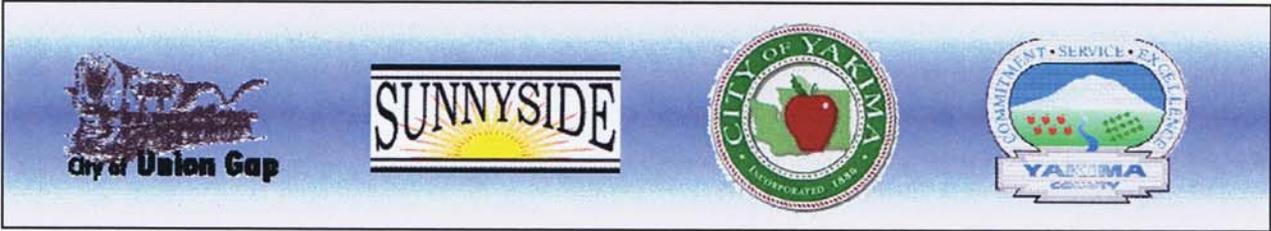


Yakima Area Stormwater Co-Permittees



January 16, 2012

Municipal Permit Comments
Washington State Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7600

Re: **2012 DRAFT EASTERN WASHINGTON PHASE II MUNICIPAL STORMWATER PERMIT**

The Yakima Area Stormwater Co-permittees would like to thank the Department of Ecology for the opportunity to comment on the proposed permit modifications. Our comments are enclosed.

If you have questions regarding our comments, please contact Brian Cochrane, Yakima County Surface Water Division Supervisor at (509) 574-2354.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Gatchalian', written over a horizontal line.

Donald H. Gatchalian, P.E., Yakima County

A handwritten signature in blue ink, appearing to read 'Dennis Henne', written over a horizontal line.

Dennis Henne, City of Union Gap

A handwritten signature in blue ink, appearing to read 'Mark Gervasi', written over a horizontal line.

Mark Gervasi, City of Sunnyside

A handwritten signature in blue ink, appearing to read 'Scott Schafer', written over a horizontal line.

Scott Schafer, City of Yakima

c: Vern M Redifer, P.E., Yakima County
Terry Keenhan, P.E., Yakima County

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Comments on the 2012 Draft Eastern Washington Phase II Municipal Stormwater Permit have been divided into two broad categories: “substantive” and “editorial” and are as follows:

Substantive Comments:

- 1) Overall comment. Many requirements in the existing and draft permit use language such as “develop and implement” or “implement a program”, then fail to clearly specify requirements of such programs. Yakima Area Stormwater Co-permittees realize that much of this language comes from EPAs Phase II rule (Federal Register, Vol. 64, No. 235, December 8, 1999), intended to provide latitude to permitting authorities and permittees, however, lack of specificity has created situations where Ecology has a set of expectations that are not specifically identified in the permit and can lead to violations based on subjective judgments. Such language of subjective and confusing guidelines should be stricken from the permit. In many sections, relaxation of requirements are proposed that make the permit less clear, expectations less defined, and create an administrative and jurisdictional nightmare for Permittees that will increase Permittee costs and court liability. We prefer permit language wherever possible that is specific and clear that reduces multiple, sometimes conflicting, interpretations, so have offered alternative language to provide clarity with what we believe Ecology actually wants, based on discussions. Additionally, requiring actions will focus permittees on efforts that actually improve water quality rather than establish programs to do the same actions, which focuses on the programs (e.g. “implement a program to enforce ...” vs. “enforce ...”). These suggestions are provided in editorial comments following these substantive comments.
- 2) Page 5, line 11. Geographic area of coverage for counties remains unclear, in part because the definition of Urban Area on page 73 is confusing. Clarity could be added by simply stating that geographic coverage is the Urban Growth areas around permitted cities plus any Census-defined Urbanized Area or Urban Cluster area (which would be consistent with page 6, line 7), unless specifically identified in the permit by Ecology.
- 3) Page 16, lines 4-12 and 26-32. Yakima Area Stormwater Co-permittees recognize that a SWMP and SWMPR are essentially the list of Best Management Practices (BMPs) that EPA envisioned Permittees would identify in a Notice of Intent in the Phase II rules (Federal Register, Vol. 64, No. 235, December 8, 1999, page 68754). However, EPA envisioned a mechanism whereby the permitting authority (Ecology) would review the BMPs and ask the Permittee to revise the mix of BMPs to better reflect the Maximum Extent Practicable (MEP) pollution reduction requirement if necessary: *“In issuing the general permit, the NPDES permitting authority will establish requirements for each of the minimum control measures. Permits typically will require small MS4 permittees to identify in their NOI the BMPs to be performed and to develop the measurable goals by which implementation of the BMPs can be assessed. Upon receipt of the NOI from a small MS4 operator, the NPDES permitting authority will have the opportunity to review the NOI to verify that the identified BMPs and measurable goals are consistent with the requirement to reduce pollutants under the MEP standard, to protect water quality, and to satisfy the appropriate water*

