



DIVISION OF ENGINEERING AND ROADS
A DIVISION OF THE PUBLIC WORKS DEPARTMENT

February 3, 2012

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

RE: Comments on the Eastern Washington Phase II Municipal Stormwater Permit – Draft Revisions

Dear Ecology,

Thank you for the opportunity to comment on the Eastern Washington Phase II Municipal Stormwater Permit (Permit) – Draft Revisions. We appreciate the effort that Ecology has made over the last few months to engage and work with Eastern WA jurisdictions. Nonetheless, there remain important revisions that are necessary to find a balance between water quality stewardship, the measure of reasonable regulation, and the economic reality of our local jurisdictions.

Overall, the proposed revisions to the Permit add extensive additional requirements onto local jurisdictions and increase the complexity and cost of an already overly complex and expensive Permit. The Eastern WA Phase Municipal Stormwater Permittees through the Eastern WA NPDES Coordinator's Forum have identified the following *Focus Topics* within the proposed draft Permit, followed by equally important *Specific Comments* (page/line), and ending with *Final Comments*.

Focus Topics

Monitoring....Ultimately, the effectiveness of a BMP at a specific location will in fact be site specific, and based on proper engineering design for the flow, geology, location and use, quality of construction, sufficiency of materials used, and maintenance. The reality is that no two sites are the same, even within the same Phase II jurisdictions. To believe that we are going to gain regionally applicable new data from BMPs effectiveness studies is improbable. In fact the regional applicability of the results are likely to be largely inconclusive and potentially detrimental to generally functional BMPs if any one of the items listed in the first sentence is inadvertently misconstrued as being done properly. If regionally applicable results are improbable and inconclusive, then we risk spending a lot of time and money on something other than improving water quality. **Therefore, we request that the effectiveness study proposals in S8.C. be deleted and staff time/funding within the second Permit cycle focus on water quality improvement actions and projects. Also, that any monitoring requirements fall under TMDL compliance section of the Permit.**

Nonetheless, if Ecology is insistent that a stormwater discharge monitoring option be available for Permittees, then we request that **Option 2 be revised to be consistent with the EPA's Preliminary**

Draft NPDES Permit for the City of Moscow, March 2011. This alternative monitoring option allows for grab samples 4 times a year for five parameters (flow, fecal coliform, temperature, TSS, phosphorus). This level of monitoring would be much more reasonable and cost effective for Phase II jurisdictions. Option 2 as proposed by Ecology (details described in Appendix 8) is equivalent to Phase I level monitoring. This is excessive and unreasonable for Phase II communities. (For full monitoring comments see below, *Page 53, line 14.*)

Local Ordinance Revisions....The new ordinances implemented during the first Permit cycle are 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 encourage Ecology to allow Permittees to focus on continuing to educate the public about the (first cycle) new ordinance revisions. In addition, the amount of water quality benefit derived from the proposed ordinance revisions would be minimal and not justify the considerable amount of staff time and cost necessary to facilitate the revisions. **Therefore, we recommend that any proposed new language within the draft Permit that requires an ordinance revision be deleted or delayed until the third Permit cycle.**

O&M Plan revisions.....There are several proposed revisions that impact local O&M Plans that were just finalized in 2011. Time is needed to allow for the impacts and results of those plans to be fully recognized. **Therefore, we request that any proposed Permit amendments that call for revising local O&M Plans be deleted.**

Annual Reporting.... 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. Many jurisdictions, including Spokane County, spend 2-3 months gathering information, analyzing and compiling data, updating the SWMP, developing various reporting documents, and completing the annual report application. 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.**

Social Marketing.... Social marketing contained within this draft is above and beyond the scope of the Permit. Our purpose as Permittees is to operate our MS4 and protect surface water quality. Permittees have limited expertise in social marketing and do not have the resources to create expansive programs that the draft is calling for. State level programs would have a greater degree of applicability and cohesiveness than the present situation which involves a patchwork of vaguely interrelated individual programs. Creating a successful public education and outreach program on a statewide scale would

provide the best opportunity for a successful social marketing campaign. **Therefore, we request that Ecology pursue this option.**

Specific Comments

Page 10 line 15: Comments: “Opting out” is different than “no exposure”. Taking the opting out option as described within the Permit may bind the permittee to Phase I rules rather than Phase II. Ecology should make it clear within the revised Permit that if a current Phase II permittee eliminates all outfalls to surface waters of the State, then a Permit will no longer be required. **Therefore, we recommend that the following sentence be added under d. on Page 10, after line 18: “The operator of a permitted MS4 chooses to eliminate all surface water discharges. In this instance, coverage under this General Permit will no longer be required.”**

