



Eastern Washington Stormwater Group

**November 6, 2023**

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DELIVERED VIA EMAIL

Re: Comments to the Draft Eastern Washington Phase II Municipal Stormwater General Permit

Dear Abbey,

Thank you for the opportunity to provide comments to the Draft Eastern Washington Phase II Municipal Stormwater General Permit. Comments developed by the Eastern Washington Stormwater Group (EWSG) are being provided to you directly (enclosed), and were also submitted using the online submission form. The EWSG is pleased to provide comments to the draft Phase II permit on the following topics:

- Appendix 1 – Core Elements
- Mapping Tributary Conveyances
- Public Involvement and Participation for Overburdened Communities
- Tree Canopy Assessment and Mapping
- PCB Building Washdown, Renovation, and Demolition
- Illicit Discharges - PCBs
- Non-Stormwater Discharges – PFAS

If you have any questions, or need clarification on anything, please contact me via email at [JGeorge@spokanecity.org](mailto:JGeorge@spokanecity.org), or by phone at 509-625-7908. The EWSG is looking forward to seeing the final version of the Eastern Washington Phase II permit.

Regards,

James George III  
on behalf of the Eastern Washington Stormwater Group

enclosure

cc: Brad Mitchell, EWSG Chair

# Comments on the Draft Eastern Washington Phase II Municipal Stormwater General Permit

November 2023

*Provided to:*

Washington State Department of Ecology



*Provided by:*

The Eastern Washington Stormwater Group



Eastern Washington Stormwater Group

# **EWSG Recommendations for Draft EWA Phase II Permit Conditions – Appendix 1**

## **2024 Eastern Washington Phase II Municipal Stormwater Permit Reissuance**

**Topic: Appendix 1 – Core Elements**

**Permit Sections: Appendix 1 - Core Elements for New Development and Redevelopment**

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### **Regulatory Purpose**

- It is the understanding of the EWSG that the Core Elements in Appendix 1 of the Eastern Washington Phase II Municipal Stormwater Permit have been developed to provide a consistent working set of principles for municipalities to adopt as requirements for development and redevelopment projects. The proposed changes to Appendix 1 are several and varied, and appear to attempt to provide clarity where needed, and close gaps where perceived, in order to reduce the adverse impacts of stormwater runoff.

### **Problem Statements**

#### ***Appendix 1 - Section 1 Exemptions***

- The opening sentence of Appendix 1, *“Unless otherwise indicated in this section, the practices described in this section are exempt from the Core Elements, even if such practices meet the definition of new development or redevelopment”* provides clarity for the users of the Appendix 1 guidance and should minimize overconservative interpretations of the Core Elements requirements and diminish confusion when the Core Elements are being implemented. The EWSG supports the addition of this statement.

#### ***Appendix 1 - Pavement Maintenance Projects***

- The proposed Appendix 1 language for pavement maintenance projects proposes to change the designation of pavement maintenance from a practice to a project where, *“The exemptions... [for pavement maintenance projects] ...may only be applied to an entire project...”*. Lifecycle pavement maintenance includes the performance of several activities that serve to repair damage, increase the usability of the pavement, and ultimately prolong its’ lifetime. Broadly requiring the implementation of the Core Elements for an entire project because pavement maintenance is occurring, or requiring the Core Elements for pavement maintenance because another task of a project requires them fails to consider whether the Core Elements are actually warranted. Moreover, it is standard practice to evaluate activities specifically in order to identify the BMPs that will most effectively address the activities appropriately. BMPs that do not address the actions of an activity are unnecessary to implement. In lieu of the broad application of generic BMPs for a set of actions, it is more appropriate to implement BMPs that are tailored specifically for the actions being performed. Implementation of the Core Elements should be no different.
  - The proposed Appendix 1 language for pavement maintenance projects states *“...The entire [pavement maintenance] project must be for the sole purpose of maintaining a pavement area.”* Maintenance activities that have inherently low potential to impact stormwater when performed as the sole focus of a project are equally as unlikely to impact stormwater if the maintenance activity is included as a component of a larger project. Disallowing the exemption for pavement maintenance activities that are performed as a component of a larger project unnecessarily requires the overapplication of the Core Elements, and is unfounded. Arbitrarily requiring application of the Core Elements for street maintenance activities with an inherently
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low potential to impact stormwater that are included as a component of a larger project discourages the integration and management of separate maintenance and development activities under a single project umbrella, ultimately, and creates an unnecessary hurdle for the performance of an efficient and cost-effective project.

