CITY OF EAST WENATCHEE
PUBLIC WORKS DEPARTMENT
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February 3, 2012

Municipal Stormwater Permit Comments
Washington State Department of Ecology
Water Quality Program
PO Box 47696
Olympia, WA 98504-7696

RE: Eastern Washington Phase II Municipal Stormwater Permit, Draft Permit Comments

To Whom It May Concern:

Thank you for the opportunity to comment on the Eastern Washington Phase II Municipal Stormwater Permit, draft permit language. We appreciate the extension of the effective date for the new permit requirements and hope you find these comments constructive when drafting the final permit language.

The City of East Wenatchee (City) appreciates the efforts made by the Environmental Protection Agency (EPA) and the Washington State Department of Ecology and your stewardship for our environment. The City continues to see positive results while working under our Municipal Permit and through the development of our Wenatchee Valley Regional Stormwater Program. However, after reviewing the draft language for the new permit requirements, City Staff believes that most of the changes may hinder what progress we've had over the last five years of program development. Our East Wenatchee Citizens are beginning to understand and embrace current stormwater regulations, our building community is becoming more knowledgeable and compliant with requirements and processes and our City Staff is cross training to regulate and enforce these requirements. Substantial changes to our current permit requirements and stormwater program or changes that require amendments to current ordinances, development requirements, O&M plans and policies and education and outreach messages run the risk of confusing and frustrating our community and possibly reducing progress we've made over the last five years.

City Staff believe it would be more prudent and beneficial to work under current requirements, evaluate the effectiveness of our current programs and policies relating to the six core elements and utilize the second permit cycle to continue to develop and improve our current stormwater program. Also, the second permit cycle should be used to develop an Ecology approved monitoring program and LID manual suitable for all agencies and accommodating to our current requirements and local stormwater programs.

The City asks that we continue to work in a coordinated effort to evolve our stormwater program while considering financial feasibility for local governments and communities and to obtain more beneficial and meaningful results by building on current requirements and implementing our current Wenatchee Valley Stormwater Program.

The following are specific language from the draft permit with comments following:

Page 16 lines 26-32: The first sentence states, "Each Permittee shall prepare written documentation of the SWMP." This sentence is clear in describing a requirement for Permittees to prepare written documentation of their SWMP. However, the second sentence is unclear. This language apparently is describing the development of an additional new document called the "Stormwater Management Program **Report (SWMPR)"** on top of the SWMP documentation required in the first sentence. First comment; local jurisdictions cannot afford to spend additional staff time generating additional reports. Second, the SWMPR language increases the complexity and adds redundancy to the Annual Reporting requirements; Third comment; as far as we can tell, the SWMPR is in fact the Annual Report. The new SWMPR language is unnecessary and creates confusion. **Therefore, we request that all references to SWMPR eliminated.**

Page 17, lines 7-12: The proposed revised first sentence change from a "process" to a "program" is significant. Developing a program takes a considerable amount more work than having "an ongoing process". **Therefore, we request that the word "program" on line 8 be eliminated.**

Page 17, line 35: The proposed revision within the SWMP from "should" to "shall" include coordination mechanisms among departments would require substantial additional staff time and cost to local jurisdictions. In addition, the development and implementation of the SWMP and the development of the Operations and Maintenance Manual within the first Permit cycle have already forged the development of coordination among departments. Further defining what is already established just isn't necessary. **Therefore, we request that the proposed word "shall" on line 35 be left as "should".**

Page 18, lines 1-5: Based on the previous discussion and that this new sentence adds complexity, additional work load and higher cost to the Permit. **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, line12: 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 to create stewardship opportunities is a substantial new requirement that will add additional work load and additional cost to the Permittees. **Therefore, we request 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. **Therefore, we request that that this new requirement be deleted.**

Page 20, line 17: Consistent with previous comments and for the same reasons, **we request that the reference to "SWMPR" be deleted.** Also, we request that this sentence be revised to read as follows, "...make the latest version of the annual report and SWMP available to the public."

Page 20, lines 23: We request keeping the existing reference to "SWMP" and deleting the proposed reference to "SWMPR".

Page 20, line 29: The new words "and prevent" add a whole new element to IDDE that would require revision of all existing IDDE programs. This new element adds complexity, additional work load and higher cost to the local jurisdictions. **Therefore, we request that the proposed words "and prevent" be deleted.**

Page 22, line 20-21: The addition of the new words "but not limited to" expands the applicability of the existing requirements and would require an ordinance revision for local jurisdictions to be in compliance. Ordinance revisions are staff intensive and costly for local jurisdictions to implement. **Therefore, we would request that the existing language remain unchanged.**

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 an ordinance revision for local jurisdictions to be in compliance. Ordinance revisions are staff intensive and costly for local jurisdictions to implement. **Therefore, we would request that the existing language remain unchanged.**

Page 23, line 25 and lines 29-41: The proposed new language, "that includes information compliance actions such as public education and technical assistance as well as", creates new work, policy and ordinance revisions. Permittees have just adopted IDDE ordinances and need the opportunity to enforce them before taking them back to the public and Commissioners. Further, requiring additional informal compliance periods may also water down the enforcement ability for illicit discharges, which will result in a negative effect on water quality. Mandating informal compliance actions removes the enforceability of the existing IDDE ordinances by creating the opening for violators to argue that they weren't afforded adequate opportunity for "informal compliance actions". **Therefore, we request that the proposed words, "that includes information compliance actions such as public education and technical assistance as well as", and page 23, lines 29-41, all be deleted and the original language restored.**