Page 12 line 6: The addition of the proposed new language “occurred during” may create a loophole which forces stormwater regulation of firefighting activities. The proposed new language suggests the period of time that a fire is actively burning, and does not necessarily include the cleanup afterward. This revision could also create additional work for stormwater crews including overtime, etc. and conflict between departments within a jurisdiction. **Therefore we recommend that the words “occurred during” be deleted.**

Page 12 line 37: With new monitoring partnerships proposed to be created with this permit, this paragraph becomes a liability issue. If permittees work together and one permittee fails to comply with their obligations, other members of the group should not be held liable. Add some language in this paragraph to provide relief to the other parties if partnering entities fail to comply. **Therefore, we propose revising the language on page 12, line 37 – page 13, line 2 to state the following: “Permittees that are relying on another entity to satisfy one or more of their permit obligations remain responsible for permit compliance if the other entity fails to implement the permit conditions, except for those obligations set forth pursuant to Section S8 Monitoring.”**

Page 16 line 22: Not allowing changes to our existing code is contrary to Ecology’s stated goals of adaptive management. There must be a provision within the “no backsliding” section that allows for the update or revision of local law based on new information, improvements/advancements in science, and/or old laws become obscure, etc. **Therefore, we request that Ecology amend the “no backsliding” language accordingly.**

Page 16 line 24: The addition of the proposed new language, “prohibiting non-stormwater discharges and for” significantly expands the existing “no backsliding” requirement. This additional language is unnecessary due to the IDDE ordinance already in place through the existing Permit. **Therefore, we request that this new language be deleted.**

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 be eliminated.**

The last sentence is also unclear. It makes more sense for the SWMP to define the activities for the upcoming year rather than include them within the proposed "SWMPR", which should be the Annual Report on the activities of the previous year. **Again, eliminating the "SWMPR" language will provide clarity.**

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.**

In addition, the proposed new word "tracking" adds an additional element to the Permit. This not only makes the title on line 6 inaccurate it also adds complexity, additional work load and higher cost to local jurisdictions. **Therefore, we request that the word "tracking" on line 8 be eliminated.**

The proposed new words "to set priorities" on line 11 adds complexity, additional work load and additional cost to local jurisdictions. **Therefore, we request that the words "to set priorities" on line 11 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 (work) 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 18, line 30: The addition of the proposed new language, "the nature of" is too subjective and unclear. **Therefore, we recommend that "the nature of" be deleted.**

Page 19, lines 2-5: The proposed new words "such as" could be construed to provide an actual list of topics to be met, when the intent is to provide examples. **Therefore, we request that the proposed words "such as" be deleted and replaced with "for example".**

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 to create stewardship opportunities is a substantial new requirement that will add additional work load and additional cost to the Permittees. **Therefore, we**

request that that the word “shall” be replaced with “should” or we request deleting paragraphs b. and c.

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 “SWMP” 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 “SWMP”.

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 21, lines 10-11: The proposed deletion of the word “appropriate” and the addition of “consistent with national security laws and directives”, completely changes the intent of the sentence by removing and now longer allowing local jurisdictions to exercise reasonable discretion prior to disseminating maps and mapping information to others. In addition, since there is no definition provided that defines which national security laws and directives apply, local jurisdictions are unable to determine which laws and directives are being referenced here. **Therefore, we request that the proposed words “consistent with national security laws and directives” be deleted and the word “appropriate” remain.**

Page 22, line 6-7: The existing words, “Irrigation water from agricultural sources that is commingled with urban stormwater”, creates liability for permittees in that this language could allow an illicit discharge (if irrigation water is contaminated) to an MS4 that the local jurisdiction will be liable for and unable to legally prevent. **Therefore, we request that the words “Irrigation water from agricultural sources that is commingled with urban stormwater”, be deleted or replaced with, “Irrigation water from agricultural sources that is approved to enter the MS4 by the local jurisdiction.”**

Page 22, lines 12-13: See comments on page 12, line 6. The term “occur during” is a potential issue for firefighting activity allowable discharges and should be deleted.