#### ***Appendix 1 - Underground Utility Projects***

- The proposed Appendix 1 language for underground utility projects states *“This exemption may only be applied to an entire project. The entire project must be for the sole purpose of installing, maintaining, and/or upgrading an underground utility...”* Broadly requiring implementation, or exemption, of the Core Elements for an entire project fails to address the unique tasks performed as components of a project. Requiring application of the Core Elements for all components and tasks of a project misses the opportunity to address the implementation of activity specific BMPs that may be unique to certain project tasks or components, but not the project as a whole. Implementing, or exempting, the Core Elements for the whole of a project that includes underground utility maintenance activities as a project component will result with inappropriate application of the Core Elements per the individual project tasks and/or components.
- Requiring application of the Core Elements for an entire project that is a sum of unique activities discourages the integration of separate activities under a single project management umbrella, and undermines attempts to complete efficient and cost-effective municipal projects.

#### ***Appendix 1 - Core Element Thresholds***

- The proposed Appendix 1 thresholds require implementation of the Core Elements for projects that 1) result in 5,000 sq ft of new/replace hard surfaces, 2) convert  $\frac{3}{4}$  acres of vegetation to lawn/landscaped areas, or 3) convert 2.5 acres of native vegetation to pasture. The water quality benefits for implementation of the proposed thresholds has not been demonstrated as applicable for the unique geographies of each Eastern Washington jurisdictions. Implementation of the proposed, undemonstrated thresholds will place a significant and unnecessary burden on smaller and rural Eastern Washington jurisdictions with staffing and resource challenges.

### **Recommended Revisions**

#### ***Appendix 1 - Pavement Maintenance Projects***

- Ecology should consider revising the draft language for pavement maintenance exemptions to be based on the potential for the maintenance activity to impact stormwater, instead of basing the exemption on whether the activity is the sole focus of a project or a component of a larger project scope. Specific stormwater BMPs mitigate specific pollutant generating activities, and the implementation of the Appendix 1 Core Elements should also address activities specifically. Exemptions and partial exemptions to Core Elements should work within the same framework as the implementation of BMPs, and focus on the specific pollutant generating activity rather than the sum of separate activities and project as a whole.

- Ecology should consider exempting pavement maintenance activities when performed as a component of a project if the activities in question would be exempted if they were the sole focus of a project. The potential for a pavement maintenance activity to impact stormwater does not arbitrarily change if the activity is managed as the sole focus of a project, or as a component of a project that is a sum of separate activities.
- Ecology should consider encouraging the integration of municipal maintenance activities and development projects where stormwater can be appropriately managed per activity under a project umbrella in order to allow municipalities to efficiently perform projects, and realize a cost savings to the rate payers. Eliminating the Core Element exemption for a pavement maintenance activity because it is under the management umbrella of a larger project is unwarranted.

### ***Appendix 1 - Underground Utility Projects***

- Ecology should consider exempting underground utility activities when they are performed as a component of a project if the activities in question would be exempted if the sole purpose was installing, maintaining, and/or upgrading the underground utility. The potential for an underground utility maintenance activity to impact stormwater does not arbitrarily change if the activity is the sole focus of a project, or managed as an activity within a project that is a sum of separate activities.
- Ecology should consider encouraging the integration of separate municipal activities and development projects under a project umbrella that manages each activity appropriately with respect to stormwater. Integration of municipal maintenance activities into capital projects, when appropriate, in order to allow municipalities to efficiently perform projects, and realize a cost savings to the rate payers. Requiring application of the Core Elements for all tasks of a project if the project includes an underground utility, and vice versa, is unwarranted.

