



# Public Services

128 North Second Street • Fourth Floor Courthouse • Yakima, Washington 98901  
(509) 574-2300 • 1-800-572-7354 • FAX (509) 574-2301 • [www.co.yakima.wa.us](http://www.co.yakima.wa.us)

LISA H. FREUND – Director

RE: 2024-2029 Draft NPDES Permit for Eastern Washington

## General Comments

Thank you for the opportunity to share comments on the proposed updates to the permit program and how they might impact jurisdictions in Eastern Washington. I deeply appreciate the work that you do to protect our environment, and I believe that together, we can address some of the concerns regarding these proposed mandates.

Environmental protection is important and there is a necessity of regulations to combat stormwater pollution. It's also important to keep in mind the unique challenges and limitations faced by smaller cities in our region. Our aim is to work collaboratively to ensure that our environment is safeguarded while also taking into consideration the practicalities of implementation.

Here are some general comments:

1. **Resource Constraints:** Smaller cities in Eastern Washington have legitimate concerns regarding the extent of the new requirements and the lack of resources available to meet them. Many of these jurisdictions have just one person managing the entire permit program. Expecting such limited staffing to handle the increased complexity of the proposed permit may be unrealistic, at least to the extent of requirements required. We continue to try to collaborate with smaller jurisdictions and reduce this load, but increasing requirements on a less than one FTE trying to fulfill all the requirements alone.
2. **Costly Compliance:** Compliance with this updated permit will undoubtedly be costly, complex, and difficult for smaller cities. The financial burden imposed by these mandates may divert or reduce funds from other essential municipal services. It would help to outline the expected performance benefits of these requirements. How does the cost of implementation relate to effectiveness of the permit? Have the permit effectiveness studies helped to determine how these compare? Sharing this information can help jurisdictions prioritize when trying to comply with a growing list of state mandates (not just from stormwater).
3. **Uncertain Compliance:** Related to the cost of compliance, when numerous requirements are modified simultaneously in one permit update, compliance becomes more difficult. Smaller jurisdictions require a stable regulatory environment to plan and allocate resources effectively. The current approach introduces some ambiguity and risks.
4. **Need for Clarity/Transparency:** The permit includes some new and untested approaches and requirements. Permittees may struggle to allocate resources efficiently and effectively without a clear understanding of the rationale behind these changes. Ecology should provide detailed documentation and reasoning for each requirement,

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enabling jurisdictions to present this information to elected officials responsible for program approvals and budgets. For example, why was it determined that a new requirement around building washing was required, and that the stormwater permit was the most effective place to put this regulation?

5. **Lack of Flexibility:** In the past, Ecology has acknowledged the limited capacity of smaller jurisdictions' stormwater programs but has failed to increase flexibility in the proposed permit requirements. A one-size-fits-all approach does not consider the unique challenges faced by Eastern Washington communities, and it challenges some jurisdiction's ability to focus on the most important portions of the permit that help to reduce or eliminate stormwater pollution.
6. **Transparency and Science-Based Decisions:** The draft permit includes sections that go beyond the minimum requirements of the EPA and the Clean Water Act, without clear documentation or rationale. Ecology should transparently explain why these additional requirements are necessary or recommended and how they contribute to environmental protection based on scientific evidence. The permit should incorporate flexibility to allow jurisdictions to implement measures that align with the most effective strategies for their specific areas.
7. **Permit Effectiveness:** Since the inception of the first stormwater NPDES permit in Eastern Washington, Ecology has received data related to the effectiveness of the permit requirements. Further, one of the Eastern Washington NPDES permit requirements have been for jurisdictions to run effectiveness studies, which also often measures the effectiveness of the studies. Related to the comment above, it is unclear whether the studies that have been made have gone into rational for future requirements. Ideally, as permit requirements are found to be less effective these would be removed from the permit requirements to instead allow focus on those efforts that are found to be more effective in reducing stormwater pollution. It would help to see a central location on Ecology's website that these permit effectiveness measures were shown and outcomes of evaluations shared, including how this was tied back to the permit requirements.

### **Appendix 1 Regulatory Threshold Comments**

Here are some key points to consider related to the regulatory threshold changes:

1. **Increased Administrative Burden:** The new requirements place a significant administrative burden on counties in Eastern Washington. Requiring the review of all permits and associated construction stormwater pollution prevention plans for projects larger than 5,000 square feet or with certain landscape alterations introduces a substantial workload, particularly in areas with limited staffing and resources. This requirement will burden the staff even more due to the increase in pre-construction, construction, and post-construction inspections.

2. **Threshold Size:** The previous threshold of 1 acre (as specified in the CWA) seemed reasonable for our region, given the lower population density and development patterns in Eastern Washington. Lowering the threshold to  $\frac{3}{4}$  acre or more of vegetation conversion to lawn or landscaped area or 2.5 acres or more of native vegetation to pasture may not be the most effective use of resources and cost for our unique circumstances.
3. **Elimination of Exemptions:** Removing the ability to provide exemptions when converting from one hard surface to another with the same runoff footprint could hinder common-sense development practices. In many cases, such conversions do not significantly impact stormwater runoff, and requiring a full review and compliance with construction and post-construction requirements may not be justified.
4. **Complexity:** The proposed changes, including the introduction of a flow chart to determine if a project fits the regulatory threshold, add complexity to an already intricate regulatory framework. This complexity may lead to confusion among stakeholders and increase compliance challenges, particularly for smaller jurisdictions with limited resources.
5. **Cost-Effectiveness:** It is crucial to evaluate whether the proposed changes provide a cost-effective solution for our region. Eastern Washington faces overburdened communities, and additional regulatory requirements may deter investment and development, ultimately affecting our communities' economic well-being.
6. **Lack of Evidence:** The rationale for these specific threshold changes should be thoroughly documented and supported by scientific evidence that demonstrates their effectiveness in reducing stormwater pollution. It would also be good to see whether the thought of spending staff dollars reviewing permits with smaller thresholds is as cost effective as other stormwater projects. Without such evidence, it is challenging to justify or understand if these changes as a cost-effective solution.