Page 22, lines 14-15: This added line creates liability for the permittee by authorizing the acceptance of (and forcing the permittee to accept) discharge water into their system that may be in line with the requirements of other permits held by the discharger but insufficiently protective of the MS4, or of the standards set by the local jurisdiction for their system. **Therefore, we request that the words “Non-stormwater discharges authorized by another NPDES permit or state waste discharge permit”, be deleted or replaced with, “Non-stormwater discharges authorized by another NPDES permit or state waste discharge permit that is approved to enter the MS4 by the local jurisdiction.”**

Page 22, line 17-18: The proposed word revision from “shall prohibit” to “may allow” and “unless” to “only if” are inconsequential, saying the same thing only in a different way. This may seem like not a big deal, but in reality it produces inconsistency between the Permit and the ordinance revisions that were approved last cycle. **Therefore, we request that the existing language remain unchanged.**

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 18: The proposed revision from “SWMP” to “ordinance or other regulatory mechanism” could require an ordinance revision and is contrary to the first Permit cycle requirements. In addition, this word swap could create controversy by decreasing clarity and specificity.

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 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 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 4-8: The proposed new language is unnecessary and redundant. **Therefore, we request that the proposed new words, “identify and” 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, lines 13-15: 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 proposed new 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 27, lines 15-16 and lines 24-25: These lines say the same thing and both are not necessary. **Therefore, we recommend that lines 15-16 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 33, lines 5-6: The proposed revisions to this sentence are inconsistent with previous text revisions that address the evolution of “shall adopt requirements” (old text) to “all permittees shall implement requirements” (new text). Therefore, we request that the first sentence be revised as follows, “All Permittees shall implement requirements for project proponents and property owners to implement...”

Page 33, line 11: The first sentence fails to recognize that Permittees were required to define a specific hydrologic method with the 1st permit cycle. **The sentence that states, “Each Permittee shall define a specific hydrologic method...” should be updated to state, “Each Permittee shall implement a specific hydrologic method...”.**

Page 33, lines 17-19: During all of our discussions with Ecology regarding the preliminary draft Permit language, it was our request and understanding that the 10-year, 24-hour language would be broad enough to allow for equivalent existing local jurisdiction language. **Therefore, we recommend that this sentence be revised as follows, “...at a minimum, the 10-year, 24-hour rainfall event, or local equivalent.”**

In addition, this language calls for the development of a local ordinance (or equivalent), if one is not currently sufficient. As previously stated, the development of an ordinance is staff intensive and costly to local jurisdictions. This language may require the update of the Spokane Regional Stormwater Manual as well as the Stormwater Management Manual for Eastern WA. The E. WA Manual provides the scientific foundation for the technical requirements of the Permit. **Therefore, consistent with the original sequence of the E. WA Stormwater Manual preceding the 1st cycle Permit, any technical revisions required within the Permit should first be revised within the E. WA Stormwater Manual. We request that any technical revisions proposed within the 2nd Permit cycle first be addressed within the E. WA Stormwater Manual.**

Page 33, line 20: The proposed new language that states, “Permittees shall develop and implement criteria...” calls for the development of an ordinance (or equivalent). The development of an ordinance is staff intensive and costly to local jurisdictions. **Therefore, we request that this language be deleted.**

Page 34, lines 11-12: Since the ordinance or other regulatory mechanism was required to be adopted last Permit cycle, we request that the beginning of this sentence read as follows, “**All Permittees shall implement requirements...**”

Page 38, lines 1-8: The proposed new requirements defined within this paragraph and within *Appendix 6, Street Waste Disposal*, are significant and will add substantial cost to local jurisdictions. The requirement to address decant water in accordance with *Appendix 6* is a significant requirement that is estimated to cost Spokane County over well over \$900,000 (estimate for North side Decant Facility) just for the construction of one decant facility. When you figure in ongoing cost such as man power and long-term maintenance, the impact of this requirement on local jurisdictions is substantial.

The implementation of this new requirement should be contingent on available funding as well as consideration for the significant amount of time necessary to raise funds through stormwater fee increases, navigating revenue bonding processes, potential property acquisitions, project design, project construction, updating local capital improvement plans, consideration of public input/interest, etc. A decant facility being a relatively large capital improvement project, typically takes multiple years to bring to fruition.

In addition, this requirement will require local jurisdictions to update their just completed Operations and Maintenance Plans.

Therefore, we request that Ecology phase in the requirement of a decant facility over the life of the 2nd and 3rd Permit cycles. An option would be to for the 2nd Permit to call for local jurisdictions to make substantial progress towards planning new decant facilities (where not available) with the intent to be ready to begin the design phase by the expiration date of the 2nd Permit. Then starting in the 3rd Permit cycle, phase in the design and construction of a decant facility, allowing for some time consideration (1 constructed decant facility per Permit cycle) for large jurisdictions requiring multiple decant facilities.

