Eastern Washington Ad Hoc Work Group

See uploaded file "EWA Ad Hoc Workgroup early comments_FINAL_20220223"

February 25, 2022

DELIVERED VIA ONLINE PUBLIC COMMENT FORM

Washington Department of Ecology
Water Quality Program - Municipal Stormwater Permitting
300 Desmond Drive SE
Lacey, WA 98503

Re: Phase II Municipal Stormwater Permit Reissuance
Eastern Washington Ad Hoc Work Group Early Comments for the Eastern Washington

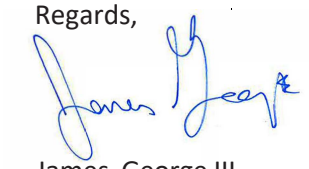
Dear Municipal Permit Group,

The Eastern Washington Ad Hoc Work Group was organized to collectively develop suggestions for the upcoming Eastern Washington Phase II Municipal Stormwater permit reissuance. The Work Group participants include Eastern Washington municipalities, government agencies, higher learning institutions, conservation/irrigation districts, and non-government organizations.

Please see the attached Eastern Washington Ad Hoc Work Group permit suggestions document. The Work Group focused on six topics that were collaboratively discussed, penned and combined as the attached document. The Work Groups suggestions for the permit are being submitted for Ecology's consideration of integrating them into the permit during the permit draft period.

The Ad Hoc Work Group appreciates the opportunity provided by Ecology to participate in the permit reissuance process. Any feedback on the suggestions provided by the Work Group would be greatly appreciated. If you have any questions, or would like some additional information, please feel free to contact me at jgeorge@spokanecity.org, or Laurie Larson-Pugh at laurie.larson-pugh@wsu.edu.

Regards,



James George III
Environmental Analyst
City of Spokane

cc: Laurie Larson-Pugh, laurie.larson-pugh@wsu.edu, Washington Stormwater Center

Eastern Washington Ad Hoc Work Group Participant List

The following municipalities, jurisdictions, government and non-government entities, and educational institutions participated in the ad hoc work group to develop permit suggestions for the upcoming 2024 Eastern Washington Phase II Municipal Stormwater Permit reissuance.

City of College Place
City of Ellensburg
City of Kennewick
City of Moses Lake
City of Pasco
City of Pullman
City of Richland
City of Selah
City of Spokane Valley
City of Spokane
City of Sunnyside
City of Union Gap
City of Walla Walla
City of West Richland
City of Yakima
Spokane County
Yakima County
Port of Benton
Sunnyside Irrigation District
Walla Walla County Conservation District
Spokane Aquifer Joint Board
Spokane River Forum
Washington State University – Pullman
Washington State University – Spokane
Washington State University – Tri-Cities
Yakima Valley Community College
Washington Department of Transportation

Construction Site Stormwater Runoff Control Suggestions

EWA Phase II Permit Construction Site Stormwater Runoff Control Suggestions

Eastern Washington Phase II Municipal Stormwater Permit Reissue

Topic: Duplication in Terms of Eastern Washington Phase II Municipal Stormwater and Construction General Stormwater Permits

Permit Sections: S5.B.4 and Appendix 1

Regulatory Purpose – Construction Site Stormwater Runoff Control

- The Construction Site Stormwater Runoff Control Permit section requirements' purpose is the protection of water quality. By protecting the Permittee's regulated municipal separate storm sewer system from the discharge of pollutants from construction sites, a reduction of the amount of pollutants discharged to receiving waters may be achieved.

- The Construction Site Stormwater Runoff Control Permit requirement describes criteria for meeting the "Maximum Extent Practicable" standard of the Clean Water Act section 402(p) through the application of All Known, Available, and Reasonable methods of prevention, control, and Treatment (AKART). The AKART methods applied are the inspection of the erosion and sediment control (ESC) Best Management Practices (BMPs) installed by the site operator, and the enforcement of installation and maintenance requirements by an authorized agency.

Problem Statement – Construction Site Stormwater Runoff Control

- The Washington Construction General Stormwater Permit requires site operators to allow agents of the Department of Ecology to inspect permitted sites. The Eastern Washington Phase 2 Municipal Stormwater Permit requires Municipal Permittees to create for themselves legal authority to inspect the same construction sites. This is duplicate regulatory authority.

- The Construction General Stormwater Permit requires a permitted site's Certified Erosion and Sediment Control Lead (CESCL) to inspect erosion and sediment controls. The Eastern Washington Phase 2 Municipal Stormwater Permit requires inspection of erosion and sediment controls by "qualified personnel" during construction. Because the site CESCL is "certified," and thus "qualified" to perform this inspection, the Municipal Permittee's inspection is redundant and creates an unnecessary burden to the Municipal Permittee.

- The Construction General Stormwater Permit requires installation of erosion and sediment controls to protect operable drain inlets; these are inlets to the "storm sewer system that drains to surface waters of the State," which is the regulated municipal separate storm sewer system (MS4). Core Element 2 of Appendix 1 of the Eastern Washington Phase 2 Municipal Stormwater Permit includes Stormwater Pollution Prevention Plan element seven, "protect drain inlets." This is an example of the redundancies that exist between the Construction General Stormwater Permit requirements and the Eastern Washington Phase 2 Municipal Stormwater Permit requirements.

Permit Revision Suggestions

- The regulatory duplication present in the Construction General Stormwater Permit and the Eastern Washington Phase 2 Municipal Stormwater Permit regarding Stormwater Pollution Prevention Plan review and Erosion and Sediment Control BMP inspection fails to comply with the intentions of RCW 34.05.328. Revised Code of Washington section 34.05.328 requires the Department of Ecology to "coordinate implementation and enforcement of [a] rule with the other federal and state entities regulating the same activity or subject matter" and "determine … that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated" [for the rule]. The Construction General Stormwater Permit General Condition G3 authorizes the Department of Ecology to inspect any site under coverage by the Construction General Stormwater Permit. The Eastern Washington Phase 2 Municipal Stormwater Permit requires Permittees to inspect construction sites meeting the regulatory threshold, which is the identical threshold for Construction General Stormwater Permit coverage. Per RCW 34.05.328, the Department of Ecology Construction General Stormwater Permit issuer should coordinate with the Department of Ecology Municipal Stormwater Permit issuer to remove the burden of construction site inspection from Eastern Washington Phase 2 Municipal Stormwater Permittees.

