



**City of
Wenatchee**

DEPARTMENT OF PUBLIC WORKS

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February 3, 2012

WA State Department of Ecology
Water Quality Program
P.O. Box 47696
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RE: Comments on the Draft Eastern Washington Phase II Municipal Stormwater Permit, August 2013 to August 2018

To Whom It May Concern:

Over the last 5 years, the City of Wenatchee has worked diligently to develop and implement a regional stormwater management program that addresses local stormwater issues while balancing regulatory requirements, environmental protection, public health and financial resources. To implement the current program, the city adopted a stormwater rate schedule in 2010 that will increase stormwater rates by over 53% by 2015. In 2010 the city's stormwater rate was already one of the highest in Eastern Washington.

In reviewing the draft permit, one of the main concerns was the number of changes that increase the level of regulation by the state on specific program elements. Another concern is the acceleration of the monitoring requirements. Lack of proper planning for monitoring and increased regulation on how the city implements each program element will only result in burdening the community economically and may not actually address local stormwater issues. Moreover, the proposed changes are not consistent with one of the key provisions of EPA's stormwater regulatory framework noted in the draft permit fact sheet. According to the fact sheet (page 18) the stormwater rules should include "flexibility that allows permittees to first focus their resources on the highest priority problems (40 CFR 122.26(d)(2)(iv))." Please consider the following comments on the draft Eastern Washington Phase II Municipal Stormwater Permit effective August 2013 to August 2018:

- Page 16, S5.A.2, lines 26-32: The first sentence clearly states, "Each Permittee shall prepare written documentation of the SWMP." However, the second sentence is unclear. This language appears to require an additional document called the "Stormwater Management Program Report (SWMPR)" on top of the Stormwater Management Program (SWMP) documentation required in the first sentence. The city is concerned that this will increase program costs unnecessarily and that the SWMPR would include the same information as what should be found in the SWMP documentation and the annual report. Therefore, we request that all references to SWMPR eliminated.
- Page 17, S5.A.3.a, 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, S5.A.4.b, line 35: The proposed revision to the SWMP from “should” to “shall” include coordination mechanisms among departments would require substantial staff time and cost to local jurisdictions. In addition, the development and implementation of the SWMP and the development of the Operations and Maintenance (O&M) Plan within the first permit cycle have already resulted in 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, S5.A.4.b, lines 1-5: This new sentence adds complexity, additional work load and higher cost to the SWMP. Therefore, we request that the proposed new sentence be deleted.
- Page 18, S5.B.1.a, 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 the original language.
- Page 19, S5.B.1.a.iii, line12: It may be premature to be required to provide information to engineers, construction contractors, developers, development review staff, and land use planners about low impact development (LID) since Ecology has yet to develop a technical LID manual for Eastern WA. Therefore, we request that the words “low impact development” be removed from the sentence on line 12.
- Page 19, S5.B.1.b, lines 22-25: The city recommends removing this new requirement in its entirety. The creation and maintenance of stewardship programs are costly and raise serious liability concerns with regards to citizens working in the right-of-way or in riparian areas that in Wenatchee are typically steep and rocky. In addition, the riparian areas along the Columbia River are not owned by the city and often only accessible through private property. Another safety concern is the frequent water level changes that can occur along the river from the operation of the dams. Furthermore, other organizations have similar programs in the Wenatchee Valley, but they are typically outside the urban area and outside the city’s stormwater utility. The city cannot use stormwater utility funds to support activities outside the city. We request that the city be able to use funds to address local issues and that this new section be deleted.
- Page 19, S5.B.1.c, lines 26-31: This new requirement is a substantial change that will add additional work load and additional cost to the city. 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, S5.B.2.b, 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, S5.B.2.b, line 23: We request keeping the existing reference to "SWMP" and deleting the proposed reference to "SWMPR".
- Page 20, S5.B.3, line 29: The new words "and prevent" add a whole new element to IDDE that would require revision of the existing Illicit Discharge Detection & Elimination (IDDE) program. 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, S5.B.3.b.iii, lines 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, S5.B.3.b.iii, 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. In addition, the city has not identified this as a local stormwater concern. Therefore, we would request that the existing language be restored.
- Page 23, S5.B.3.b.vi, 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, policies and ordinance revisions. Permittees have just adopted IDDE ordinances and need the opportunity to enforce them before taking them back to the public and elected officials. 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, S5.B.3.b.vi.2, 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) 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, S5.B.3.c.iii, 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 developed during the first permit cycle. Therefore, we request that this proposed new requirement be deleted.
- Page 25, S5.B.3.c.v, lines 3-12: The frequency of “ongoing training” should be at the discretion of the Phase II jurisdictions. Additionally, training plan is already included in the O&M Plan. Therefore, we request that lines 3-12 be deleted.
- Page 25, S5.B.3.c.vi, 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, S5.B.3.d.iv, lines 10-17: The word “Immediately” is a subjective statement and an impossible requirement in some cases. These two bullets are not necessary because IDDE procedures were required in the first permit cycle and emergency services for spill response currently exist. Therefore, we request that the new language be removed.
- Page 26 S5.B.3.d.iv, 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 33, S5.B.5.a.ii, 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.”

- Page 38, S5.B.6.a.i, 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 40, S5.B.6.a.ii, line 9: The proposed new language, “...every two years...” will require additional labor and equipment expenses. 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 be as described within the local adopted O&M Plan.
- Page 40, S5.B.6.a.ii, 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 52, S8.C.1: With regards to Option 1, the concern is that this will produce minimally defensible answers for BMP effectiveness monitoring and will likely fall short of producing locally beneficial and actionable data. This option is also expected to be costly. The city requests 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 52, S8.C.2: With regards to Option 2, the proposed monitoring is cost prohibitive and difficult to implement in Eastern Washington. The city would like to propose ambient receiving water monitoring as an alternative to stormwater discharge monitoring.
- Page 67, Definitions and Acronyms, 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 and the original wording restored.

- Page 67, Definitions and Acronyms, 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, Definitions and Acronyms, line 3: We request that Ecology delete this definition based on previous SWMPR comments.

Within the second Permit cycle, we encourage Ecology to prioritize and focus on water quality improvement actions and projects as well as to continue to promote the implementation of the existing six SWMP components. We believe that this approach is in the best interest of the local economy, public health, aquatic health, and surface and ground water quality. We look forward to continuing to work with Ecology and the other stakeholders to develop and implement effective stormwater management programs in Eastern Washington.

Sincerely,
PUBLIC WORKS DEPARTMENT



Steve King, P.E.
Public Works Director-Engineering

Cc: Frank Kuntz, Mayor
Allison Williams, Executive Director