

October 14, 2005

Karen Dinicola
Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7696

Re: Comments on Preliminary Draft Phase II Permit for Eastern Washington

Dear Karen:

I want to thank you for the opportunity to comment on the preliminary draft permit. I also want to thank you and many others for your hard work to make this process meaningful and productive. I hope that the grass roots effort that was developed with the stakeholders in the development of the Eastern Washington Stormwater Manual (Stormwater Manual) and the Model Municipal Stormwater Program continues as we take on the hard tasks of addressing water quality issues.

Instead of commenting on specific items within the permit, Yakima County would instead like to provide general comments for your consideration.

Again, thank you for allowing us to comment on the preliminary draft permit.

Sincerely,

Donald H. Gatchalian, P.E.
Assistant Public Services Director, Environmental Services
Yakima County

General Comment No. 1

Yakima County feels that inclusion of Appendix 2 (Minimum Technical Requirements for Stormwater Management at New Development and Redevelopment Sites) is contrary to what was discussed when the Eastern Washington Stormwater Manual was developed. Appendix 2 goes beyond simply providing guidance and instead places more requirements on local jurisdictions as part of the permit. Additionally, Appendix 2 bypasses the rule-making process under State law.

Yakima County is recommending that Appendix 2 be removed from the permit. If the appendix is to be included in the permit, then it should go through the rule-making process.

General Comment No. 2

Yakima County objects to the specificity of BMP implementation in the draft permit, including the proposed implementation schedule. Our understanding is that we have five years to fully implement the requirements of the permit. A permit containing a specific implementation schedule would take away control and flexibility needed by local jurisdictions in attaining permit compliance. Not meeting a particular deadline, even though significant progress has been made towards overall compliance, exposes local jurisdictions to potential litigation.

Our recommendation is to provide Phase II jurisdictions with the necessary flexibility, so long as the jurisdiction is in full compliance with the permit requirements by the end of the 5-year permit term.

General Comment No. 3

Yakima County feels that the NPDES Phase II Permit needs to blend with the Draft Construction Stormwater General Permit. We were informed by Ecology that different staff members are in charge of different projects (i.e., different staff for NPDES Phase II permit, UIC Rule and Guidance Document, and Construction Stormwater General Permit). It is also disconcerting that TMDL development is assigned to other Ecology division staff. Yakima County understands that these projects are large, complex, and in all cases, interrelated.

Yakima County recommends that Ecology staff members responsible for the development of the various on-going projects meet and compare notes to ensure that all efforts are coordinated.

General Comment No. 4

Yakima County feels that the definition of Redevelopment is too restrictive. We informed Ecology many times during the development of the Eastern WA Stormwater Manual that this definition puts a heavy burden on local jurisdictions, especially those that can less afford it. Here are a couple of examples of financial burden:

1. Gravel roads are considered pollutant generating impervious surface (PGIS) as defined in Appendix 2 (page 2 of 22). To comply with the Clean Air Act, the local jurisdiction is required to control air pollution; therefore, when funding is available, the most common practice for local municipality is to pave gravel roads. With this permit requirement however, local jurisdictions will be required to install drainage improvements when converting gravel roads to paved roads.
2. Installation of drainage improvements is required during reconstruction of deteriorated streets. Small communities and economically depressed municipalities will not have funding to support such requirement. Most of the time, municipalities rely on transportation grants, however this funding source is dwindling. Adding drainage improvements to the project will add costs to the project and limit the funds to repair deteriorated streets.

Yakima County recommends that exemptions be allowed for (1) conversion of gravel roads to paved roads, and (2) reconstruction of deteriorated streets. Ecology also needs to consider adding additional exemptions, if it makes sense, such as the two examples mentioned above.

General Comment No. 5

The municipal NPDES permit regulates municipal stormwater systems. Yakima County feels that local jurisdictions should not be delegated the burden to review stormwater facilities in private development.

Yakima County recommends that this should be clearly explained and stated in the permit.

General Comment No. 6

Ecology staff informed Yakima County during the workshop that the permit needs to be prescriptive in nature and that is why Appendix 2 is being attached as a set of requirements rather than as a guidance document. We are disappointed with this decision because adaptive management should be allowed during the first 5-years of the permit since not all of the BMP's have proven to be effective in preventing or minimizing stormwater pollution.

Yakima County requests flexibility through adaptive management, especially if one or more of the actions taken is not successful and needs to be revised or adjusted.