- Title 40 CFR 122.34 requires the inclusion of "procedures for site inspection and enforcement of control measures" for construction sites as a minimum control measure in compliant State-issued Permits. This minimum control measure may be considered with regard to section 122.35(b), which declares that

  > "In some cases, the NPDES permitting authority may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the permitting authority itself is responsible. Where the permitting authority does so, you are not required to include such minimum control measure(s) in your storm water management program."

  In this instance, the Washington Department of Ecology implements inspection of erosion and sediment control measures and enforcement of installation and maintenance standards on construction sites as part of its NPDES Construction Stormwater General Permit. Per Title 40 CFR section 122.35(b), the Eastern Washington Phase 2 Municipal Stormwater Permittee should not bear the same obligation.[1] *(see footnote)*

- The terms of the Eastern Washington Phase 2 Municipal Stormwater Permit should be revised. The responsibility for the inspection of erosion and sediment control BMPs on construction sites should not be held by two separate parties – the Department of Ecology for Construction General Stormwater Permits and the Permitted jurisdiction for the Eastern Washington Phase 2 Municipal Stormwater Permit. The Washington Department of Ecology has the authority to release the Municipal Permittee from the requirement to inspect ESC BMPs because it is already performing this minimum control measure for another NPDES Permit (40 CFR 122.35).

[1] *Footnote*: It is acknowledged that some jurisdictions may wish to serve their constituents by establishing a "qualifying local program," whereby compliance with such a program by a site operator would satisfy some or all of the requirements to meet minimum control measures of the Construction General Stormwater Permit. For this case it is an additional suggestion of this Work Group that clarifying reference to this policy be included in the Construction General Stormwater Permit or that a guidance document similar to EPA Factsheet 2.6 Stormwater Phase II Final Rule Construction Site Runoff Control Minimum Control Measure (September 2018) be issued by the Washington Department of Ecology.

- We propose that the terms of the renewed Eastern Washington Phase 2 Municipal Stormwater Permit should clarify the respective responsibilities of the Department of Ecology and the Municipal Permittee.
- We propose that the Department of Ecology should recognize that its inspections and enforcements of construction site erosion and sediment controls *within the boundaries of the construction site defined by the Department of Ecology-issued Construction General Stormwater Permit terms* implements the minimum control measure for Construction Site Runoff Control and satisfies the requirements of the Eastern Washington Phase 2 Municipal Permit Special Conditions S5.B.4.c.i.(b),(c).
- We propose that the Permittee should continue to be required to inspect the regulated MS4 for discharge of pollutants, including sediment-laden runoff from construction sites. The Permittee should have the legal authority to inspect construction sites if inspection of the MS4 indicates that the construction site is a possible source of pollutants. The Permittee should only be required to inspect erosion and sediment controls within the boundaries of the construction site if inspection of the regulated MS4 indicates that the construction site is a possible source of pollutants.

  By distinguishing inspection responsibility based on the boundary of jurisdictional responsibility – the Permittee has established legal authority over its MS4, and the Department of Ecology establishes its inspection authority in the Construction General Stormwater Permit terms – redundancy is removed and compliance may be achieved with greater efficiency.

Effectiveness Study Requirements Permit Suggestions

EWA Phase II Permit Effectiveness Study Requirements Suggestions

Eastern Washington Phase II Municipal Stormwater Permit Reissue

Topic: Phase II Permit Conditions to Perform Effectiveness Studies

Permit Section: Section S8.A.1

Regulatory Purpose – *Stormwater Program Research*

- The purpose of the effectiveness study permit requirements are to require the municipalities to conduct studies to determine the effectiveness of undemonstrated operational, structural, and/or education and outreach activities with respect to stormwater program management. As we understand it, this requirement was implemented in lieu of requiring 'end-of-pipe' stormwater discharge monitoring to determine effectiveness of the Eastern Washington Phase II Municipal Stormwater permit.
- The goal of the effectiveness study permit condition, as we understand it, is to have municipalities cooperatively develop sound operational, structural, and/or education and outreach practices that can be formalized and made available to all Eastern Washington stormwater permittees.

Problem Statement(s)

Eastern Washington municipalities generally lack research expertise and resources

- Eastern Washington municipalities are generally not organized to be able to efficiently perform the tasks inherent to a research study, and are also unlikely to have staff with the skill sets needed to perform an Ecology approved effectiveness study. The gaps that exist between the effectiveness study permit conditions, and municipal organizations and employee expertise, can be barriers to successful coordination, design, performance, and documentation of a research study project. The work to perform a value-added effectiveness study approved by Ecology often has to be hired out to a qualified consultant.

- Many Eastern Washington jurisdictions do not have permanent staff available, or the funds necessary, to lead a thorough and meaningful effectiveness study. In order to maintain compliance, some Eastern Washington municipalities must compete with similarly permitted jurisdictions for Ecology administered funding to be able to perform an effectiveness study on a topic in which they are not knowledgeable, using methods they are unfamiliar with. Additionally, Ecology must approve the proposed effectiveness study topic, which creates an awkward scenario where the municipality ultimately functions as an implementation tool for Ecology desired studies, as well as a pass through mechanism for funds from Ecology to a consultant.

- Smaller municipalities are disproportionately impacted by the effectiveness study requirement due to having one or less fulltime employees dedicated to managing the stormwater program, in addition to having limited funding and a lack of expertise.[1] *(see footnote)*

[1] Footnote: It is acknowledged that an Eastern Washington ad hoc work group participant feels that the system demands placed on larger jurisdictions are proportionally greater, and as such the impact that the effectiveness study requirement has on smaller municipalities is equivalent to that of larger ones.

- Effectiveness study results do not always demonstrate that the research topic was effective and that it should be developed further, which does not provide value to the jurisdictions that used limited resources to fund and perform the study, which takes resources away from compliance work that may directly improve water quality.

Permit Revision Suggestions

Flexibility in Effectiveness Study Permit Requirements

Ecology should consider writing some flexibility into the requirement to perform an effectiveness study. The permit should allow jurisdictions the option to perform an effectiveness study, end of pipe sampling, and/or some combined approach that demonstrates effectiveness of specific activities that are likely to have a positive benefit on local water quality. A tiered approach to requiring effectiveness studies should be written into the permit to allow municipalities that do not directly receive much value in the performance of a study to maintain compliance by some other means. For example, smaller municipalities, or municipalities that have a distinctly unique poor water quality condition, could use their limited funds to perform operational, structural, and/or education and outreach activities to directly address local water quality improvement opportunities, in lieu of performing an effectiveness study.