### ***Appendix 1 - Core Element Thresholds***

- Ecology should consider demonstrating the basis, and therein the value, for adding the proposed development thresholds for projects within Eastern Washington watersheds and/or municipal boundaries. Smaller and rural Eastern Washington Permittees tend to resource their stormwater utilities with personnel who fill more than a single public utility role. The staff time needed for an increase in plan reviews that may be unnecessary, places an undue burden on some Eastern Washington jurisdictions that already struggle to maintain compliance with current staffing and resources.
- Ecology should consider raising the threshold limits, or removing the thresholds altogether, as a Core Element requirement unless it has been demonstrated that the water quality of a permitted Eastern Washington jurisdiction would greatly benefit.

# EWSG Recommendations for Draft EWA Phase II Permit Conditions – Mapping Tributary Conveyances

## 2024 Eastern Washington Phase II Municipal Stormwater Permit Reissue

Topic: Mapping Tributary Conveyances

Permit Sections: S5.B.3.a.ix

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### Regulatory Purpose

- The Illicit Discharge Detection and Elimination Section of the permit outlines the measures that Permittees must take to prevent, detect, characterize, trace, and eliminate illicit connections and illicit discharges. Specifically, section S5.B.3.a of the 2019 permit requires the Permittee to maintain and periodically update a map of the MS4 with the specific mapping information required in S5.B.3.a.i-vii.

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### Problem Statements

#### S5.B.3.a.ix – Illicit Discharge Detection and Elimination

##### *Tributary Conveyances*

- The new proposed requirement in S5.B.3.a.ix says:

*“No later than December 31, 2027, Permittees shall map tributary conveyances to all known outfalls and discharge points with a 24-inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems. The following features or attributes (or both) shall be mapped:*

  - (a) Tributary conveyance type, material, and size where known.*
  - (b) Associated drainage areas.*
  - (c) Land use.”*
- Draft permit Section S5.B.3.a.ix is based on  $\geq$  24-inch nominal diameter piping, or equivalent cross-sectional area of non-pipe systems, where the intent appears to be mapping larger contributing MS4 drainage areas to known outfalls and discharge points. In addition to mapping piped systems from larger drainage areas, the proposed language of the draft will also require Permittees to map non-pipe systems with equivalent cross-sectional areas of 24-inches or more that convey stormwater from smaller contributing drainage areas. For example, a short (~200 ft) ditch and 12” diameter culvert conveyance outfalls to a stream, with an associated drainage area less than 1-acre. Mapping smaller drainage areas may provide very little benefit when compared against the overarching requirements in the Illicit Discharge Detection and Elimination section of the permit.
- It is unclear what the criteria is for systems that include equivalent non-pipe cross-sectional areas, and if the smaller drainage areas that are hydrologically connected to an equivalent cross-sectional area non-pipe system are intended to be mapped. Additionally, the requirements do not address mapping of tributary conveyances of pipe and non-pipe systems having nominal diameters  $<$  24-inches that discharge to known outfalls, where the upstream conveyances are  $\geq$  24-inches but have been reduced prior to the outfall.

### ***Associated Drainage Areas***

- Associate drainage areas lacks definition and allows for widely different interpretations and varying levels of accuracy.

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### **Recommended Revisions**

#### **S5.B.3.a.ix – Illicit Discharge Detection and Elimination**

##### ***Tributary Conveyances***

- Ecology should provide clarity on the expectation for implementing the proposed language specific to tributary conveyances, or update the Mapping and Guidance for Municipal Stormwater Permittees (October 2019) with clarification on how to correctly fulfill this mapping requirement.

##### ***Associated Drainage Areas***

- Ecology should provide clarity on the expectation for implementing the proposed language specific to associated drainage areas, or update the Mapping and Guidance for Municipal Stormwater Permittees (October 2019) with clarification on how to correctly fulfill this mapping requirement.

# **EWSG Recommendations for Draft EWA Phase II Permit Conditions – Overburdened Communities**

## **2024 Eastern Washington Phase II Municipal Stormwater Permit Reissue**

**Topic: Public Involvement and Participation for Overburdened Communities**

**Permit Sections: S5.B.2.a**

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### **Regulatory Purpose**

- The Department of Ecology (DOE) has taken actions to reduce environmental health disparities for vulnerable populations in Washington State by creating an environmental Justice Task Force (EJTF) and incorporating environmental justice goals in their agencies structures, systems, and policies. Therefore, DOE has incorporated requirements for public education and outreach, involvement, and participation to overburdened communities into all three municipal stormwater NPDES permits to help meet the goals of the EJTF.
- The proposed requirements under draft permit section S5.B.2.a. require that Permittees must identify the geographic areas of overburdened communities in their jurisdiction, which is necessary in order to fulfill other public education and outreach, involvement, and participation requirements.

