.3.5.

Revised section should read:

2.3.3.4 Procedures for notifying affected parties, including immediate notification of PFAS related spills and illicit discharges that enter the MS4, and periodic updates about abatement measures and possible impacts from abatement measures.

2.3.3.4.1 The Permittee must notify downstream operators of MS4s, shellfish beds/fisheries, agricultural/livestock operations of PFAS spills or other PFAS related illicit discharges that may impact those systems subsequent to the notification procedures required in Section 5.9, if applicable;

2.3.3.4.2 For PFAS related illicit discharges that cannot be immediately abated and that have the potential to affect human health, the Permittee shall keep those parties identified in Part 2.3.3.4.1 informed of the status of illicit discharge elimination activities and also provide other information and data, as appropriate, on potential impacts.

2.3.3.5 Procedures for notifying affected parties, including immediate notification of spills and illicit

discharges not relating to PFAS, and ongoing updates about abatement measures and possible impacts.

2.3.3.5.1 Downstream Permittees must be notified if a spill or other non-stormwater discharge that may reach their MS4⁵ subsequent to the notification procedures required in Section 5.9, if applicable. For illicit discharges that cannot be immediately abated and that have the potential to affect human health, the Permittee shall keep downstream MS4s informed of the status of illicit discharge elimination activities and also provide other information and data, as appropriate, on potential impacts.

EPA Response: There is not a notable difference between the revised language and the proposed requirement, other than making a distinction between PFAS spills/discharges and other spills/discharges. The Navy has not provided a rationale for limiting these conditions to PFAS nor for creating different permit provisions for pollutants other than PFAS. EPA notes that the context of this requirement is for the Permittee to develop procedures for notifying affected parties and, within the context of the stated objectives in 2.3.3.4.1 and 2.3.3.4.2, has discretion to customize these procedures to specific situations. See responses to Comments #92 and #93.

Comment #95 (M. Ghermann, U.S. Navy)

Section 2.5.8.1. Since control measures do not need to be deployed during an emergency, the first sentence should read, "The Permittee must implement measures to minimize discharges of PFAS via the MS4 following emergency firefighting activities."

EPA Response: Certain control measures can be deployed prior to an emergency in anticipation that firefighting operations may require the use of AFFFs. An evaluation of the most likely pathways of discharges via the MS4 could identify locations, for example, where diversion and collection systems could be installed, or conveyance systems where valves could be utilized. No change has been made as a result of this comment.

Comment #96 (M. Ghermann, U.S. Navy)

Section 2.5.8.2. Change "remediation" to "corrective actions" and remove the word "all" in the following statement "*The Permittee must establish specific protocols for minimizing the resuspension, conveyance and discharge of PFAS already in the MS4 system, both during normal operations and during all maintenance and remediation activities.*"

EPA Response: Given the very narrow scope of this requirement, i.e., controlling the movement of PFAS materials through the MS4, the existing language is appropriate. The term "corrective action" is used in this permit in a different context. Relevant activities, e.g., specifically removing contaminated solids from the conveyance system, are appropriately described as remedial activities.

Comment #97 (M. Ghermann, U.S. Navy)

Please incorporate Navy comments provided in November 2019. The draft permit purports to regulate discharges to groundwater, as did the previous draft permit. There is no Clean Water Act authority for such regulation for this MS4 permit.

EPA Response: See responses to Comments #26 - #73 for explanations on how EPA responded to Navy comments provided in November 2019. Regarding the comment on groundwater, see response to comment #26.

Comment #98 (M. Edain, Whidbey Environmental Action Network)

Please include these comments in the record for the proposed stormwater permit for NAS Whidbey, and please actually consider them in making decisions concerning that permit.

The proposed revisions to the permit are a major improvement in that they now explicitly include PFAS and recognize at least to some extent the existing discharge of these bioaccumulative “forever” pollutants.

However, we believe that the requirements relating to this family of chemicals in particular need to be strengthened.

Monitoring and testing for PFAS needs to be conducted throughout the year to determine seasonality (periodicity) of the relative discharge load. In particular, monitoring needs to be timed to catch the initial flush in the fall rainy season. This monitoring should include the volume and rate of water being discharged at the time of monitoring. Both of these parameters are necessary for planning and designing future treatment system(s).

EPA Response: The objective of the MS4 program is to identify sources and causes of stormwater pollution in order to implement controls to reduce or eliminate them, and then confirm that pollutants are being abated in the discharge. Sampling designs for these purposes, i.e., data quality objectives, are not the same as study designs for estimating loads or establishing seasonal patterns. Eliminating/reducing PFAS discharges in stormwater will most likely be focused on the use of an alternative non-PFAS-containing AFFF formulation as soon as one becomes available, cleaning out the MS4 system and removing contaminated solids, implementing containment and diversion measures to be used during firefighting activities, and adopting specific protocols for cleanup from those activities; none of these measures requires the type of data suggested by the commenter. Should a treatment system be identified as an appropriate remedial measure, the necessary engineering analyses will be undertaken at that time. EPA also notes that treatment systems may be identified as appropriate measures for certain types of remediation that are outside the scope of the MS4 program; Naval Air Station Whidbey Island is undertaking additional monitoring required by the Superfund program.

Comment #99 (M. Edain, Whidbey Environmental Action Network)

In addition to monitoring of the larger discharge streams/facilities, wetlands throughout the watershed should also be tested to help determine the geographical extent of the contamination. It is possible that the shallow groundwater (hyporheic zone) throughout the watershed is contaminated. Again, this information is necessary for informed decision making, planning, and design of treatment systems in the future.

EPA Response: The MS4 permit is one element of a comprehensive PFAS investigation and remediation program. For example, part 2.3 of the permit includes requirements for identifying contaminant sources and sinks related to stormwater, and Part 2.5.8 includes requirements for implementing measures to control those PFAS discharges. EPA notes again, however, that some actions, e.g., remediation of contaminated groundwater or wetlands, are outside the scope of

this permit. EPA has established a coordination team among relevant programs to ensure that collectively we ensure that important investigations and actions are undertaken.

Comment #100 (M. Edain, Whidbey Environmental Action Network)

These test results should be reported to both EPA and DOE. There has been concern previously that the Navy was obscuring test results. Having the results available from the public agencies charged with monitoring and enforcing anti-pollution laws will help avoid this perception. This will benefit all concerned, including the Navy.

EPA Response: See response to comment #74. All NPDES-required monitoring data are reported to EPA and are also publicly available from EPA's [Enforcement and Compliance History Online](#) (ECHO) database.

Comment #101 (M. Edain, Whidbey Environmental Action Network)

EPA and DOE should require a written conceptual plan for treating PFAS pollution in the watershed within two years of issuance of the permit, with full implementation within 4 years. The current ongoing discharge is likely one of the most significant into the Salish Sea. Given the increasingly precarious status of Southern Resident Orca and the effect that these bioaccumulative toxins are known to have on mammal reproductive physiology, addressing this longstanding problem is urgent. Additionally, other marine organisms' uptake of PFAS and concentration at higher trophic levels are also of concern, since this is a prime route for human uptake. There is no reason why actually implementing treatment of this pollutant should be delayed.

EPA Response: Per Part 1.4.3 of the permit the Permittee must have an updated Stormwater Management Plan completed and available by the reporting deadline for the first Annual Report, which is February 28, 2022; all required measures must be included in that Plan unless the permit provides an alternative compliance deadline. That plan must be annually updated. EPA notes again, that this Plan will include measures within the scope of the MS4 program as explained in the responses to Comments #77, #80 and #99.