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quality requirements of the Clean Water Act. If necessary, the NPDES permitting authority may ask the permittee to revise their mix of BMPs, for example, to better reflect the MEP pollution reduction requirement.” Yakima Area Stormwater Co-permittees strongly request that the permit state that Ecology will review annual (or bi-annual) SWMPRs, and respond to the Permittees by either accepting the SWMPR BMPs or requesting a revision of BMPs to ensure that Permittees are aware of Ecology’s expectations and agreement is assured for public commitments. Additionally, the permit should state that no response by Ecology within a reasonable time (60 days) constitutes acceptance of the Permittees’ BMPs. This would eliminate unnecessary or unknown violation until issued, due to incomplete mutual understandings. Given the flexible and broad nature of many permit requirements, Permittees do not know if their programs meet Ecology expectations without feedback or confirmation from Ecology.

- 4) Page 21, lines 10-16. All existing and draft permit language regarding making maps available should be deleted. Records the Permittees have that are related to the permit are public and available, with reasonable fees for duplication, under freedom of information processes. The section also duplicates S9.D on page 54, line 19 wherein “Each Permittee shall make all records related to this permit and the Permittee’s SWMP available to the public at reasonable times during business hours.” Availability of maps through GIS should satisfy this requirement.
- 5) Page 21, line 21. If the map shall be updated periodically, how often is sufficient and who decides? Please provide a standard. Recommend clarity added by replacing “periodically” with “with new MS4 information by 180 days of permit expiration”. Many municipalities share or contract for a GIS department or hire a private firm and must prioritize workloads and cost with that entity.
- 6) Page 22, line 6. The Yakima Area Stormwater Co-permittees continue to maintain that irrigation water from agricultural sources should not be an allowable or exempted discharge, given recent court cases citing that Permittees are responsible for all discharges even if they merely convey the offending source of water or pollution. See NRDC vs. Los Angeles County, 9th Circuit Court, May 2011. Permittees cannot be made responsible for polluted water caused by others.
- 7) Page 22, line 14. Yakima Area Stormwater Co-permittees continue to maintain that discharges from other permits to municipal stormwater systems should not be an allowable discharge into MS4s, given recent court cases citing that Permittees are responsible for all discharges even if they merely convey the offending source of water or pollution. See NRDC vs. Los Angeles County, 9th Circuit Court, May 2011. A third-party sample indicating a water quality violation at an outfall would be the Permittee’s responsibility, regardless of the source, permitted or not. Yakima Area Stormwater Co-permittees assert that Ecology nor EPA have not taken responsibility for construction and irrigation waters permitted into MS4s and therefore cannot issue permit violations for exceedance of water quality standards at the end the pipe. Even if responsibility has been taken, permitting discharges to MS4s does not relieve

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Permittees from third-party liability under the Clean Water Act for conveyance and discharge.

- 8) Page 23, lines 24 through Page 24, line 3. Yakima Area Stormwater Co-permittee enforcement staff already use informal compliance whenever possible, so additional regulation requiring such is redundant and unnecessary. Informal compliance actions are not currently in the Yakima Area Stormwater Co-permittees' ordinances. Inserting new language requiring informal compliance will add confusion since Yakima Area Stormwater Co-permittees use consistent enforcement codes and personnel for stormwater, sewage pre-treatment, building, zoning and nuisance violations. Please remove this section or fund directly from Ecology. A separate process for stormwater will require additional steps for enforcement personnel to document and present new loopholes for violators to exploit in a court case if the required process isn't precisely followed, creating further delay in resolving illicit discharges. When this section is deleted, then the reference to the "compliance strategy" found on page 26, line 5 should also be deleted.
- 9) Page 24, lines 18 32. We are concerned that the term "assessment" and "assess" may mean very different things to Ecology and Permittees, especially with respect to conveyances. Assessment could range from visual observation to cameras, which have very different costs associated with them. What is Ecology's expectation? If "inspect" is meant by the term "assess", we suggest that this section is duplicative of requirements found on page 37, beginning line 34, that require inspections of Permittee stormwater collection and conveyance systems. We recommend that the assessment requirements in this section be deleted since system inspections will identify illicit connections and discharges. If not deleted by Ecology, the word should be added to Definitions found on Page 64.
- 10) Page 27, line 26. Ecology should delete this section. In the Phase II rules issued by EPA (Federal Register, Vol. 64, No. 235, December 8, 1999), EPA provided an option for permitting authorities (Ecology) to recognize existing programs to reduce duplication of effort. Specifically, on page 68747, EPA states "*NPDES permitting authorities may also recognize existing responsibilities among governmental entities for the minimum control measures in an NPDES small MS4 storm water permit. For example, the permit might acknowledge the existence of a State administered program that addresses construction site runoff and require that the municipalities only develop substantive controls for the remaining minimum control measures. By acknowledging existing programs, this provision is meant to reduce the duplication of efforts and to increase the flexibility of the NPDES storm water program.*" This is further supported in the Phase II rule on page 68774: "*EPA also notes that under § 122.35(b), the permitting authority may recognize its own program to control storm water discharges from construction sites in lieu of requiring such a program in an MS4's NPDES permit, provided that the permitting authority's program satisfies the requirements of § 122.34(b)(4), ...*" With respect to Construction Site Stormwater Runoff Control, operators must obtain coverage or a waiver under Ecology's General Construction Stormwater Permit. The existing and draft Municipal Stormwater Phase II permit