In light of these considerations, I respectfully request that the Washington State Department of Ecology reevaluate the proposed regulatory threshold changes for Eastern Washington. It is essential to strike a balance between environmental protection and economic sustainability, ensuring that any changes to regulations are justified by clear evidence of their benefits and cost-effectiveness in our region.

### **Building Washing Comments**

Here are some key points to consider related to the building washing:

1. **Difficulty in Regulation:** Extending these regulations to buildings not owned or operated by the municipality presents challenges in terms of management and enforcement. It is difficult to regulate and police activities in buildings that fall outside municipal jurisdiction. Implementing these regulations for privately owned or operated structures would place an undue burden on local authorities and may lead to compliance issues.

2. **Unpermitted Activity:** Building washing is not currently a permitted activity in jurisdictions in Eastern Washington. Introducing regulations for activities that have not historically been regulated can be met with resistance and practical challenges. It is essential to consider how these regulations can be effectively communicated to and adopted by all relevant parties.
3. **Scope of PCB Regulation:** Would this approach be more proactive and cost-effective if the regulation of PCB-containing materials were addressed primarily within building standards and construction guidelines rather than stormwater regulations?

### **PFAS Management Plan**

These are some concerns regarding the PFAS Management:

1. **Availability of PFAS containing AFFF:** Washington State RCW 70A.400 - Firefighting Agents and Equipment –Toxic Chemical Use, defines and outlines restrictions and prohibitions of Class B firefighting foams. This RCW was adopted in 2018. Specifically, it prohibits the use of PFAS containing foam in training exercises. The RCW also restricts the manufacture, sale and or distribution of these PFAS containing foams.
2. **Certification:** Rather than a plan to regulate or track discharges of PFAS containing AFFF a certification from Fire Districts and Departments stating the non-use of AFFF, storage and/or possession of said foams.
3. **Guidance:** Perhaps some other guidance on what “minimizing the resuspension, conveyance etc.” looks like could prove beneficial. Has EPA provided any protocol regarding resuspension or conveyance of PFAS already contained in MS4’s?

### **Public Education and Outreach**

Comments on Public Education and Outreach:

1. **Program Evaluation:** Per this statement: “*Document program evaluation process and how resources will direct effective methods and implementation of the ongoing education and outreach program.*” A documented program analysis is required to determine the effectiveness of the Public Education & Outreach program. Additional staffing time will be required to analyze data and evaluate the effectiveness of specific portions of the Public Education and Outreach program.
2. **Effectiveness Studies meet this requirement:** Many studies have been performed to evaluate Public Education and Outreach programs. These studies will be ongoing as part of the S8.B requirement through SAM or individual agency studies.
3. **Stewardship Opportunities:** The County currently works with a third party as part of our PE&O program (Drain Rangers) does this meet the stewardship goal? Ecology should take the lead in organizing additional PE&O requirements.

4. **Propose:** Ecology should provide additional resources to permittees and/or funding support for the Washington Stormwater Center to aid permittees in developing tools to evaluate the effectiveness of Public Education and Outreach programs. This provides a mechanism for a unified message with regards to stormwater awareness.

### **Overburdened Communities**

1. **Document and Report:** Virtually all of Yakima County has a high rating (>5) according to the Washington State Department of Health's Map on overburdened communities. Therefore, any Public Involvement or CIP projects would be to the benefit of overburdened communities.
2. **Method:** Washington State Department of Health disparities map.

### **Street Sweeping Program**

Issues created by Street Sweeping requirement:

1. **Frequency:** Due to the dry climate in central Washington, our current sweeping schedule is twice a year or as needed. This requirement adds at least one more scheduled sweeping to the schedule thus adding additional maintenance cost and wear on the apparatus.
2. **Routes:** The NPDES permit only covers the stormwater utility boundary which is the growth areas outside permitted cities. Many of the current routes, which are based on maintenance zones, traverse areas inside and outside of the stormwater utility boundary. Documenting only the activities that occur within the stormwater utility boundary will be cumbersome for the maintenance crews.
3. **Documentation:** Due to the age and technology available in current equipment some of the documentation requirements would be no more than an estimate.
4. **Disposal:** This requirement could create additional costs to jurisdictions.
5. **Cost:** This regulation could potentially require enhancements, improvements, or new equipment costs.

### **Regional Manual Equivalency**

Eastern Washington has a variety of different climates, vegetation, features, and soils. Regional Stormwater Manuals provide important details regarding localized climate, precipitation, soils and BMPs for such conditions.

1. **Equivalency:** This requirement will create a major update to our current regional manual.

2. **Expense:** Based on the creation of similar projects and manuals this will have a significant cost impact on the county and regional partners.

Thank you for considering these comments. I hope these are helpful as we continue to collaborate to find solutions that benefit both our environment and the citizens of Eastern Washington.



Jack Wells  
Yakima County Water Resources  
Supervisor-Stormwater Lead  
(509) 574-2350  
[jack.wells@co.yakima.wa.us](mailto:jack.wells@co.yakima.wa.us)