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### **Problem Statements**

#### ***S5.B.2.a - Public Involvement and Participation***

- The permit definition for overburdened communities is very specific to certain populations of people. Eastern Washington Permittees have found the best resources to use to identify these geographic areas is the Washington State Department of Health’s Environmental Health Disparities Map or the Environmental Protection Agency’s Environmental Justice Screening and Mapping Tool. While these tools both use data from multiple sources, each have apparent inaccuracies or limitations of precision to census tracts, which can be misleading for Permitteesto adequately identify this priority audience.
- The permit defines overburdened communities as vulnerable populations which are more likely to be at higher risk for poor health outcomes in response to environmental harms. This definition will include a majority of some municipalities’ population within their respective geographic boundaries due to adverse regional socioeconomic factors and sensitivity factors, ultimately associating the whole of a municipal population (e.g. the general public) as an overburdened community.
- It is unclear what the risk thresholds to use to evaluate populations that are at high-risk for poor health outcomes. The Washington State Department of Health’s Environmental Health Disparities Map provides a color grade scored 1 through 10, but does not identify the high-risk threshold, requiring user subjectivity to develop an analysis. Lack of guidance and/or risk threshold standards will lead to highly variable interpretations, overestimates of a vulnerable populations, or scope narrowing to only the most highly vulnerable of populations, among other uncertain variability. These uncertainties have significant potential for misalignment of the implementation of the public participation and outreach to priority audiences and the compliance expectations from Ecology, as well as render data that is not comparable



between jurisdictions.

### **Recommended Revisions**

#### ***S5.B.2.a - Public Involvement and Participation***

Ecology should consider providing more clarity on the permit conditions for public participation of overburdened communities in the form of details in the permit or guidance documentation in order for the intent of the permit to be attained with success.

# **EWSG Recommendations for Draft EWA Phase II Permit Conditions – Tree Canopy Assessment**

## **2024 Eastern Washington Phase II Municipal Stormwater Permit Reissue**

**Topic: Tree Canopy Assessment and Mapping**

**Permit Sections: S8.A.1 and S5.B.3.a.x**

**Regulatory Purpose** – Illicit Discharge Detection and Elimination, Monitoring and Assessment

- The proposed permit requirement to implement tree canopy goals and policies appears to be intended to act as a water quality benefit tool, using the advantages tree canopies offer to water quality improvements for runoff permitted MS4s.

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### **Problem Statements**

#### **S5.B.3.a.ix – Illicit Discharge Detection and Elimination**

##### ***Tree Canopy Scope***

- Draft permit section S5.B.3.a.x requires that *“No later than December 31, 2028, begin mapping of Permittee-owned or operated properties with tree canopy based on available, existing data.”* The expectations are unclear for the proposed tree canopy mapping requirement, specifically what properties within a municipal boundary are considered *“Permittee-owned or operated”* properties by Ecology.

##### ***Tree Canopy Definition***

- Tree canopy is not defined in the permit, and allows for highly varied interpretations across the Eastern Washington jurisdictions.

#### **S8.A.1 – Monitoring and Assessment**

##### ***Permittee Owned Properties***

- Draft permit section S8.A.1 reads: *“Permittees shall adopt and implement tree canopy goals and policies in order to support stormwater management and water quality improvement in receiving waters.”* The proposed permit language S.8.A.1 does not indicate 1) if the policies and goals for stormwater management are intended to only apply to Permittee-owned or operated properties, and 2) whether this requirement can be met by existing tree canopy policies that may support stormwater management and water quality improvements.

##### ***Water Conservation***

- Water conservation is a concern in Eastern Washington, and some jurisdictions have already codified water conservation goals and requirements. Requiring tree canopy mapping requirements appears to intend to establish larger tree canopies, and may not align with some Eastern Washington water conservation efforts and regional values.