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essentially duplicates Ecology's program by requiring operators to obtain Ecology coverage, and Permittees to review construction SWPPPs for completeness (only) and inspect projects once. Essentially, the minimum control measures are already being done by Ecology, so including the requirement for operators to obtain Permittee approval under the Municipal permit is duplication of effort that adds costs to the program with no additional benefit.

- 11) Page 33, line 20 through page 34, line 3. Yakima Area Stormwater Co-permittees already require on-site retention of the 10 or 25 year event. However, no provision is made for site conditions that prevent on-site retention. Site conditions may preclude certain types of development. By not allowing infeasibility criteria, the Permittees can ensure that only development appropriate for the site occurs. Requiring Permittees to allow less retention due to poor site conditions means existing criteria will be relaxed, functionally allowing a lesser requirement or back-slide, with subsequent decrease in water quality and administrative jurisdiction nightmare. Yakima Area Stormwater Co-permittees disagree with this relaxation of our current ordinances and believes that criteria to determine infeasibility should be either, a) a local option only for those jurisdictions where on-site retention is problematic rather than be used as a requirement for all eastern Washington Permittees, or b) a requirement for those Permittees that do not currently have on-site retention criteria.
- 12) Page 38, line 39. No standards or recommendations for pet waste are provided in the Stormwater Management Manual for Eastern Washington. What is Ecology's expectation for how Permittees are to "address" pet waste, especially in areas with relatively high pervious/low runoff such as parks and open space? Please provide specific actions or a standard with guidelines for retention/infiltration dominated communities so Permittees will know what actions and how much action is compliant with the permit or delete the draft requirement.
- 13) Page 40, line 14. The deletion "greater than 10 year recurrence interval rainfall" should be retained. The definition of "major storm" is subject to interpretation and leaves Permittees open to an NOV if they differ with Ecology on what a "major storm" constitutes. Since rainfall frequencies and records are available at airports (and most airports are near urban areas), use of rainfall data is most appropriate. Deleting "or snowmelt" is appropriate since no frequency data is available to quantify snowmelt frequency or recurrence.
- 14) Page 52, lines 6-24. Use of sub-regions is confusing. The draft language suggests that all Permittees must work with all others in their sub-region, yet conversations with Ecology staff indicate that Permittees may enter cooperative agreements with just a small number of other Permittees in their sub-region. Additionally, the option to work out of sub-region in lines 15-17 show that Ecology is willing to allow other arrangements. Suggest deleting the sub-regional idea and suggest the following language: "Option 1: Enter into a collaborative agreement with other Permittees to select, develop, and conduct Ecology-approved effectiveness studies. Pursuant to the

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agreement, Permittees will collaboratively propose studies to assess effectiveness of required stormwater management program activities and best management practices.” Reference to sub-regions in subsequent sections can be changed to “Permittee group” or equivalent. For example, Yakima Area Stormwater Co-Permittees can partner with Spokane Area Stormwater Co-Permittees for an Ecology-approved effectiveness study.