Funding Mechanism for Effectiveness Studies

Ecology should consider establishing a dedicated and recurring funding mechanism for Eastern Washington Phase II permittees to perform effectiveness studies. A lot of energy is expended to attempt to obtain funding for proposed studies that are sometimes not well defined due to the lack of scientific expertise within some Eastern Washington jurisdictions. As such, municipalities may not score well on grant applications unless they hire a consultant to assist. Since, under the current effectiveness study permit conditions, a consultant may be necessary to obtain funding to perform a study in order to achieve compliance, Ecology should develop and implement a recurring funding source to enable permittees to comply with the permit.

Defined Structure for Effectiveness Studies

Ecology should consider setting up permittees for success by providing side rails around the effectiveness study requirements. A lot of anxiety and tension is created for permitted jurisdictions who are not organizationally structured to perform research, and the uncertainty provided by the lack of defined structure when developing a study compounds the discomfort. To streamline the decision making process and relieve unease amongst permittees, Ecology should provide a list of topics that it prefers to be studied for the permittees to choose from each permit cycle. Included with the list should be the number of studies Ecology requires to be performed in Eastern Washington, and the ideal size of cooperative groups per study, grouped either regionally, or areally for adjacent communities.

Effectiveness Study Support Materials

Ecology should consider developing tangible support materials for municipalities, in order to provide usable templates that will assist and guide permittees during the implementation of science based research that meets the intent of the permit. Ecology should develop a general process map that outlines the conceptual flow of the implementation of an effectiveness study that identifies milestones, deliverables, schedule, and the support materials to aid permittees who are daunted with the idea of implementing a research study that is outside of their skill sets. The Quality Assurance Project Plan guidance provides a good general framework for science based methods and documentation, but some research experience is necessary for it to be usable, and many

municipalities lack research experienced staff. Ecology should provide usable templates with guidance and examples for the documentation necessary to complete a QAPP such as: sampling procedures, data summaries and analysis, and operation and maintenance information, among others. A documented process map and standardized documentation and would serve to bridge the skill gaps within municipalities and would provide a better understanding of Ecology's compliance expectations.

Stormwater Action Monitoring

Ecology should consider including in the permit stormwater monitoring requirements and options similar to the Western Washington Phase II Municipal Stormwater Permit requirements in order to determine effectiveness of various activities. For example, the inclusion of the requirement to participate in a Stormwater Area Monitoring (SAM) program with defined optional approaches and funding structures. The lack of a defined operational framework for effectiveness studies creates an uncomfortable scenario for Eastern Washington permittees who must compete for funding with like permittees and plan around that uncertainty to develop studies that are outside of their expertise for an unknown outcome that may or may not add value to their stormwater program and directly affect water quality. Ecology should include more structure in the permit, and create associated program guidance and procedural aids to enable permittees to meet the compliance expectations.

Expand River and Stream Water Quality Monitoring Program

Alternatively, the effectiveness of the permit could be measured by expanding Ecology's currently ongoing statewide river and stream water quality monitoring program. The scope of the program could be increased to include monitoring of typical urban runoff contaminants at monitoring stations in key urban runoff discharge areas. Funding that is routinely provided to municipalities by Ecology could be re-allocated to bolster the river and stream monitoring program in order determine if current permit conditions are positively impacting water quality. In order to determine if the requirements of the Eastern Washington Phase II permit conditions are effective at improving water quality, Ecology should consider removing the effectiveness study requirement from the permit altogether, and expand the river and stream monitoring program, allowing the permittees to utilize their resources to meet other permit conditions with a more direct correlation to water quality improvement.

Education & Outreach Requirements Permit Suggestions

EWA Phase II Permit Education & Outreach Requirements Suggestions
2024 Eastern Washington Phase II Municipal Stormwater Permit Reissuance

Topic: Education & Outreach Requirements
Permit Section: S5.B.1

Regulatory Purpose – Stormwater Education

The purpose of the Public Education and Outreach requirement, as stated in the Permit, is to achieve improvements in the target audiences' understanding of the stormwater pollution problem and what they can do to solve it. Ecology identifies the following target audiences in the Permit:

I. General public (homeowners, teachers, school-age children, or overburdened communities).
II. Businesses.
III. Engineers, construction contractors, developers, development review staff, and land use planners.

Problem Statement

Eastern Washington Permittees are required to have a Public Education and Outreach component as part of the Stormwater Management Program. To fulfill this component, Permittees must engage with various target audiences, each requiring a different approach. Several permitted jurisdictions have limited resources and do not have an Education Coordinator on staff, or in-house expertise in public education. The Permit requirement establishes a standard which is exceptionally burdensome for numerous jurisdictions to attain.

Permit Revision Suggestions

The Education and Outreach requirements could be met efficiently if Ecology would:

- Provide experienced education and outreach personnel to permittees to establish standard guidelines on the best methods to reach each of the three target groups, and offer a financially sound and efficient model to reach target audiences II and III (i.e. businesses; and engineers, construction contractors, developers, development review staff, and land use planners) that can be leveraged.

- Explicitly support permittees leveraging resources by supporting a third-party community organization(s) (e.g. NGO's, University extension, etc.) to develop, adapt, and/or distribute education and outreach materials for use by multiple permittees. This potentially increases efficiency, reduces costs and contributes to cohesive messaging across the region.

The Eastern Washington Ad Hoc Public Education and Outreach (PE&O) group agrees with the purpose of the existing stormwater permit requirements. However, we request that Ecology provide technical assistance and resources for under-supported jurisdictions.

Ecology develops a variety of brochures, BMP fact sheets, videos, and social media posts for initiatives like Recycle Right, Pollution Prevention Technical Assistance visits, and Hazardous Waste and Toxics Reduction. Eastern Washington Stormwater Permittees need a similar suite of educational resources for all three target audiences, which are specific to Eastern Washington stormwater issues, in multiple languages, that address the problem statements listed above. This suite of resources should be housed on an easily accessible website for downloading, and in a format that allows branding and personalization.

Note: These suggestions are supported by survey results shown on pages 3 - 5.

Eastern Washington Phase 2 Municipal Stormwater Permit Public Education and Outreach Survey

In order to determine the resources available to Eastern Washington Phase 2 Permittees for fulfillment of the Public Education and Outreach component of the Municipal Stormwater Permit, a survey was sent to the Phase 2 Permittees. The survey had 5 questions designed to discover if the Permit requirements establish reasonable, achievable standards. The survey intended to measure the existing conditions in which Permittees are operating to meet Public Education and Outreach requirements.

