

October 14, 2005

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Sent Via: Email

Subject: Wenatchee Valley Stormwater Technical Advisory Committee comments on Draft
Phase II Stormwater Permit.

Greetings:

On behalf of the Wenatchee Valley Stormwater Technical Advisory Committee, consisting of representatives from Chelan and Douglas Counties, City of East Wenatchee and City of Wenatchee, we are submitting the attached comments on the Eastern Washington Draft NPDES Phase II permit. The attachment contains line by line comments and suggestions for modifications to the draft permit. Specific comments regarding the schedule proposed in the draft permit will also be sent to you under separate cover by Lori Barnett, City of East Wenatchee Planning Director. Additionally, this letter provides the following overall concern regarding the permit.

The permit as written contains very specific language with respect to what the compliance requirements. This is very concerning for the following reasons.

- Permit specificity takes away from the local agencies ability to fit NPDES regulations to their community in a way that makes the most sense. Many entities in EW are at different stages in terms of their stormwater management programs. Especially during the first permit cycle, emphasis should be placed in the areas that achieve the best “bang for the buck” in order effectively go about addressing stormwater pollution.
- The NPDES regulations specifically require stakeholder participation. Local agencies need to be given the chance to involve stakeholders as in the same manner that Ecology did for development of the Model Program and the Eastern Washington Stormwater Management Manual. A permit that is very specific in terms of BMPs and implementation schedules do not facilitate the use of stakeholders and thereby makes it more difficult for local agencies to educate and obtain community support.
- The notion of “Failure to Regulate”, based on 9th Circuit Court decision, can be addressed differently in terms of specificity contained within the permit. We suggest that Ecology’s

interpretation of what needs to be done to meet failure to regulate test be published outside of the permit. Ecology could review local agency progress during the permit cycle to ensure Ecology's obligation to regulate is met. This approach would reduce the potential of third party lawsuit based on a technicality of missing a particular requirement of the permit.

- We reviewed other state NPDES Phase II permits, and most of them were very straight forward with respect to the federal law and did not dive into the specificity.
- Detailing compliance schedules within the permit creates problems in terms of each jurisdictions local codes and procedures.
- As discussed above, permit specificity is concerning from a third party liability standpoint. A permit that is difficult to comply with opens the door for easy third party attacks which ultimately is very expensive and creates an adverse attitude towards the regulation in the community.

We have fears that the draft permit as written is a set up for failure. The complexity and cost of the implementing the draft permit makes it nearly impossible to comply with. Local agencies should be given the opportunity to make reasonable efforts to comply with federal and state regulations.

We appreciate yours and Ecology's effort to work with stakeholders through this permit process and hope that you will find our comments helpful.

Sincerely,

Steve King, P.E.
City Engineer

cc: Paula Cox, P.E., Chelan County
Lori Barnett, City of East Wenatchee
Jennifer Lange, Douglas County

Enc.: Draft Permit Comments