- 15) Page 52, lines 33-34. If each sub-region shall submit 4 proposals how many proposals will multiple Permittee groups working within the sub-region submit? What if all eastern Washington Permittees want to collaborate on one large regional proposal? The simplest requirement will be to state how many proposals each Permittee be responsible for, regardless of how many others are in the group or the geographic area of the group. Suggest each Permittee be party to no more than two proposals. Ecology will have to approve the proposals suggested by each Permittee anyway.
- 16) Page 53, line 35. Annual reports, as required by this line of the draft permit, are inconsistent with EPAs Phase II rule (Federal Register, Vol. 64, No. 235, December 8, 1999, page 68770) wherein EPA suggested that: “*For subsequent permit terms, the MS4 operator must submit reports in years 2 and 4 unless the NPDES permitting authority requires more frequent reports.*” Yakima Area Stormwater Co-permittees agree with EPA’s logic that annual reports are appropriate for the first permit term to help permitting authorities track development of permittee programs, however, programs are now in place and annual reporting represents a sizeable burden when combined with SWMPR revision. Year 2 and 4 reports will reduce the reporting burden on Permittees and Ecology’s burden to review all annual reports and SWMPRs.
- 17) Page 57, lines 11-13. Draft language “*which could constitute a threat to human health, welfare, or the environment*” is subjective. Additionally, it has been the Yakima Area Stormwater Co-permittees’ experience that local Ecology officials expect notification of ALL discharges and spills. To remove subjectivity and meet local expectations, suggest revision to read: “If a Permittee has knowledge of a discharge, including spills, into or from a MS4, the Permittee shall:” One reporting method to Ecology is preferred; Permittees must already report hazardous material spills, so a single telephone report should meet requirements of both hazardous material and stormwater programs.
- 18) General comment on Appendix 8. The draft Appendix 8 appears copied word-for-word from Western Washington Phase I and Phase II drafts, with some downward adjustments made in the “Monitoring Frequency” section to address the lower precipitation in eastern Washington. It is inappropriate to copy one set of monitoring requirements to another region without making adjustments for objectives, parameters sampled, types of sampling, number of samples required, and site conditions. Yakima Area Stormwater Co-permittees suggest that such monitoring considerations be driven by the goal or question to be answered and the degree of variability in the samples. QAPPs are the appropriate tool to address methodology for a given monitoring effort.

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- 19) General comment on Appendix 8. The required monitoring appears to far exceed the level of detail and effort required “to characterize stormwater runoff quantity and quality at a limited number of locations in a manner that allows analysis of loadings and changes in conditions over time and generalization across the Permittee’s jurisdiction.” (Draft Eastern Washington Phase II Municipal Stormwater General Permit, Appendix 8, page 1, lines 2-4) Further, the required monitoring goes well beyond what EPA envisioned in their Phase II rule (Federal Register, Vol. 64, No. 235, December 8, 1999, page 68769) wherein “In the second and subsequent permit terms, EPA expects that some limited ambient monitoring might be appropriately required for perhaps half of the regulated small MS4s. EPA expects that such monitoring will only be done in identified locations for relatively few pollutants of concern.” It is apparent that Ecology has “stacked the deck” to ensure that most Permittees will select option 1 in Section 8 by making the requirements in this Appendix extremely impractical and expensive for eastern Washington conditions. The requirements found in this Appendix need to be adjusted to reflect EPA’s intent and Ecology’s overall goal. We feel that there is really one option provided by Ecology since the alternative option is too costly and difficult to implement.
- 20) General comment on Appendix 8. The required monitoring will be prohibitively expensive. Using local laboratory, equipment and labor costs, we have conservatively estimated the 5-year permit cost for discharge monitoring alone as follows:

Component	Population < 10,000 (one site)	Population between 10,000 & 50,000 (two sites)	Population > 50,000 (three sites)
Lab	\$48,785	\$97,571	\$146,356
Equipment	\$12,910	\$17,985	\$23,060
Labor	\$35,840	\$71,680	\$107,520
Total	\$97,535.00	\$187,236.00	\$276,936.00

We feel this is a poor use of stormwater utility funds since little information on program effectiveness will be inferred at significant expense from discharge monitoring. The level of effort and detail required should be reduced to better balance cost vs. benefit from the draft permit discharge monitoring requirements.

Editorial Comments:

- 21) Page 5, line 14. Use of “contiguous” is confusing. Yakima County has Urban Growth Areas and Census urban areas around two municipalities that abut (are contiguous to) each other, so the area from a permitted municipality is contiguous with the Urban Growth Area of an unpermitted municipality. This would suggest from the permit language that the County regulate the area around both municipalities, yet that is not