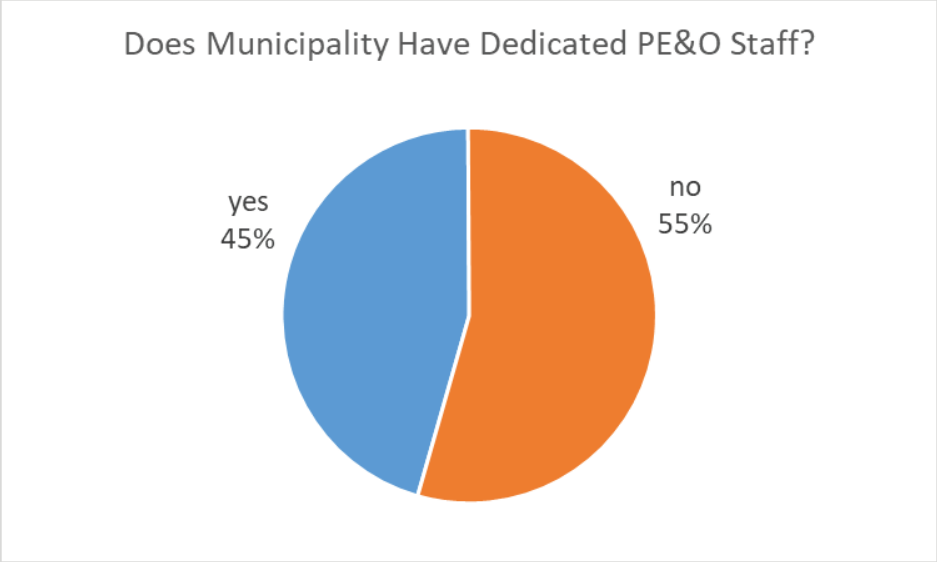
The survey was presented online, hosted by Survey Monkey. A list of the Phase 2 Eastern Washington Permit holders is published on the Department of Ecology website. The primary permittees (Cities and Counties) were contacted by email. If a contact email for a municipality's stormwater department could be determined, a survey link was sent to that address. If not, the survey link was sent to the Public Works Department with a request to route the message to the party responsible for Municipal Permit management. If no contact information for a stormwater department or public works could be found, the link was sent to the municipality's general email address with a similar request to route the message to the appropriate party.

Twenty-five municipalities were offered the opportunity to complete the survey. The link was sent on November 5, 2021, and responses were collected from Survey Monkey on November 18, 2021. There were thirteen responses submitted; two responses were excluded from evaluation because each was a second response from a single participant (the survey was anonymous, but the source's IP address was

reported; this indicated multiple responses from a single source). Eleven data sets are retained, offering information about 44% of Eastern Washington Phase 2 Permit programs.

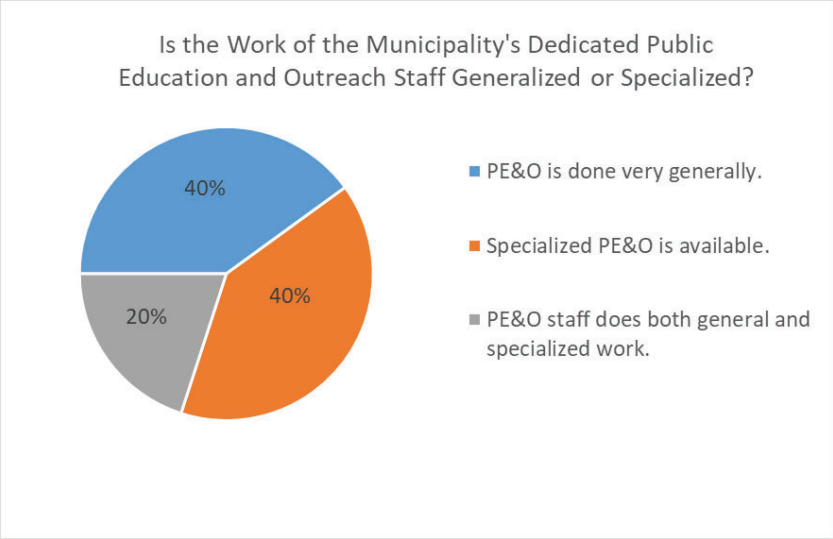
Question 1

Does your municipality have dedicated staff for providing Public Education and Outreach to your community?

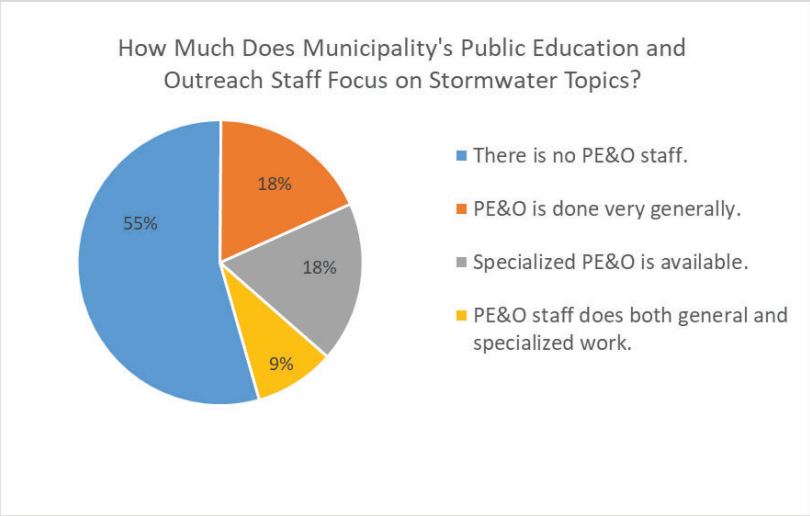


Question 2

If your municipality has dedicated staff for providing Public Education and Outreach to your community, does this staff perform outreach generally and on behalf of the entire municipal organization; with specialized knowledge relating to individual departments, like stormwater management; or some of both?



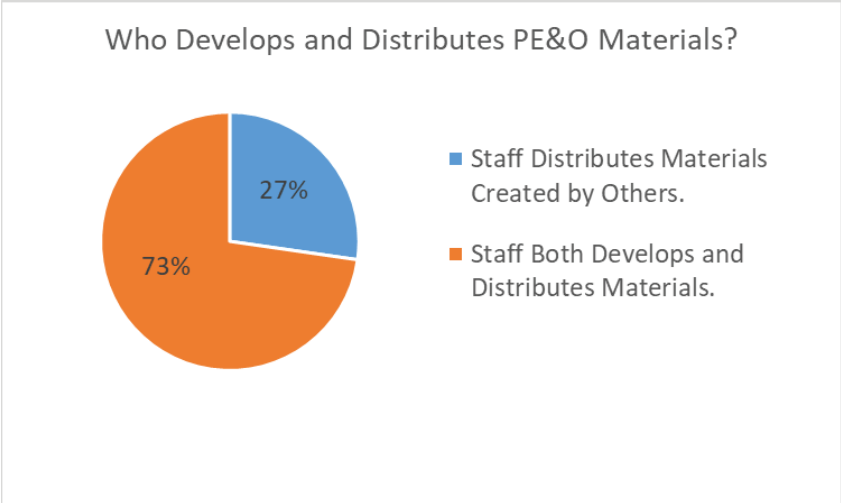
Note:
This graph combines responses from both questions 1 and 2.