Page 38, lines 11-12: The proposed new language, “and runoff from snow storage areas” will require additional cost to local jurisdictions in managing runoff from snow storage areas.

In addition, this requirement will require local jurisdictions to update their just completed Operations and Maintenance Plans, again requiring staff time and funding.

Page 38, lines 24-25: The proposed new language, “...repair, and fueling...” will require additional cost to local jurisdictions in managing runoff from these areas.

In addition, this requirement will require local jurisdictions to update their just completed Operations and Maintenance Plans.

Page 38, lines 39 and 41: The proposed new language, “...pet waste BMPs;...and dumpster...” will require additional cost to local jurisdictions in managing runoff from these areas.

In addition, this requirement will require local jurisdictions to update their just completed Operations and Maintenance Plans.

Page 39, lines 4-20: These two bullet points create a double jeopardy situation and are redundant. Permittees are already required by the terms of the construction general permit and the industrial stormwater permit to obtain these permits. Requiring them in this permit puts permittees in double jeopardy if they fail to obtain them, which would apply two separate sanctions for the same offense. Requirements for these two permits do not belong in the municipal stormwater permit. **Therefore, we request that lines 4-20 be deleted.**

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 than 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 than 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 52, lines 11-14: We request that this section *specifically* list each jurisdiction (City and County) subject to the E. WA Phase II Permit and group them accordingly. That way there’s no mention of Counties that aren’t a current Phase II Permittee.

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

Eastern WA Permittees proposes to work together as a cohesive, large group (Eastern WA as a whole) rather than three smaller sub-region groups as proposed by Ecology. The Permittees request to take 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 14: The new monitoring language (S8.C.2.) proposed by Ecology appears to be contrary to Environmental Protection Agency's (EPA 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."

Contrary to what Ecology is proposing within the draft language, the "EPA expects that many types of entities will have a role in supporting group monitoring activities-including federal agencies, State agencies, the public, and various classes or categories of point source discharges." Although EPA acknowledges that "some regulated small MS4s might be required to contribute to such monitoring efforts, EPA expects, however, that their participation in monitoring activities *will be relatively limited*." The "EPA recommends that, in general, NPDES permits for small MS4s should not require the conduct of any additional monitoring beyond monitoring that the small MS4 may be already performing."

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.

According to the EPA rule referenced above, the "operators of regulated small MS4s are required to evaluate the **appropriateness** of their identified BMPs and progress towards achieving their identified measurable goals." Note that the language states, "appropriateness", rather than "effectiveness". We contend that in Washington State this requirement is met by Ecology defining the "applicable BMPs" (aka: required BMPs) within the Stormwater Management Manual for Eastern Washington, and by requiring concurrency for local stormwater manuals. This is further supported within the Phase II Permit, S4. Compliance with Standards, which requires, "all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent and control pollution of waters of the State of Washington.

In addition, it's important to recognize that many of the BMPs within the Stormwater Management Manual for Eastern Washington (as well as within the other Regional Stormwater Manuals) have been subject to both regional and national study and are known to consistently reduce levels of stormwater pollutants when sited, designed, installed and maintained properly. In fact, this is the primary justification for the "applicable BMPs" within the Stormwater Manual being **required**. We contend that additional "BMP effectiveness studies" on already known effective BMPs is not necessary, would not produce new and regionally beneficial results, would not promote regional scale water quality improvements, nor is it the best use of limited local government funds.

Further, Ecology's Technical Application Protocol Ecology (TAPE) program specifically evaluates new stormwater pollution reduction technologies prior to their certification for use in WA. Therefore, we

contend that Ecology's past actions, developed documentation, applicable BMPs, existing processes and programs already answer BMP effectiveness questions and no further BMP effectiveness monitoring is necessary within the Phase II Permits. Regardless, if additional study of BMPs currently listed within the Stormwater Management Manual for Eastern WA (or other approved document) is necessary then that research and study should be facilitated by the Washington Stormwater Center, in coordination with Washington State University and the University of Washington.

