

# CHELAN COUNTY

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February 2, 2012

Municipal Stormwater Permit Comments  
WA Department of Ecology  
Water Quality Program  
P.O. Box 47696  
Olympia, WA 98054-7696

Subject: Draft Eastern Washington Phase II Municipal Stormwater Permit

To Whom It May Concern:

On behalf of Chelan County staff, thank you for the opportunity to comment on the draft Eastern Washington Phase II Municipal Stormwater Permit. While Chelan County appreciates the challenges faced by the Department of Ecology (Ecology) in development of the new Phase II NPDES Municipal Stormwater Permit, we are concerned about the overall impact of the proposed permit requirements. We are uncertain that the benefits versus the costs associated with the proposed requirements are fiscally responsible. Chelan County has the following comments:

### **Municipal Permit Requirements**

We are aware that the Environmental Protection Agency (EPA) has delegated authority to Ecology in Washington State to administer the Clean Water Act and thus the Stormwater Municipal Permit. However, Ecology's proposed Municipal Stormwater Permit is beyond the EPA requirements for stormwater control. Ecology should reevaluate what is indeed required by the EPA and remove any additional requirements. In doing so, this allows the county time to fully implement the newly adopted Stormwater Management Program, instead of focusing resources on implementation of new permit requirements.

### **Permit Implementation-Phase II Communities**

The EPA Phase I Municipal Stormwater Permit for medium to large MS4 communities was issued in 1990, with Washington State's Phase I Municipal Stormwater Permit finalized by

Ecology five years later in 1995. *Nine* years later in 1999, EPA issued the Phase II Municipal Stormwater Permit for smaller MS4 communities, with Ecology finalizing the state's Phase II Eastern Washington Municipal Stormwater Permit in 2007. Within the Fact Sheet, Ecology has commented in multiple locations (see page 32, Section S5.B.1 as an example) that certain updates to the Phase II Municipal Stormwater Permit were to aid in "consistency with the Phase I permit". At this point in time, Ecology's goal should be allowing time for Phase II communities the ability to implement the six minimum control measures, not adding additional permit requirements in attempts to provide consistency. Phase I communities have almost 20 years to implement their specific Stormwater Management Program, while Phase II communities have had just over five years. Therefore, the county is requesting additional time to implement the newly adopted Stormwater Management Program, without new requirements interfering.

### **Monitoring**

The new monitoring language (S8.C.2.) proposed by Ecology appears to be contrary to EPA's (or Agency) Rules and Regulations regarding "Evaluation and Assessment" (FR vol. 64, No. 235/Wednesday, December 8, 1999/Rules and Regulations, 68769). The "Agency encourages participation in group monitoring programs that can take advantage of existing monitoring programs undertaken by a variety of governmental and nongovernmental entities."

Ecology's preliminary proposal appears to disregard these recommendations by placing the initial development and financial burden of creating a functioning monitoring plan for all of Eastern Washington on the shoulders of Phase II jurisdictions.

The EPA rule referenced above goes on to state, "EPA does not anticipate "end-of-pipe" monitoring requirements for regulated small MS4s". The EPA language is contrary to S8.C.2., which gives permittees the option to "conduct stormwater discharge monitoring..." This clear direction from EPA should offset any contention that "end-of-pipe" monitoring is a justifiable option within the Phase II Permit.

Therefore, we request that the effectiveness study proposals in S8.C. be deleted and staff time/funding within the second Municipal Stormwater Permit cycle focus on water quality improvement actions and projects. Also, any monitoring requirements should fall under the TMDL compliance section of the Permit.

**Chelan County has provided the following specific draft permit comments below:**

**Page 18, lines 1-5:** This new sentence adds complexity, additional work load and higher cost to the Permit. This should be left up to the local jurisdiction to create and have on hand. **Therefore, we request that the proposed new sentence be deleted.**

**Page 18, lines 24-25:** The proposed new word "measurable" is impractical. We have no way to measure this task meaningfully, consistently, or accurately. **Therefore, we recommend that Ecology remove new language (lines 23-25) and retain original language.**

**Page 19, line 12:** It may be premature to be required to provide information to engineers, construction contractors, developers, development review staff, and land use planners about LID since Ecology has yet to develop a technical LID manual for Eastern WA. **Therefore, we request that the word LID be removed from the sentence on line 12.**

**Page 19, lines 22-25:** Requiring Phase II's Permittees to create stewardship opportunities is a substantial **new requirement** that will add additional work load and additional cost to the Permittees. This is already done in other departments at Ecology and should not be implemented in the stormwater permit. **Therefore, we request that this new requirement be removed.**

**Page 19, lines 26-31:** This **new requirement** is a substantial change that will add additional work load and additional cost to the Permittees. In addition, developing an effective way to *accurately* measure the understanding and adoption of the targeted behaviors will be very difficult and will likely produce inconclusive results. Local jurisdictions are not trained or staffed properly to conduct social marketing analysis. Because the Municipal Stormwater Permit is administered by Ecology, this task should be handled by Ecology. **Therefore, we request that that this new requirement be deleted.**