Question 3

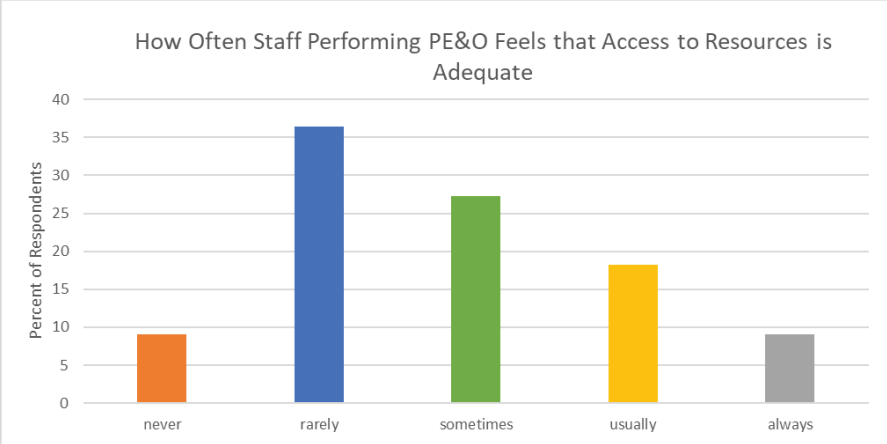
Does the municipal staff providing public education develop educational materials, distribute educational materials, or both?

Note: No municipalities responded that staff providing public education is only responsible for materials development and not for distribution.



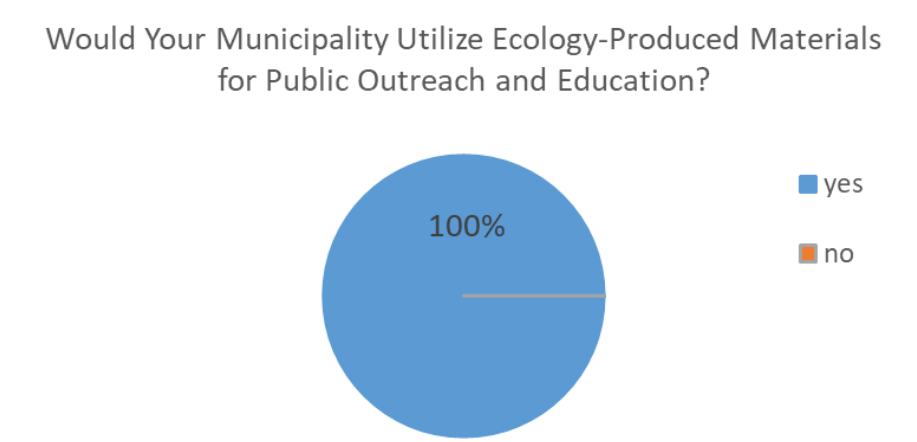
Question 4

Does the staff who have been performing Public Education and Outreach as part of your municipality's Stormwater Management Program feel like they have sufficient access to the resources they need to provide subject area information to all of the target audiences (the general public, businesses, and members of the construction industry)?



Question 5

If Ecology were to create Public Education and Outreach materials with regionally tailored content, do you think your municipality would utilize them in its program?



Scope of Coverage for MS4 and UIC Program Suggestions

EWA Phase II Permit Scope of Coverage for MS4 and UIC Requirements Suggestions
2024 Eastern Washington Phase II Municipal Stormwater Permit Reissuance

Topic: Scope of Coverage for MS4 and UIC Requirements
Permit Section: Multiple Sections and Appendices

Regulatory Purpose – MS4 and UIC Requirements

The regulatory path for the UIC program is fostered by the Safe Drinking Water Act and defined by WAC173-218. The UIC program regulatory path is autonomous to the Clean Water Act and the Phase ll General Municipal Stormwater Permit. This designation is made and confirmed in section S2.A.1 of the general permit.

With that said the objective of the MS4/UIC Ad Hoc group is to confirm that language within the General Municipal Stormwater Permit directs the scope of regulated MS4 coverage appropriately. Contradiction and lack of clarity in both permit language and/or terminology leaves the scope uncertain.

Three groups of permit language and a set of six terminology elements have been identified for edit, change, or deletion. Proposed edit, change, or deletion is indicated by "blue" text.

Problem Statements and Permit Revision Suggestions – MS4 and UIC Requirements

GROUP 1 PROBLEM STATEMENT – CONTRADICTIONS

Contradiction regarding coverage of the general permit is observed in the language of the following permit line items.

1) S1.A.1 – Geographic Area of Permit Coverage

"For all Cities required to obtain coverage under this permit, the geographic area of coverage is the entire incorporated area of the City."

Problematic Condition of the Language:

- Interpretation of "coverage"
  - Evaluation (for MS4s) of entire geographic area for permit requirements? **or**
  - Implementation of permit requirements in entire geographic area?

- Lack of provision "Regulated Small MS4" in condition statement.

- Inconsistent relative to the preponderance of permit language.

2) S3.A – Responsibilities of Permittees

"Each Permittee covered under this permit is responsible for compliance with the terms of this Permit for the regulated small MS4s which they operated."

Accurate Condition of the Language:

- Accurate language relative to the general arrangement of the permit language.
- Accurate language relative to the intent and scope of the federal NPDES permit requirements (Clean Water Act).

3) S5.A.1 – Stormwater Management Program

"At a minimum, the SWMP shall be implemented, throughout the geographic area described for the Permittee in S1.A."

Problematic Condition of the Language:

- What would implementation beyond the minimum be?
- Lack of provision "Regulated Small MS4" in condition statement.
  - Inconsistent relative to the preponderance of permit language.

GROUP 1 PERMIT REVISIONS - EDITS (blue) TO HELP RESOLVE CONTRADICTIONS

Contradiction regarding coverage of the general permit is observed in the language of the following permit line items and/or definitions.

1) S1.A.1 – Geographic Area of Permit Coverage

"For all cities required to obtain coverage under this permit, the minimum geographic area of coverage is those owned and operated by the permittee as described under S1.B.1 "Regulated Small MS4."