Ultimately, the effectiveness of a BMP at a specific location will in fact be site specific, and based on proper engineering design for the flow, geology, location and use, quality of construction, sufficiency of materials used, and maintenance. The reality is that no two sites are the same, even within the same Phase II jurisdictions. To believe that we are going to gain regionally applicable new data from BMPs effectiveness studies is improbable. In fact the regional applicability of the results are likely to be largely inconclusive and potentially detrimental to generally functional BMPs if any one of the items listed in the first sentence are inadvertently misconstrued as being done properly. If regionally applicable results are improbable and inconclusive, then we risk spending a lot of time and money on something other than improving water quality. **Therefore, we request that the effectiveness study proposals in S8.C. be deleted and staff time/funding within the second Permit cycle focus on water quality improvement actions and projects. Also, that any monitoring requirements fall under TMDL compliance section of the Permit.**

In addition, at the end of each Permit cycle it seems reasonable to that there is some level of watershed health assessment. **In lieu of S8.C., we request that Ecology conduct an independent overall watershed health analysis at the end of the second Permit cycle to begin to assess the overall watershed health.**

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.

Nonetheless, if Ecology is insistent that a stormwater discharge monitoring option be available for Permittees, then **we request that Option 2 be revised to be consistent with the EPA's Preliminary Draft NPDES Permit for the City of Moscow, March 2011.** This alternative monitoring option allows for grab samples 4 times a year for five parameters (flow, fecal coliform, temperature, TSS, phosphorus). This level of monitoring would be much more reasonable and cost effective for Phase II jurisdictions. Option 2 as proposed by Ecology is (details described in Appendix 8) is equivalent to Phase I level monitoring. This is excessive and unreasonable for Phase II communities. Not only has the Phase I monitoring efforts been generally unsuccessful in producing beneficial and actionable data, they have also proven to be extremely costly (estimated at approximately \$70,000 per outfall/year). By this estimate, Option 2 as proposed, would cost Spokane County approximately \$210,000 annually to monitor 3 outfalls. We believe that spending \$210,000 on SWMP projects and programs that have a direct link to water quality improvement is in the public's interest and is a more beneficial use of limited local funds.

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. Many jurisdictions, including Spokane County, spend 2-3 months gathering information, analyzing and compiling data, updating the SWMP, developing various reporting documents, and completing the annual report application. 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 65, lines 14-15: The proposed new language that states, “and 4) linear projects such as roads, pipelines, or utilities”, creates a substantial revision that would create additional cost for local jurisdiction infrastructure projects. **Therefore, we request that this revision be deleted.**

Page 66, lines 19-20: If the proposed deletion of existing language, “on a long term basis”, is removed from this definition, the applicability and intent changes completely. Removing this language would require any area where heavy equipment is stored for any amount of time subject to the requirement of developing a Stormwater Pollution Prevention Plan (SWPPP). This revision would require additional cost, potential delay infrastructure projects and is unreasonable. **Therefore, we request that the language “on a long term basis” remain.**

Page 67, line 24: The proposed removal of the word “channel” from this definition may give the false impression that a channelized illicit discharge to a MS4 is a legal connection. **Therefore, we request that the word “channel” remain.**

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.

Appendix 6, Page 1, lines 25-26: The proposal to delete, “municipal sanitary sewer” and replace it with “MS4” inaccurately changes the focus of this paragraph on POTW and municipal sanitary sewer. This section refers to the municipal sanitary sewer and not the MS4. In addition, the “sewer authority” does not always have jurisdiction over the MS4. Therefore, we request that this section remain unchanged.

Appendix 2, Page 9, lines 7-42: The timelines stated are too aggressive and too short for us to meet the proposed TMDL deadlines as well as meet all of the other deadlines proposed within the Permit within the 5-year permit horizon. This is at a time when staff resources are reduced due to local government economic conditions. The one-year gap between these requirements does not provide the necessary staging to ensure that limited staff can adequately address both TMDL and other mandated requirements. **Therefore, we request that the deadlines listed in this section be extended one addition year.** This makes sense in that the deadline for the Action Plan will coincide with the end of the 2nd Permit cycle in 2018. Then implementing the Action Plan can be a primary focus within the 3rd Permit cycle.

Final Comments

As an alternative to offering “GROSS” grant funds for the permittees to develop regional or statewide programs, Ecology should consider putting forth those funds, or a portion thereof, towards statewide programs that all Phase II jurisdictions could benefit from.

Within the second Permit cycle, we encourage Ecology to prioritize and focus on water quality improvement actions and projects as well as continue to promote the implementation of the existing six (6) SWMP components. We believe that this approach is in the best interest of the public, public health, aquatic health, and surface and ground water quality.

If you would like to speak directly, please don't hesitate to call or request a meeting. Thank you again for listening to the concerns of the Eastern Washington Phase II Municipal Stormwater Permit jurisdictions.

Yours Truly,



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