**Page 22, line 31, and 35-36:** The proposed **new words** "spa and hot tub" and "Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water", expand the applicability of the existing requirements and would require a code revision for local jurisdictions to be in compliance. Code revisions are staff intensive and costly for local jurisdictions to implement. This requirement would be virtually impossible to enforce. **Therefore, we would request that the existing language remain unchanged.**

**Page 24, lines 1-3:** The **additional code revision** necessary to meet the requirements of this section creates a burden on local governments that will require additional staff time and finances. The new IDDE resolution implemented during the first Municipal Stormwater Permit cycle is just beginning to be understood and accepted by the public. To facilitate additional requirements on the heels of the recent changes may not be in the public's best interest. We contend that the limited amount of time and funds local jurisdictions have available for IDDE should be focused during the second Permit cycle on continuing to educate the public about the (first cycle) new IDDE resolution and conducting enforcement where necessary. **Therefore, we recommend that any proposed new language within the IDDE section that requires an additional code amendment be deleted.**

**Page 24, lines 9-12:** Adding the **new words**, "shall include field screening", is a substantial additional requirement that will require increased staff (and/or staff time), specialized equipment, training, and increase the complexity of annual reporting. **Therefore, we request that the proposed new words, "shall include field screening" be deleted.**

**Page 26, lines 8-17:** The word “Immediately” is not sufficiently defined and is an impossible requirement in some cases. These two bullets are not necessary because IDDE procedures were required to be developed within the first Municipal Stormwater Permit cycle, and currently exist. **Therefore, we request that lines 8-17 be deleted.**

**Page 32, lines 10-11:** The proposed new language, “...shall apply to all applications submitted after February 16, 2011”, contradicts the 2<sup>nd</sup> cycle Municipal Stormwater Permit effective date. The effective date for the new Permit is August 1, 2013. If the new Permit doesn’t become effective until August 1, 2013, then defining an applicability date prior to the Permit’s “Effective Date” is not legally sound. **Therefore, we request that the February 16, 2011 date referenced above be revised to August 1, 2013.**

**Page 40, line 9:** The proposed new language, “...every two years...” will require additional labor cost and challenging to complete within a two year timeframe. Our current O&M Plan schedule calls for the inspection of all facilities once on a 3 year cycle, with problem facilities requiring more frequent inspection schedule. This schedule works efficiently within Public Works operations, allowing effective use of staff and time in between inspections for analysis and repairs. In addition, this requirement will require that we update our just completed O&M Plans, requiring additional staff time and cost. **Therefore, we request that the time frame be revised to a more reasonable and efficient “once every three years (3) or as described within the local jurisdictions O&M Plan”.**

**Page 51, lines 30-31:** The proposed new language that states, “or if stormwater-related investigation conducted by other entities were reported to the Permittee”, goes well beyond reason by requiring local jurisdictions to submit and/or report on an outside (public or private) entities monitoring efforts that may or may not be valid for any number of reasons, including potentially substantiating efforts that aren’t scientifically valid or accurate. **Therefore, we request that the following language be deleted, “...or if stormwater-related investigation conducted by other entities were reported to the Permittee”.**

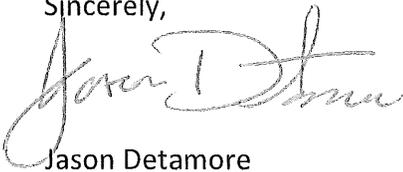
**Page 53, line 33:** Environmental Protection Agency’s (EPA or Agency) Rules and Regulations regarding “Reporting” (FR vol. 64, No. 235/Wednesday, December 8, 1999/Rules and Regulations, 68770), states, “...the operator of a regulated small MS4 is required to submit annual reports to the NPDES permitting authority for the first permit term. For subsequent permit terms, the MS4 operator must submit reports in years 2 and 4 *unless the NPDES permitting authority requires more frequent reports.*” **Therefore, we request that Ecology amend the existing Permit language to require reports only within years 2 and 4.**

**Page 67, line 29:** The proposed new language, “...and infiltration/exfiltration of non-stormwater that takes place in pipe bedding.”, adds a new component to the illicit discharge definition that would be undetectable through routine outfall inspections. In addition, “exfiltration” would change the intent of the illicit discharge definition to protect MS4s from illicit discharges to now stating that the MS4 itself may be classified as an illicit discharge, potentially requiring the inspection for not only illicit connections to the MS4 but from the MS4

as well. This proposed language compromises the intent of the IDDE program requirements and would be largely unenforceable. **Therefore, we request that the proposed new language, "...and infiltration/exfiltration of non-stormwater that takes place in pipe bedding.", be deleted.**

The goal of protecting water quality in Washington State and specifically the Wenatchee Valley is shared by many. Regardless of economic conditions, implementation of regulations to achieve this goal must be done in a fiscally responsible manner. We believe that this objective can be achieved through a coordinated effort with all parties involved, if time is taken to do so. Chelan County appreciates the opportunity to comment on the draft permit language.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jason Detamore".

Jason Detamore  
Environmental Coordinator

cc: Mitch Reister, P.E., Director/County Engineer  
Paula H. Cox, P.E., Assistant County Engineer