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- the case from discussion with Ecology. Suggest striking the entire sentence beginning on line 13.
- 22) Page 5, line 18. Clarity added regarding Yakima County is good. Suggest full descriptions for all permitted areas in each county, such as: “For XYZ County, the geographic area of coverage is the Urban Growth Area and Census Urban Area (or Urban Cluster) around the following communities: (list communities)”.
 - 23) Page 7, line 7. Suggest adding clarity by replacing “developing and implementing” with “completing the requirements of”.
 - 24) Page 12, line 19. Geographic areas of coverage defined on page 5 need adjusted to comply with authorization beginning on this line. Yakima County has Census defined Urbanized Area extending onto the Yakama Nation.
 - 25) Page 13, line 5. Suggest adding clarity by replacing “implements” with “complies with”.
 - 26) Page 13, line 6. Suggest adding clarity by replacing “implementation of” with “compliance with”.
 - 27) Page 14, line 10. Suggest adding clarity by replacing “implementation of” with “compliance with”.
 - 28) Page 14, line 16. Suggest clarity by replacing “operational and/or structural BMPs that are currently being implemented” with “operational BMPs being performed or completed, and structural BMPs under construction or constructed”
 - 29) Page 14, line 22. Suggest adding clarity by replacing “BMPs that will or may be implemented” with “BMPs that are planned or scheduled”
 - 30) Page 14, line 26. Suggest adding clarity by replacing “implemented” with “performed”.
 - 31) Page 14, line 30. Suggest adding clarity by replacing “implementation” with “adaptive management”.
 - 32) Page 14, line 38. Suggest adding clarity by replacing “implement” with “complete”.
 - 33) Page 15, line 5. Suggest clarity by deleting “implementation”.
 - 34) Page 15, line 8. Suggest adding clarity by replacing “implementation of the BMP approach of this section” with “performance and/or construction of additional BMPs”.
 - 35) Page 15, line 12. Suggest adding clarity by replacing “implementing” with “complying with”.
 - 36) Page 15, line 13. Suggest adding clarity by adding “and schedule” after “response”.
 - 37) Page 16, line 1. Suggest adding clarity by replacing “implement” with “complete actions and activities of”.
 - 38) Page 16, lines 20-22. Suggest replacing entire sentence with: “Permittees with SWMPs shall continue actions and activities of those SWMPs.”

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- 39) Page 17, line 18. Suggest adding clarity by replacing “development and implementation of each component of the SWMP” with “compliance with each section of this permit”.
- 40) Page 17, line 26. Suggest adding clarity by adding “but is not required to” after “should”.
- 41) Page 18, line 13. Suggest adding clarity by replacing “implement” with “complete the actions and activities of”.
- 42) Page 18, line 19. Suggest adding clarity by replacing “be developed and implemented” with “apply”.
- 43) Page 18, line 22. Suggest adding clarity by replacing “implement” with “complete the actions and activities of”.
- 44) Page 19, line 2. Suggest adding clarity by replacing “business, such as” with “business. Examples may include, but are not specific requirements, ...”.
- 45) Page 19, line 24. Suggest adding clarity by replacing “activities, such as” with “stormwater activities. Examples may include, but are not specific requirements, ...”.
- 46) Page 20, line 9. Suggest adding clarity by removing “implement a program or policy directive to”. The resulting sentence will read: “Permittees shall create opportunities ...”.
- 47) Page 20, line 29. The addition of “and prevent” is unnecessary. Permittees already have ordinances prohibiting illicit connections and illicit discharges, but are otherwise unable to actually stop someone intent on connecting or discharging to the MS4.
- 48) Page 21, line 9. No definition provided for “priority water bodies”. Who decides these? If an Ecology list, provide a reference to the list.
- 49) Page 21, line 18. Mapping standards are not provided. An example description (line following) is not a standard. Either provide the standard, or direct permittees to follow the example, but not both. Please provide a link to the description.
- 50) Page 21, line 20. No standard for the documentation is provided, so maintaining the correct documentation is difficult. Again, an incomplete mutual understanding is possible. If spatial metadata is what Ecology means by “documentation of information”, please provide the metadata standard.
- 51) Page 21, line 22. Suggest adding clarity by removing the word “effectively” so the sentence reads “Each Permittee shall prohibit ...”.
- 52) Page 21, line 24. Suggest adding clarity by replacing “Implement an ordinance” with “Enact and enforce an”.
- 53) Page 23, line 20. Who determines “significant source of pollutants to waters of the State” and what criteria area used? Please clarify. Is this the same as “significant contributor” found in the Definitions on page 72?