2) S3.A – Responsibilities of Permittees

"Each Permittee covered under this permit is responsible for compliance with the terms of this Permit for the regulated small MS4s which they operated."

3) S5.A.1 – Stormwater Management Program

"At a minimum, the SWMP shall be implemented for the "Regulated Small MS4" as described under S1.B.1."

GROUP 2 PROBLEM STATEMENT - CONTRADICTIONS

Contradiction on the "waters" the permit has authority or regulation over is observed in the languageof the following permit line items and/or definitions.

The Eastern Washington Phase ll Municipal Stormwater Permit appears (as indicated in WAC 173-226-14) to be a combined NPDES/State Waste Discharge General Permit. The combined Federal and State programs cover "Surface Waters of the State" and "Waters of the State" respectively.

The State Waste Discharge Permit per Per WAC 173-226-040 appears to be an independent program. This State program covers "Groundwaters of the State".

1) "Surface Waters of the State"

- Applicable to WAC 173-220 – National Pollutant Discharge Elimination System Program
- Applicable to 6 permit line items and/or definitions.
    - S1.B.1.c – Regulated Small MS4
    - S1.B.3 – Regulated Small MS4
    - S2.A – Authorized Discharges
    - S2.A.1 – Authorized Discharges
    - S2.B – Authorized Discharges
    - Definition of "NPDES" (National Pollution Detection Elimination System)

2) "Groundwaters of the State"

- Applicable to WAC 173-216 – State Waste Discharge Permit
- Applicable to 3 permit line items and/or definitions.
    - S2.A – Authorized Discharges
    - S2.A.1 – Authorized Discharges
    - S2.B – Authorized Discharges

3) "Waters of the State"

- Applicable to WAC 173-226 - Waste Discharge General Permit
- Applicable to 7 permit line items and/or definitions.
    - S4.A – Compliance with Standards
    - S4.D – Compliance with Standards
    - S4.G.3- Compliance with Standards
    - S5.B.1.a.i.(a) – Public Education and Outreach

- S5.B.3.b.iv – Illicit Discharge and Elimination
- Definition of "Beneficial Uses"
- Definition of "Waters of the State"

GROUP 2 PERMIT REVISIONS - EDITS (blue) TO HELP RESOLVE CONTRADICTIONS

Contradiction on the "waters" the permit has authority or regulation over is observed in the language of the following permit line items and/or definitions.

- Remove "Groundwaters of the State" and use throughout the permit "Surface Waters of the State" and "Waters of the State."
- **S2.A.2 – Authorized Discharges**

  "Discharges to groundwaters of the State not subject to regulation under the Federal Clean Water Act are authorized in this Permit only under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act, and the State Waste Discharge Permit and State Waste Discharge General Permit programs, WAC 173-216 and WAC 173-226 respectively.

GROUP 3 PROBLEM STATEMENT - CONTRADICTIONS

Contradiction on the "responsibility for compliance" with the terms of the permit for MS4 areas; isobserved in the language of the following permit line items and/or definitions.

1) S3.A – Responsibilities of Permittees

"Each permittee covered under this permit is responsible for compliance with the terms of this Permit for the regulated small MS4s which they operate…."

Accurate language relative to the S3.A condition is observed in the foreword of the following sections:

- S5.B.3 – Illicit Discharge Detection and Elimination
  - *"Each Permittee shall implement and enforce a program designed to prevent, detect, characterize, trace, and eliminate illicit connections and illicit discharges into the MS4."*
- S5.B.4 – Construction Site Stormwater Runoff Control
  - *"All Permittees shall implement and enforce a program to reduce pollutant in any stormwater runoff to the MS4 from construction activities that…."*
- S5.B.5 – Post-Construction Stormwater Management for New Development and Redevelopment

- *"All Permittees shall implement and enforce a program to address post-construction stormwater runoff to the MS4 from new development and redevelopment projects that…."*

2) S5.B.1 – Public Education and Outreach

"Permittee shall implement a public education and outreach program designed to educate the target audiences about the impacts of stormwater discharges to water bodies and the steps to take to reduce pollutants in stormwater…."

Problematic condition of the language:

- Inconsistent language with S3.A with no reference to MS4 in the foreword of the section.

3) S5.B.6 – Municipal Operations Maintenance

"Permittees shall implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations."

Problematic condition of the language:

- Inconsistent language with S3.A with no reference to MS4 in the foreword of the section.

GROUP 3 PERMIT REVISIONS - EDITS (blue) TO HELP RESOLVE CONTRADICTIONS

Contradiction on the "responsibility for compliance" with the terms of this permit for MS4 areas; is observed in the language of the following permit line items and/or definitions.

1) S3.A – Responsibilities of Permittees

"Each permittee covered under this permit is responsible for compliance with the terms of this Permit for the regulated small MS4s which they operate…."

2) S5.B.1 – Public Education and Outreach

"At minimum, Permittees shall implement a MS4 public education and outreach program designed to educate the target audiences about the impacts of stormwater discharges to water bodies and the steps to take to reduce pollutants in stormwater…"

- Public Education specific to MS4 supported by both the SMMEW and Mapping Guideline document.

3) S5.B.6 – Municipal Operations and Maintenance

"At minimum, Permittees shall implement a MS4 operation and maintenance program that

includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operation."

TERMINOLOGY PROBLEM STATEMENT – EDITS (blue) or ADDITION (blue)

The following terms need to be edited or added to provide clarity to the scope of the permit.

1) **MS4**
2) **Point Source**
3) **Non-Point Source**
4) **Outfall**
5) **Discharge**
6) **Discharge Point**

TERMINOLOGY PERMIT REVSIONS – EDITS (blue) or ADDITION (blue)

1) **MS4**
   - Modify language of S1.B.1.a to include:
     - *"Is a "small MS4" and "Municipal Separate Storm Sewer" as defined in the Definitions and Acronyms section at the end of this permit;* ***and"***
       - Adding as defined "Municipal Separate Storm Sewer" associates "designed or used for collecting or conveying stormwater" to a "regulated small MS4."
     - Modify language of S5.B.1.c:
     - *"Outfalls stormwater from the MS4 to a surface water of Washington State;* ***and"…. Or***
       - Term "outfall" associates the term "point source" to a regulated MS4
     - **Or** provide clarity on the existing term "discharge" as discussed below.

