

14 October 2005

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

Dear Karen:

RE: Comments on Proposed MS4 Stormwater General Permit [07/13/05]

The Central Washington Home Builders Association [CWHBA] appreciates this opportunity to submit comments regarding the proposed NPDES and State Waste Discharge General Permit for Discharges from MS4s in Eastern Washington.

The CWHBA has concern that the proposed General Permit creates cost implications on municipalities that can only be offset by establishing enormous stormwater utility fees. Many citizens in the Central Basin live below the poverty level and cannot afford additional assessments. The six minimum measures established by EPA and the "plus two" requirements have increased into activities and reports that go far beyond EPA Phase II guidelines. CWHBA understands that Ecology's interpretation of several court decisions has prompted Ecology to issue a more prescriptive Permit. However, Ecology should revisit the proposed Permit with the goal to minimize the rules and reduce the financial impact of the stormwater program.

1. Permit at S1.B.1.a, page 1, line 28 regarding the terms "industrial wastes, or other wastes." The purpose of the Permit is to regulate discharges of stormwater. Other regulations regulate "wastes." *Delete "industrial wastes, or other wastes."*
2. Permit at S2.C, page 6, line 16. The present wording of the Permit would require fighting fire to stop when water runoff from fighting the fire is identified as causing significant sources of pollutants to waters of the State. This is unreasonable and would create a public safety hazard. *Delete "unless the discharges from fire fighting activities are identified as significant sources of pollutants to waters of the state."*

Further, the Permit should clearly state that waters from testing fire hydrants is an authorized discharge of fire fighting activities.

3. Permit at S4.B, page 7, line 12. The Permit should clearly state that if the terms and conditions of the Permit are met, "maximum extent practicable" [MEP] has been fulfilled. The NPDES municipal stormwater program is based on the presumptive standard that the use of BMPs and AKART [as defined] meets compliance with MEP.

**4. Permit at S4.C, pages 7 and 8. The Permit requirements relating to New Stormwater Discharges appears to regulate permitting of individual pipes and outfalls.**

**Replacing a pipe may increase the flow rate which creates a new outfall causing the municipality to be out of compliance with the Permit. The mere replacement or upgrade of existing pipes and outfalls should not be included within the requirements of New Stormwater Discharges and New Stormwater Outfalls.**

**5. Permit at S5.A.1, page 8, line 22. That portion of the sentence reading "and any additional actions necessary to meet the requirements of applicable TMDLs" is too broad. *Change to read: "and any additional actions necessary to meet the requirements of this Permit."***

**6. Permit at S5.A.1, page 8, line 23 references S7.B for the SWMP components. The SWMP components start at S5.B on page 9.**

**7. Permit at S5.B.3.b.iii, page 11, lines 33 -38. Prohibiting water from activities such as street wash water, lawn watering and irrigation water from entering the stormwater system is not realistic. To require an ordinance that prohibits these type of activities that cannot be enforced will merely invite third-party lawsuits. *Delete all of S5.B.3.b.iii on page 11.***

**8. Permit at S5.B.3.b.iii, page 12, line 1. Non-storm discharges from rising ground waters, springs and flows from riparian habitats and wetlands occur naturally. MS4s have no control over these events. To prevent the water from these natural occurrences to enter the stormwater system would create an undeterminable requirement and burden on MS4s. *Delete all of S5.B.3.b.iii on page 12.***

**9. Permit at S5.B.3.b.v, page 12, lines 18 and 24. Fire Departments regularly flush fire hydrants as normal maintenance operations. To require dechlorination, pH adjustment and reoxygenation of fire hydrant flushing will require an undeterminable burden to meet compliance.**

**Further, the same burden applies to swimming pool discharges when it is not practicable to discharge to a sanitary sewer. *Delete all of S5.B.3.b.v.***

**10. Permit at S5.B.4.a.ii, page 14, line 11. Compliance with Appendix 2, Core Element #2 differs significantly and has different requirements than the Construction Stormwater General Permit at S9.D SWPP-Narrative Comments and Requirements, pages 28-32. The wording and requirements in the MS4 and Construction Stormwater Permits should be the same to avoid conflict between municipal staffs and developers.**

11. Permit at S5.B.4.a.iii, page 14, line 26 and G5, page 28, line 28. It would be inappropriate for a municipality to pass an Ordinance that authorizes Department of Ecology staff to enter and inspect facilities on private property.
12. Permit at S8.A.1.b, page 25, line 3. Permittees shall gather, maintain, and use information to evaluate SWMPs, to the extent allowable, to determine whether the SWMP is adequate. What determines *to the extent allowable*? Delete “*to the extent allowable*.”
13. Permit at S8.A.2, page 25, line 9. The monitoring program as it relates to stormwater and the receiving waters, and the effectiveness of BMP practices, should be at the Ecology level and not the municipal level.
14. Permit at S8.B.1, page 26, line 1. The detailed annual reporting requirements create an unnecessary and costly paperwork burden and in some instances will open the door for third party lawsuits. For example, the required reporting of any non-compliance with the Permit, or failure to meet deadlines, will invite third-party lawsuits.
15. Permit at Definition of "Common plan of development or sale", page 33, line 12. The definition and application of "Common Plan of Development or Sale" will require virtually all subdivided parcels of less than one acre to be tracked for an indefinite period of time. If Ecology does not do the tracking, then each jurisdiction must develop a means of tracking. The tracking of these lots of less than one acre, and then at some future date require stormwater Permit compliance, will create an expensive administrative burden.
16. Fact Sheet at S5.B.4, page 10. The requirements to become a Qualified Local Program [QLP] are not known. It would seem that a jurisdiction would not want to accept the responsibility of being designated a QLP.
17. Fact Sheet at S5.B.5, page 11. Notwithstanding that the Fact Sheet has no legal basis, it is not appropriate for Ecology to encourage Permittees to apply the technically-based thresholds in the manual to all development projects in their jurisdiction, regardless of the land area disturbed by the project, i.e. less than one acre. Some jurisdictions will read this as Legislative Intent. The statements are beyond the scope of EPA requirements and should be deleted.
18. The Construction Stormwater General Permit is scheduled to be effective December 2005. The MS4 Stormwater General Permit for Eastern Washington will not be issued until June 2006 and has an Implementation Schedule that goes beyond June 2006 up to five years. The CWHBA believes that Developers and Redevelopers should not be held to compliance with the Construction Stormwater Permit until the MS4s have completed their Implementation Schedule on issues that impact construction.

**Thank you for considering CWHBA's comments to the MS4 Stormwater General Permit.**

**Sincerely,**

**Clarence Barnett  
CWHBA  
3301 W. Nob Hill Blvd.  
Yakima, WA 98902**

**MS4 Permit Oct**