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- 54) Page 24, line 4. Suggest adding clarity by removing “implement an ongoing program to” so the sentence reads “Each Permittee shall identify and detect ...”. If the next sentence begins “Each Permittee shall:” items (i-vi) can then begin with an action verb. For example, item i would begin “Conduct investigations ...”; item ii would begin “Locate priority areas ...” Use of this structure will shift the focus of the requirements from a program to actions, which is more effective.
- 55) Page 24, line 28. How many times do we need to verify outfall locations? We can understand detection of illicit discharges may need perpetual re-survey to identify, but outfalls locations don’t move and need re-verified. Suggest footnote at “outfalls” to indicate that outfall verification is for new permittees only to perform by a given date.
- 56) Page 25, line 3. Suggest adding clarity by replacing “ongoing training program” with “annual”. Training program is vague and subject to differences of opinion as to sufficiency, quality, and quantity of training. “Annual” at least defines the issue of frequency.
- 57) Page 25, lines 13-15. This section on public education duplicates requirements beginning on page 18. Suggest deletion.
- 58) Page 25, lines 16-18. Confusing section. The first sentence requires an ongoing implementation of a program, but the second sentence refers to a plan. Which does Ecology want, since the two are very different with respect to time? Suggest the following direct language: “Permittees shall prepare a written description of how they will respond to illicit discharges, including spills, and illicit connections to the MS4.”
- 59) Page 26, lines 11 and 13. The terms “constitutes a threat” and “otherwise judged to be urgent” are subjective and subject to differences of opinion between regulators and permittees. If these terms are retained, they require definitions. In addition, it has been Yakima Area Stormwater Co-permittees ’s experience that Ecology wants ALL illicit discharges to and from the MS4 to be reported, so everything has become “threatening” or “urgent”. Suggest clarifying this bullet beginning on line 10 to state: “Immediately respond to all illicit discharges, including spills.”
- 60) Page 26, lines 25-30. The phrase “documented effort ... within 6 months” could be construed as not requiring documentation after 6 months. Additionally, code violation cases are frequently longer than 6 months, and judges have been known to hand down sentences that don’t remove the violation of state law or requirement for the Permittee. The use of specific time frames in a permit does not recognize that permittees must relinquish control of timelines once enforcement cases enter the legal system, and cannot meet the permit requirements. Suggest Ecology consider language to state “Permittees shall use and document escalating enforcement required by ordinances in section xxx to eliminate illicit connections to the MS4.
- 61) Page 27, line 27. Suggest adding clarity by replacing “implement and enforce a program” with “enforce ordinances”.

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- 62) Page 27, line 33. Suggest adding clarity by replacing “shall implement an ongoing program for ensuring” with “shall ensure”.
- 63) Page 29, lines 17 and 18. Suggest adding clarity by replacing “shall implement an enforcement strategy and the enforcement provisions of” to “shall enforce”.
- 64) Page 29, line 24. Suggest adding clarity by replacing “shall implement procedures for site plan review” with “shall review site plans”.
- 65) Page 29, lines 31 and 32. Please provide a reference to the definition on page 71 for “qualified personnel”. Otherwise the term appears subjective.
- 66) Page 30, line 7. Please provide a standard for “adequate training”. Suggest annual training to address frequency of training. Who decides what “adequate” means with respect to quality of training?
- 67) Page 30, line 12. Suggest adding clarity by replacing “shall implement procedures for site inspection” to “shall inspect sites”.
- 68) Page 30, line 18. See comment [66](#)).
- 69) Page 30, line 25. See comment [65](#)).
- 70) Page 31, line 27. Suggest adding clarity by replacing “shall implement and enforce a program to address” with “shall control”.
- 71) Page 31, lines 30 and 31. Suggest adding clarity by replacing “The program” with “Permittees”
- 72) Page 32, line 2. Suggest adding clarity by replacing “shall implement an ordinance” with “shall adopt and enforce” with footnotes identifying adoption requirements for new permittees.
- 73) Page 32, line 26. Language requiring Permittees (“shall”) to encourage project proponents to use natural drainage seems contradictory. Recommend the following language: “Permittees shall require project proponents to maintain natural drainages to the maximum extent possible, particularly where clearly defined by swales, channels, gullies and draws.” Modification of natural drainages due to development has created many problematic flooding problems for Yakima Area Stormwater Co-permittees. Strong language from Ecology will provide needed support to prevent future problems. Additionally the Stormwater Management Manual for Eastern Washington (SMMEW) specifies an order of preference for dealing with flow control, including use of natural drainages. Compliance with the SMMEW is already a permit requirement via Appendix A.
- 74) Page 33, line 7. Suggest adding clarity by replacing “owners to implement appropriate runoff treatment, flow control, and source control BMPs considering the proposed land use at the site to minimize adverse impacts to water quality.” with “owners to use source control, runoff treatment and flow control BMPs designed in accordance with

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the Stormwater Management Manual for Eastern Washington or other Ecology-approved equivalent manual”.