2) **Point Source**

- The term "point source" is the foundation of the Federal Clean Water Act program requirements.
- RCW 90.48.260 gives Ecology the authority to establish and administer a comprehensive state "point source" pollution discharge elimination permit program.
- The term "point source" is only applied to the permit 4 times.

    - Definition of "General Permit"
    - Definition of "National Pollutant Discharge Elimination System"
    - Definition of "Outfall"
    - Definition of "TMDL Waste Load Allocation"

- Include in the permit the Federal (40 CFR Part 122) definition of point source:
  "Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

3) Non-Point Source

- For perspective, Include in the permit the Federal (40 CFR Part 122) definition of non-point source:
  "Non-point source is any source of water pollution that does not meet the legal definition of "point source" in section 502(14) of the Clean Water Act.

- Department of Ecology report "Assessment of Nonpoint Pollution in Washington State" (2014) provides the following non-point source definition:
  "Pollution sources which are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a specific outlet."

- Definition of "diffuse"

  "Spread out over a large area, not concentrated."

4) **Outfall**

- The very important term "outfall" that incorporates the term "point source" to the permit is only included in permit language 5 times.

    - S5.B.3.a.i – Illicit Discharge Detection and Elimination – mapping

- S5.B.3.a.i.(a) – Illicit Discharge Detection and Elimination – mapping
- S5.B.3.c.iii – Illicit Discharge Detection and Elimination – detect and identify
- S5.B.3.c.iv – Illicit Discharge Detection and Elimination – detect and identify
- Definition of "outfall"

Remove term "outfall" and replace with "direct discharge." Federal definition 40 CFR Part 122. See "discharge" below

5) Discharge

- The term "discharge" is included in permit language 92 times, but no definition for "discharge" is provided.

- To provide clarity and incorporate the provision "point source" throughout the permit add the following definitions:

- "Direct Discharge" per Federal definition 40 CFR Part 122:
  "Direct discharge means the "discharge of pollutant."

- "Discharge" per Federal definition 40 CFR Part 122:
  "Discharge when used without qualification means the "discharge of a pollutant."

- "Discharge of a Pollutant" per Federal definition 40 CFR Part 122:
  "Discharge of pollutant means any addition of any pollutant or combination of pollutants to "waters of the State" from any "point source."
  "This definition includes additions of pollutants into "waters of the State" from: surface runoff which is collected of channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works."

6) Discharge Point

- The term "discharge point" is primarily used in combination with the term "outfall" and is included in permit language 5 times.

  - S5.B.3.a.i – Illicit Discharge Detection and Elimination – mapping
  - S5.B.3.c.iii – Illicit Discharge Detection and Elimination – mapping
  - S5.B.3.c.iv – Illicit Discharge Detection and Elimination – detect and identify
  - S5.B.6.h – Municipal Operations and Maintenance – mapping

- Definition of “Discharge Point”

- The term “discharge point” is not associated with any other permit elements other than mapping and detect and identify requirements.
- Recommend deletion of term since the term “discharge point” has no relevance to any permit requirement other than mapping and identification. Mapping andidentification of a facility of this kind can be managed by:
    - **section S5.B.3.a.iv** – *“mapping of permanent stormwater facilities owned or operated by the permittee.”*

EWA Phase II Permit Procedure Implementation Suggestions

EWA Phase II Permit Procedure Implementation Requirements Suggestions

2024 Eastern Washington Phase II Municipal Stormwater Permit Reissue

Topic: Stormwater Management Program (SWMP) Procedure Implementation Requirements

Permit Section(s): Sections S5.B.3 through B.5 and S6.D.3 through D.5

Regulatory Purpose – *SWMP Components for Cities, Towns, Counties and Secondary Permittees*

The purpose of the SWMP component permit requirements, as we understand it, is to ensure that each Permittee implements and enforces a program (with procedures) designed to address the following:

- Illicit MS4 Discharge Detection and Elimination
- Control of Construction Site Stormwater Runoff into the MS4
- Post-Construction Stormwater Runoff into the MS4 from New Development and Redevelopment

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Problem Statement

Phase II permit requirements for components of a municipal SWMP include procedures to support implementation. Some examples of SWMP procedural requirements include:

- Procedures for conducting investigations of the Permittee's MS4, including field screening to identify potential sources of illicit discharges and connections (S5.B.3.c).
- Procedures for tracing the source of illicit discharges as well as for eliminating the discharge (S5.B.3.d).
- Implementation of procedures for site plan review which incorporates consideration of potential water quality impacts (S5.B.4.b).
- Procedures for site inspection and enforcement of construction and post-construction stormwater pollution control measures (S5.B.4.c & S5.B.5.d).
- Implementation of procedures to identify and remove any illicit discharges at all known MS4 outfalls and discharge points (S6.D.3.d).

As noted above, there are multiple permit requirements which institute use of procedures as components within a Permittee's SWMP. However, it is not explicitly clear whether these "procedures" are to be written/documented procedures on file with Ecology. Additionally, some of the permit components pertain to processes that do not functionally align in a step-wise standard procedure format, and forcing the process to conform to a documented procedure may render the process unnecessarily cumbersome and/or nonfunctional, or create a document that is unusable.

The form and content of the procedures required in the Phase II permit is not well defined, which creates confusion when demonstrating compliance. It may be ineffective for permittees to develop and document procedures to meet an undefined expectation in lieu of maintaining program procedures and standard processes that are functional and follow a guideline.

Permit Revision Suggestions and Considerations

The permit conditions would be more easily met if those who author the requirements would also provide or coordinate the expertise to assist jurisdictions with the required form and content of the "procedures" if it is indeed the intent to submit objective evidence of structured procedures. Jurisdictions have limited capacity or may lack the expertise and need guidance on structure and desired content. The following points of discussion are considerations for potential permit revisions to address these concerns:

- ➔ Clarify intent of overall implementation of each SWMP requirement where the word "procedures" is stated and reconsider use of that word throughout.
    - For each instance of the word "procedures" appearing within the SWMP requirements, it is recommended that use of this word (or phrase) be removed and have each component read as a general form of direction on what needs to be implemented rather than focusing on specific details. For example, Section S5.B.3.c.i. could be modified to state "Conduct investigations of the Permittee's MS4, including field screening to identify potential sources", rather than including a preceding modifier within this statement for use of procedures to demonstrate a permittee's program includes such investigatory practices.

    - As a general recommendation throughout the permit, omit or reconsider any occurrences of the word "procedures" and replace in kind with words and/or phrases such as "A general plan", "A process", "A guide" or "Guidelines", "Document", "Keep record(s)" or "An outline". These instances occur in sections S5.B.3., S5.B.4., S5.B.5., and S6.D.3., however, this suggestion is not limited to these sections.