## **Recommended Revisions**

### ***S5.B.3.a.ix – Illicit Discharge Detection and Elimination***

#### ***Tree Canopy Scope***

- Ecology should consider explicitly including which type of properties are considered “permittee- owned and operated”. For example, rights-of-way, easements, areas with interlocal agreements, and/or Permittee-owned parcels, among other property designations could be identified in the permit language as applicable.

#### ***Tree Canopy Definition***

- Ecology should consider clarifying the parameters that comprise a tree canopy (e.g. applicable species, minimum heights, native vs non-native, invasive, etc.) by inclusion in the permit language, or development of a compliance guidance document that specifically addresses tree canopies and their water quality benefits.

### **S8.A.1 – Monitoring and Assessment**

#### ***Permittee Owned Properties***

- Ecology should consider directing Permittees with respect to the proposed tree canopy assessment expectations to make clear what the extent of the goals and policies are. In addition, Ecology should clarify if tree canopy goals and policies are required to be new, or can they be existing policies.

#### ***Water Conservation***

- Ecology should consider removing this permit requirements from the Eastern Washington Phase II Municipal Permit altogether, or allowing including an exemption for Permittees who have water conservation policies that do not align with the intent of increasing tree canopies.

# EWA Phase II Permit PCB Washdown - Municipal O&M Suggestions 2024 Eastern Washington Phase II Municipal Stormwater Permit Reissue

Topic: PCB Building Washdown, Renovation, and Demolition

Permit Sections: S5.B.6.a.i (d)

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## Regulatory Purpose – Municipal Operations and Maintenance

- Section S5.B.6.a.i (d) speaks to the control of PCBs in municipal owned buildings. The section discusses the use of source control BMPs before and during demolition, renovations or building washdown.

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## Problem Statement –Municipal Operations and Maintenance

- Draft permit section S5.B.6.a.i(d) requires updating “...policies, practices, or procedures to include Source Control BMPs to minimize PCBs from entering the MSA” for buildings built or renovated between 1950 and 1980. The proposed permit language presumes PCBs are ubiquitous for all buildings everywhere for the time frame referenced, and does not provide a regulatory pathway for negative confirmation of the presence PCB containing building materials.

## Problem Recommendation

- Ecology should consider adding language to exclude buildings that are confirmed to not contain PCBs and are within the date range provided.
- Ecology should consider including an exclusion from updating policies, practices, or procedures for Permittees that demonstrate that there are no permittee-owned buildings in their jurisdictions that have PCB containing materials.

# EWSG Recommendations for Draft EWA Phase II Permit Conditions – PCB Building Washdown

## 2024 Eastern Washington Phase II Municipal Stormwater Permit Reissue

Topic: Illicit Discharges - PCBs

Permit Sections: S5.B.3.b.iii (e) and S5.B.6.a.i (d)

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### Regulatory Purpose

- Sections S5.B.3 and S5.B.6 both look to protect water quality through the detection, elimination, and regulation of illicit discharges to the MS4. This is accomplished through either field operations or regulatory mechanism implementation. Within both sections there are specifics illustrated in regard to PCBs and reducing their introduction into the MS4.
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### Problem Statements

#### ***S5.B.3.b.iii(e) – Conditionally Allowable Discharges***

- Draft permit section S5.B.3.b.iii (e) requires Permittees to “...reduce... [building washdown] discharges through, at minimum, public education activities or water conservation efforts, or both. To avoid washing pollutants into the MS4, Permittees shall minimize the amount of wash water used.” The use of or and shall in the same statement does not align and may create confusion among the permitted jurisdictions. In addition, the term “minimize” is used as a compliance threshold, but is subjective and ambiguous.

#### ***S6.a.i(d) – Municipal Buildings***

- Draft permit section S6.a.i(d) requires Permittees to “...update policies, practices, or procedures to include Source Control BMPs to minimize PCBs from entering the MS4” during “...demolition and renovations or building washdown” for buildings “...confirmed or suspected to have PCB-containing materials.” The proposed language is seemingly brief, but it has a likely potential of requiring significant municipal time and resources to implement and manage, and potentially the development of an entire program focused on PCBs during building demolition and washing activities. Implementation of a municipal program to manage suspected PCB-containing materials during demolitions and building washing will necessitate hiring qualified personnel with specialty skill sets, or training current staff to take on another role.