- 75) Page 34, line 5. For clarity, please add the name of the Core Elements following the numbers.
- 76) Page 34, line 10. Add “or equivalent manual approved by Ecology” to the end of the sentence.
- 77) Page 35, line 7. See comment [63](#)).
- 78) Page 35, lines 10-12. Suggest adding clarity by replacing entire section with “Permittees shall review site plans as follows:”
- 79) Page 35, line 24. See comment [65](#)).
- 80) Page 35, line 28. See comment [67](#)).
- 81) Page 35, line 30. Suggest adding clarity by replacing “Procedures shall include a procedure for keeping records ...” with “Permittees shall keep records ...”.
- 82) Page 36, line 19. See comment [65](#)).
- 83) Page 37, lines 10-12. Suggest adding clarity by replacing entire sentence with; “Permittees shall operate and maintain municipal facilities to prevent or reduce stormwater runoff.”
- 84) Page 37, line 28. For clarity, remove the word “appropriate” from the sentence. Appropriate has already been defined in section a, above as those in Chapters 5, 6, and 8 of the Stormwater Management Manual for Eastern Washington.
- 85) Page 37, line 34. Please add “but not limited to” after “including”.
- 86) Page 37, line 37. For clarity, replace “address” with “include information on”.
- 87) Page 38, lines 4-6. For clarity, suggest replacing “shall implement ... pollution prevention/good housekeeping practices.” with “shall conduct stormwater system operation and maintenance in accordance with the O&M plan.”
- 88) Page 38, line 10. See comment [86](#)).
- 89) Page 38, line 16. For clarity, suggest replacing “implement” with “perform” or “conduct”.
- 90) Page 38, line 17. For clarity, suggest replacing “established in” with “in accordance with”.
- 91) Page 38, line 22. See comment [86](#)).
- 92) Page 38, line 22-29. The requirement contained in the second sentence precludes the need for a plan required in the first sentence. Do we need a plan to do what Ecology is specifically requiring? One of the two requirements needs to be deleted.
- 93) Page 38, line 30. See comment [86](#)).

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- 94) Page 38, line 35. For clarity, suggest replacing “implement” with “perform” or “conduct”.
- 95) Page 38, line 37. See comment 86).
- 96) Page 38, line 44. For clarity, suggest replacing “implement” with “perform” or “conduct”.
- 97) Page 39, lines 4-14. This bullet item duplicates requirements in Construction Site Stormwater Runoff Control section on page 27. Suggest removal from this (Municipal Operations and Maintenance) section.
- 98) Page 39, lines 15-20. This section should be removed. Requirements already exist for Permittees to have NPDES coverage under the General NPDES Permit for Stormwater Discharges Associated with Industrial Activities or another NPDES permit, so requiring the same here would put a Permittee in violation of two permits if failure to obtain an industrial permit were to occur, essentially a double jeopardy situation.
- 99) Page 39, line 24. For clarity, suggest replacing “implement” with “write and follow”.
- 100) Page 39, line 25. Please clarify the specific reference or describe “these facilities”.
- 101) Page 39, line 32. For clarity, suggest replacing “assess” with “evaluate and document”.
- 102) Page 39, line 42. For clarity, suggest replacing “implement” with “use, monitor and maintain”.
- 103) Page 40, line 10. What defines “problem facilities”? Please provide specific criteria so Permittees know which facilities are subject to increased monitoring.
- 104) Page 40, line 11. Remove the term “more frequently” regarding inspection. If 95% of facilities must be inspected every two years, would more frequently mean annually? After every 2-year storm event? Draft language is unclear and vague.
- 105) Page 40, line 16-17. Remove “as soon as practicable”. Suggest a timeframe be given for clarity, such as 90 days, with a requirement to notify Ecology if repairs will take longer.
- 106) Page 40, line 24. For clarity, suggest replacing “address” with “include topics on: ”.
- 107) Page 52, lines 1-5. This section presents two very different options for Permittees. Option 2 appears disproportionately arduous compared to Option 1, so most Permittees will select Option 1. Ecology should propose equivalent options.
- 108) Page 52, line 3. For clarity, suggest deleting “to implement” since the task is to notify which option the Permittee is choosing.
- 109) Page 52, line 9. Suggest deleting “targeted” for clarity.
- 110) Page 52, line 18. Replace “sub-region” with “Permittee group”.
- 111) Page 52, line 20. Delete “sub-regional”.