Page 24, lines 1-3: The additional ordinance revision necessary to the requirements of this section create a burden on local governments that requires additional staff time and finances. The new IDDE ordinance implemented during the first Permit cycle are just beginning to be

understood and accepted by the public. To facilitate additional requirements on the heals 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 ordinance and conducting enforcement where necessary. In addition, the amount of benefit derived from the proposed new ordinance revisions would be minimal and not justify the considerable amount of staff time and cost necessary facilitate the revisions. **Therefore, we recommend that any proposed new language within the IDDE section that requires an additional ordinance 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 24, lines 25-27: Adding the new words, "field assessing at least 40% of the MS4 within the Permittee's coverage area no later than February 2, 2016 and 20% each year thereafter..." creates additional long-term work and cost for local jurisdictions. In addition, this language is duplicative as this assessment schedule is already in the O&M plans that were required during the first Permit cycle. **Therefore, we request that this proposed new requirement be deleted.**

Page 25, lines 3-12: The frequency of "ongoing training" should be at the discretion of the Phase II jurisdictions. Additionally, this is duplicative because the training plan already included within the O&M plan. **Therefore, we request that lines 3-12 be deleted.**

Page 25, lines13-15: The proposed new language, "Permittees shall inform public employees, business, and the general public of hazards associated with illicit discharges including spills, and illicit connections and improper disposal of waste." is all encompassing. As a result, achieving full compliance by local jurisdictions is virtually impossible. This proposed new language creates an open and continual possibility for 3rd party litigation. In addition, this language calls for the development of a public education and outreach campaign that informs all public employees, business, and the general public. Creating this broad of a public outreach campaign would be very costly and staff intensive. **Therefore, we request that this language 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 Permit cycle, and currently exist. **Therefore, we request that lines 8-17 be deleted.**

Page 26, lines 29-30: The proposed new language, "All illicit connections to the MS4 shall be eliminated.", is an impossible task for permittees. This proposed revision goes beyond reasonable and feasible. **Therefore, we request that this language be deleted.**

Page 32, lines 10-11: The proposed new language, "...shall apply to all applications submitted after February 16, 2011", contradicts the 2nd cycle Permit effective date. The effective date for the new Permit is August 1, 2013. If the new Permit doesn't become effective until 8-1-13, 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 Operations and Maintenance 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 O&M Plan".

Page 40, lines 14-15: We are concerned about Ecology's new proposal to not define a major storm event. Removing the language, "greater then 10 year recurrence interval rainfall or snowmelt", leaves the definition of a major storm event up to interpretation and creates a potential point of contention between Permittees and private parties. **Therefore, we request that the existing language, "greater then 10 year recurrence interval rainfall or snowmelt" remain in place.**

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 51, line 8: General Monitoring Comments - The preliminary draft monitoring language S8.C.1, will produce minimally defendable answers for BMP effectiveness monitoring and will likely fall short of producing locally beneficial and actionable data.

The City request that Eastern Washington Permittees be given the extent of the second permit cycle to develop partnerships, establish the monitoring plan, and develop the study for implementation within the third permit cycle, similar to the opportunity that was extended to the Western Washington Phase II Permittees. 2014 is not enough time to effectively develop the multi-regional monitoring program that Ecology is proposing.

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**."

The present "yearly" reporting schedule within the Washington State Phase II Permit is very staff intensive and costly to implement for local jurisdictions. Now that our SWMPs are up and

running, a transition to reports within years 2 and 4 would allow for more staff time directed towards water quality improvement activities/actions, SWMP implementation activities, monitoring, TMDL compliance, etc., as well as reduce Permit implementation costs. From this perspective, reports in years 2 and 4 would be in the best interest of the public as well as in the best interest of spending more staff time improving ground and surface water quality.

In addition, coordinating the review of annual reports is staff and cost intensive for Ecology as well. Reports in years 2 and 4 would also be beneficial to Ecology by reducing their Permit administration costs. **Therefore, we request that Ecology amend the existing Permit language to require reports only within Permit years 2 and 4.**

Page 67, line 26: The proposed new language, "...into or from..." significantly changes the scope of the existing language from its intent to protect MS4s from illicit discharges to now stating that the MS4 itself may be classified as an illicit discharge. The intent of the Permit is to protect the MS4 from illicit discharges and to pursue removal of illicit discharges either through public education or through enforcement. If the discharge from a MS4 is classified as an illicit discharge then liability could fall on the Permittees rather than focusing on the party sourcing the illicit discharge. **Therefore, we request that the proposed new language, "...into or from..." be deleted.**

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.**

Page 73, line 3: We request that Ecology delete this definition based on previous SWMPR discussions.

As we move into the second permit requirements, the City encourages Ecology to focus on water quality improvements and actions and continue to work under the current six core elements of our Municipal Permit and Wenatchee Valley Stormwater Management Program. We hope Ecology will take these comment under serious consideration while drafting final language for the Eastern Washington Phase II Municipal Stormwater Permit and continue effective progression for stormwater management programs in Eastern Washington.

Sincerely

Brandon Mauseth
Associate Engineer

Cc: Don McGahuey, P.E., Public Works Director