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## **Recommended Revisions**

### ***S5.B.3.b.iii(e) – Conditionally Allowable Discharges***

- Ecology should consider making the intention of S5.B.3.b.iii (e) clearer with respect to water conservation and public outreach expectations for conditionally allowable discharges.
- Ecology should consider establishing a quantified definition and/or standard process for the minimization of washwater to remove ambiguity and compliance subjectivity.

### ***S6.a.i(d) – Municipal Buildings***

- Ecology should consider leveraging current EPA guidance in lieu of creating additional regulation. Current guidance from the EPA suggests focusing on public education and outreach efforts, and providing municipal support and assistance to property owners. This approach would allow Permittees to help and guide rate payers, while avoiding the addition of potentially unnecessary state regulation on the municipality.

# EWSG Recommendations for Draft EWA Phase II Permit Conditions - PFAS

## 2024 Eastern Washington Phase II Municipal Stormwater Permit Reissuance

Topic: Non-Stormwater Discharges – PFAS

Permit Sections: S2.B.2 & S2.B.3.a & S2.B.3.b

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### Regulatory Purpose

- The requirements in this section identify both Stormwater and Non-Stormwater discharges in regard to discharges that are both allowed and prohibited. This section looks to limit the amount of non-stormwater discharges to the MS4 that could contain potentially harmful pollutants and specifically PFAS chemicals contained in firefighting Aqueous Film Forming Foam (AFFF) solutions. This section refers to other illicit or non-stormwater discharges found in sections S5.B.3 and S6.D.3.
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### Problem Statement

#### **S2.B.2 – Non-Stormwater Discharges**

##### PFAS Management Plan

- The draft permit section S2.B.a requires that “...the Permittee shall coordinate with firefighting agencies/departments... to develop a PFAS management plan... to minimize discharges of PFAS via the MS4 during emergency firefighting activities.” The Revised Code of Washington (RCW) 70A.400.020 restricts the sale and manufacture of Class B firefighting foams that contain PFAS, with an effective year of 2020. In alignment the RCW, several Eastern Washington Permittees have, in large part, phased out the use of PFAS firefighting foams altogether. The phasing out of PFAS containing foams renders the S2.B.a permit condition unnecessary, and the requirement to create a management system for a non-existent issue, superfluous.
- Draft permit section S2.B.a provides compliance date of *December 31, 2026* to “*coordinate with firefighting agencies/departments... to develop a PFAS management plan...*” departments to develop a plan to manage discharges to the MS4 that may contain PFAS. In alignment with RCW 70A.400.020, many Eastern Washington municipal fire departments have begun phasing out PFAS containing firefighting foams, and may potentially require beyond 2026 to accomplish a complete phase out.

##### PFAS protocols

- Draft permit section S2.B.3.b includes the statement “*...Permittee shall implement specific protocols for minimizing the resuspension, conveyance, and discharge of PFAS already in the MS4, both during normal operations and during all maintenance.*” The proposed section S2.B.3.b language lacks clear definition of the baseline conditions that Ecology appears to presume exist with respect to an MS4s ability to retain PFAS. Several Eastern Washington municipalities have phased out PFAS from firefighting operations and, given routine maintenance activities and recurring stormwater discharges over time, it is likely that there is no residual PFAS contained within MS4s.

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## **Recommendation Revisions**

### ***S2.B.2 – Non-Stormwater Discharges***

#### PFAS Management Plan

- Ecology should consider including a permit exclusion for proposed Section S2.B.a allowing permitted municipalities that demonstrate that PFAS containing firefighting foams are no longer in use by the respective fire department via a certification letter, or similar legal declaration.
- Ecology should consider extending the deadline to develop a PFAS management plan to allow applicable jurisdictions adequate time to completely remove PFAS containing foams from operations first.

#### PFAS protocols

- Ecology should consider defining where, and in what form, PFAS is presumed to be retained within the applicable MS4s to establish clear expectations for Permittees. Ecology should also consider including an exemption from section S2.B.3.b for jurisdictions that have phased out PFAS from firefighting operations and demonstrated routine maintenance activities that, by proxy, will have purged PFAS from the MS4.