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- 112) Page 52, line 29. Delete “sub-regional”.
- 113) Page 52, line 35. Suggest adding the word “written” between “Ecology’s” and “approval” on line 36. Permittees and Ecology then have a documented date and timeline in which QAPPs must be submitted.
- 114) Page 53, lines 1-2. “Begin full implementation” is vague and subjective, possibly leading to a NOV for Permittees. How much of the study or what specific actions should be started within the six month timeframe? Full implementation could mean that a consultant has been hired; or that data has been collected. What is Ecology’s specific expectation so Permittees can be sure they are compliant with the terms of the permit? Since QAPPs must include a schedule of data collection and a section describing roles and responsibilities, Permittees should be required to carry out the study (studies) in accordance with the QAPP. The following language is suggested: “Perform actions in accordance with roles, responsibilities and schedule identified in the approved QAPP.”
- 115) Page 53, line 3. For clarity, delete “relevant”. Studies should not be collecting irrelevant data if properly defined in a QAPP.
- 116) Page 53, line 3. For clarity, replace “as part of conducting” with “for”.
- 117) Page 53, line 7. For clarity, delete “implementation”. Sentence should read: “Describe interim results and status of the study in annual reports throughout the duration of the study.”
- 118) Page 53, line 23. See comment [114](#))
- 119) Page 54, line 27. Requirements in section E identified here seem to contradict requirements to use electronic annual report described in section B, line 3 above. Please clarify.
- 120) Page 54, line 34. For clarity, suggest replacing “status of implementation of the requirements” with “status of compliance with the requirements”.
- 121) Page 57, line 14-15. For reasons cited in comment [59](#)), suggest revision to read: “Take appropriate action to correct or minimize the impact of the discharge”.
- 122) Page 57, lines 27-28. “Unavoidable” and “necessary” are subjective terms that need clarified or conditioned. Who decides when these conditions are met? What happens when Ecology disagrees with the Permittee’s assessment, especially after an event has passed? Suggest an addition to this section to require consultation and concurrence with local Ecology to ensure Permittees do not violate their permit if second-guessed by Ecology.
- 123) Page 58, lines 14-18. Subjective statement in line 15: “reasonable likelihood of adversely affecting ...”. The entire sentence should be revised to read: “The Permittee shall take steps to minimize or prevent any discharge in violation of this permit.”

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- 124) Page 63, lines 2-27. A word search for “upset” found only one instance on page 58, line 26 (G9). Since upset is not used anywhere else in the permit, recommend this section be deleted and reference on page 58 deleted. Upsets section appears to be a relic from “technology based effluent limitations” that do not apply to this permit.
- 125) Page 64, line 12. The revision: “prior to the date that Ecology issues coverage under this permit” is confusing. Please clarify the difference between this date and the “issuance date” on the front of the permit. Unlike other general permits, municipalities rarely come under coverage in the middle of the permit cycle, so the distinction may be unimportant and the sentence can end with: “issuance date of this permit.”
- 126) Page 67, line 29. The new language “and infiltration /exfiltration of non-stormwater that takes place in pipe bedding” goes far beyond the existing definition and EPA definitions of illicit discharge. Please remove the new language since detection of such sources are difficult to detect, control and well beyond the scope of the existing permit.
- 127) Page 69, line 5. Suggest adding “System” after “Municipal Separate Storm Sewer” so definition of MS4 on line 3, above, flows clearly into definition of Municipal Separate Storm Sewer. Alternately, insert “System” and use “(MS4)” to be consistent with NPDES definition format at line 19.
- 128) Page 71, line 38. The new definition is not found elsewhere in the permit. Recommend deletion.
- 129) Page 72, lines 5-6. The phrase “considered to be sufficient” is subjective and may result in differences of opinion between Ecology and Permittees. Suggest the following language to remove some of the subjectivity: “a discharge that contributes a representative sample (in accordance with G9) loading of pollutants sufficient to demonstrate the measured deterioration of receiving water quality due to the discharge.” Omit the phrase “or instream habitat conditions.” since this permit and permit authority is only authorized for water quality protection.

Comments on Appendix 6, Street Waste Disposal follow:

- 130) Page 1, lines 14-15. For clarification, if Ecology will not generally require a waste discharge permit, please describe what circumstances Ecology would or has required one.
- 131) Page 1, line 25. A municipal sanitary sewer is not the same as a Municipal Separate Storm Sewer System or MS4. The strikeout should be retained and the “MS4” insertion deleted.
- 132) Page 1, line 35. Please refer to definition of “not reasonably available” on Page 2, line 8.
- 133) Page 1, line 42. See comment [131](#)).

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- 134) Page 2, lines 4-5. How is “non-toxic under circumstances of use” determined? And who decides? What information must a Permittee collect to receive approval in advance from Ecology?
- 135) Page 2, line 18. Since this option for disposal is the last of 3 sequential preferences, a statement that the 2nd preferred alternative disposal method (Stormwater Treatment BMP) is also not available needs to follow this statement regarding “the” preferred disposal method to sanitary sewer.
- 136) Page 2, line 22. See comment [131](#)).
- 137) Page 2, lines 30-33. Street waste solids are not referenced in this section, despite the title on line 30. The subject of the statement is contaminated soils, and implies, but does not state, that street waste solids are contaminated. Please clarify the relationship between street waste solids, contaminated soils, solid waste, and hazardous waste so Permittees know, or are provided enough information to determine, what the correct disposal method is for street waste solids.

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