- ➔ The permit states that recordkeeping must occur to meet specific requirements under S5.B.3., S5.B.4., S5.B.5., and S6.B.3. The language as currently written does not explicitly indicate permittees are required to provide records or procedures to Ecology, except for IDDE inspections and/or follow-up activities when submitting the Annual Report. Ecology (and/or the public) can request the record(s) at any time based on S9 and G9.
    - If the intent of the permit procedure requirement described herein is to generate documented, structured, formal procedures, it is recommended that Ecology provide the framework, template, expectations, etc. as an appendix or as modifications within the respective sections of the permit where applicable.

    - If the intent of the permit requirement is to have functional processes established to facilitate compliance with the permit components, then knowledge sharing of resources or templates amongst permittees is preferred to Ecology providing structured procedure templates.

Conclusion

When taking the above suggestions into consideration, it is worthwhile to keep in mind that most, if not all, city and municipal agencies already have processes, plans, and practices in place which incorporate elements to achieve compliance with the SWMP requirements. If able to demonstrate that these requirements are incorporated throughout adopted ordinances, municipal codes, internal guidance documentation, and standard operating processes, it is the respective opinion of this ad-hoc group that this is adequate to achieve the program compliance.

Having these processes in place not only addresses compliance with the SWMP component requirements detailed within the permit, but also ensures that permittees are held accountable to maintaining acceptable water quality. Providing structured stormwater procedures for regulatory review is not conducive to protecting ground water and surface water sources, which is the understood intent of the permit. Therefore, it is in the best interest of all parties involved that Ecology does not establish direction on how to develop and/or implement each permittees' individual procedures or perform their operations, and allow each permittee to demonstrate compliance through the processes already in place.

Business Inspection for Pollution Prevention (Source Control) Permit Suggestions

EWA Phase II Permit Business Inspection for Pollution Prevention (Source Control) Suggestions

2024 Eastern Washington Phase II Municipal Stormwater Permit Reissue

Topic: Requiring the implementation of a business inspection program to address pollution prevention
Permit Section: Not included in EWA Phase II Municipal Stormwater Permits

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Regulatory Purpose – Source Control Program for Existing Development

- The purpose of the source control program for existing development permit requirement is to prevent and reduce pollutants in runoff from areas that discharge to the MS4.

Problem Statement(s)

- Establishing a source control program of business inspections for existing development would be a new addition to the EWA Stormwater Phase II Permits and many EWA jurisdictions are resource and personnel limited. Additional Staff may be needed to implement this requirement.

- Eastern Washington municipalities have significant differences in size, numbers of businesses to inspect, and environmental considerations. There are dramatic differences and needs between the Cities of Spokane, Ellensburg, Wenatchee, Yakima, Moses Lake, Sunnyside, and College Place to name a few.

- Vactor trucks, to clean business stormwater systems, and decant facilities are limited or not available in many EWA communities so a requirement to have businesses clean their systems would not be enforceable.

- A municipal business inspection program should not include businesses that already have an industrial, dairy, irrigation district, or prison permit. There is no apparent benefit to the business or municipality by having multiple inspections of the same facility.

- The cities of Spokane and College Place have access to a Pollution Prevention Assistance Specialist, funded by Ecology, to do voluntary business inspections. If source control business inspections are added to the EWA Permits and business inspections are mandatory would Ecology's Pollution Prevention Program be impacted? What would the relationship be between this permit requirement and Ecology's existing Pollution Prevention Assistance Program?

- How would this mandatory inspection program be funded?
- What is Ecology's definition of MS4?
- Does this program only apply to NAIC code?

The EWA Ad Hoc group reviewed the WW Phase II Municipal Stormwater Permit 2019-2024 Source Control Requirements S5.C.8. to identify potential language that might be included in an EWA Permit.

WW Source Control Program for Existing Development S5.C.8.

a. The Permittee shall implement a program to prevent and reduce pollutants in runoff from areas that discharge to the MS4. The program shall include:

S5. *C.8.b.i. Source Control Program for Existing Development Appendix 3: Q73; Appendix 1; Appendix 10. Adopt and make effective an ordinance(s), or other enforceable documents, requiring the application of source control BMPs for pollutant generating sources using source control BMPs in the SWMMWW or Ecology-approved Phase I Program. Require Applicable operational source BMPs for all pollutant generating sources and structural source control BMPs if operational source control BMPs are inadequate.*

EWA Comments Already in the current permit

S5. *C.8.b.ii. Source Control Program for Existing Development Appendix 3: Q74, Q74a. Establish an inventory that identifies publicly and privately owned institutional, commercial, and industrial sites which have the potential to generate pollutants to the MS4.*

EWA Comments Already in the current permit

S5. *C.8.b.iii. Source Control Program for Existing Development Appendix 3: Q77, Q78 .Implement an inspection program for sites identified in C.8.b.ii.*

EWA Comments Not in current EWA Stormwater Phase II Permit

S5. *C.8.b.iii.a. Source Control Program for Existing Development Appendix 3: Q75, Q77. Provide information to those identified sites about activities that may generate pollutants and the source control requirements applicable to those activities.*

EWA Comments Not in current EWA Stormwater Phase II Permit

S5. *C.8.b.iii.b. Source Control Program for Existing Development Appendix 3: Q78 Complete the number of inspections equal to 20% of the businesses and/or sites listed in the source control inventory to assess BMP effectiveness and compliance with source control requirements. May count follow-up inspections at the same site towards meeting the 20% inspection rate.*

EWA Comments Not in current EWA Stormwater Phase II Permit

S5. *C.8.b.iii.c/d. Source Control Program for Existing Development. Inspect 100% of sites identified through credible complaints. Permittee may count inspections conducted based on complaints, or when the property owner denies entry, to the 20% inspection rate.*

EWA Comments Not in current EWA Stormwater Phase II Permit

Permit Revision Suggestions

1. Eastern Washington municipalities support the purpose of business inspections for stormwater pollution prevention/source control, and we suggest that, if Ecology decides to include business inspections in the Stormwater permits, a tiered approach be developed based on the number of businesses or population size.
2. If business inspections are added to the permit, we suggest that Ecology expand the Pollution Prevention Assistance (PPA) Program and provide specialists in Eastern Washington municipalities. We also suggest that Ecology 1)resolve the issue of mandatory versus voluntary PPA, and 2) provide guidance to the municipality on how to best collaborate with PPA specialists to identify the businesses for which a PPA visit is mandatory and to ensure that a business is not receiving redundant visits or conflicting expectations.