



July 29, 2022

Electronic Public Comments Submittal

**RE: Comments on the draft Lower White River pH Total Maximum Daily Load: Technical Analysis and TMDL Allocations, Publication 22-10-011A (draft TMDL) and TMDL Implementation Plan 22-10-011.**

The Washington State Department of Transportation (WSDOT) seeks to work collaboratively with the Department of Ecology (Ecology) and other partners to improve water quality across the state. Though it is difficult to provide informed public comments on draft TMDLs, we hope our feedback is constructive and helps shed light on implementation challenges that could be improved.

The requirements in this draft TMDL move away from the presumptive approach used in other TMDLs as well as the National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater (MS4) Permits. This TMDL would be difficult to reconcile within our programmatic approach to compliance represented in our current Stormwater Management Program Plan (SWMPP) and would likely require new resources to implement. WSDOT questions whether this is justified for a TMDL that does not identify stormwater as a source of impairment.

The draft TMDL states, “analysis shows that stormwater likely does not contribute to pH excursions during runoff conditions and is not a significant loading of phosphorous to the Lower White River during non-runoff conditions for the May 1st – October 31st critical period.” The Implementation Plan states, “Nonpoint sources are a significant element of this TMDL representing roughly 2/3 of the loading capacity in low flow conditions and roughly half the loading capacity during medium flow conditions.” Because of these findings, WSDOT believes the requirements set forth for WSDOT in the draft TMDL would be an inappropriate use of funds for our agency and would detract from our ability to focus resources in areas where stormwater has been identified as a source of impairment.

The draft TMDL proposes new actions for WSDOT above and beyond what is currently required, funded, and implemented under our MS4 Permit. WSDOT’s stormwater funding allows us to meet the existing requirements and level of effort outlined in our MS4 Permit, and those requirements have never included outfall screening, outfall monitoring, or source tracing, as proposed by the draft TMDL. Our existing MS4 Permit monitoring requirements are extensive and cost the state approximately \$1.5 million every biennium. WSDOT also pays into regional status and trends monitoring efforts for both the Puget Sound and Lower Columbia River watersheds. WSDOT is currently not equipped to perform the additional actions

proposed and requiring such actions does not appear justified based on the apparent lack of connection between stormwater and the impairments being addressed.

Tracking and complying with highly variable TMDL actions across the state is increasingly out of sync with our programmatic approach developed to comply with our MS4 Permit. A programmatic approach is the most efficient way for our agency to meet existing requirements, improve the quality of stormwater runoff statewide, and support environmental justice goals. Additional TMDL specific actions should target areas where stormwater is a source of impairment and complement our existing requirements. We believe TMDL specific requirements and WSDOT's programmatic approach to compliance do not have to be incongruous. While each TMDL is unique, some consistency in requirements and approaches would allow WSDOT to be more effective in improving water quality statewide. We continue to seek meaningful collaboration from Ecology on reconciling this growing implementation challenge.

**Draft TMDL Specific comments and recommendations:**

1. (pp. 41-21, Other Load Limits and Requirements)

Comment: The Implementation Plan states, "Point source wasteload allocations (WLAs) will be largely self-implementing through the administration of the NPDES Program." That statement is not true for WSDOT based on the draft TMDL. There are numerous important reasons why WSDOT's MS4 Permit is separate and different from the Phase I and II MS4 Permits. Because our MS4 Permit is very different from the Phase I and II MS4 Permits, our associated work and approach to compliance is also very different. Ecology should consider WSDOT's existing requirements (including existing TMDL specific actions) and associated work when developing new TMDL specific actions.

Further clarity is needed as to whether it is Ecology's intention to require WSDOT to develop a new program to comply with this TMDL. While other MS4 permittees may have existing programs or framework to perform the proposed actions, WSDOT does not. WSDOT does have extensive monitoring requirements that change over-time but have never included outfall screening, outfall monitoring, or source tracing. Based on discussions with Ecology on past draft TMDLs, it continues to be WSDOT's understanding that Ecology is the appropriate agency to perform such actions as part of TMDL development and implementation.

Additionally, Ecology's original request for outfall information identified specific river miles on the Lower White River and we reported only one known outfall within that scope. The scope has expanded and the definition of "piped outfall"

raises some questions. WSDOT does not yet know whether these factors will increase the number of qualifying outfalls.

Recommendation: Just as WSDOT’s MS4 Permit is different and separate from the Phase I and II Permits, TMDL actions should also be different and separate to account for the fundamental differences between jurisdictional areas, existing permit requirements, and compliance frameworks. Within that context, we ask that Ecology consider making the actions for WSDOT more consistent with other TMDLs, our existing requirements and SWMPP. For example, several existing TMDLs across the state use the same language to describe additional actions related to identifying sources over background that enable us to use our existing Illicit Discharge Detection and Elimination (IDDE) program to help meet additional requirements.

Additionally, WSDOT would like to reiterate the recommendations from the 2024 Western Washington Municipal Stormwater General Permit Reissuance Ad Hoc White Paper for TMDLs<sup>1</sup> submitted to Ecology. To highlight a few:

- Provide opportunities for MS4 Permittees and stakeholders engagement and involvement in the development of the MS4 Permit’s TMDL-related obligations in advance of the release of the MS4 permit public review draft.
  - Clarify ongoing TMDL-related programmatic obligations that don’t sunset (e.g., operations & maintenance) vs. those that are more discrete in time and space with a specific endpoint (e.g., installing a prescribed stormwater capital facilities project). This information has value for informing Permittee’s planning, program development, and budgeting in deploying these actions.
2. (p. 42, bullet d) “Controlling runoff from new and redevelopment: Phosphorus Treatment BMPs as described in Ecology’s stormwater management manual are needed for new development or redevelopment projects within the watershed of the TMDL that trigger Minimum Requirement #6: Runoff Treatment.”

Comment: This action will create confusion for WSDOT projects, again because WSDOT’s requirements differ from Phase I and II MS4 permittees’ requirements. In accordance with WSDOT’s MS4 Permit, WSDOT projects use the Highway Runoff Manual, which has been deemed equivalent to Ecology’s Stormwater Management Manual. One main point of confusion may stem from the differences between the manuals used. In the Highway Runoff Manual, the minimum

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<sup>1</sup> <https://www.wastormwatercenter.org/permit-assistance/municipal/2024-western-washington-ad-hoc-process/>

requirement for runoff treatment is Minimum Requirement 5, not 6. Further, the action should clarify the “trigger” is also the existence of a surface water discharge. For example, a phosphorus treatment BMP would not be required (according to the Highway Runoff Manual) if there is a discharge to a dispersion BMP because it assumes there would be no surface water discharge from the BMP).

Recommendation: To prevent confusion this action should allow the use of equivalent manuals and clarify the “trigger” that requires action. WSDOT recommends this action be edited to state, “Phosphorus Treatment BMPs as described in Ecology’s stormwater management manual, or equivalent manual, are required for new development or redevelopment projects that have Threshold Discharge Areas (TDAs) with a surface water discharge to the White River Watershed AND those TDAs exceeds the thresholds for the Minimum Requirement for Runoff Treatment.”

3. (pp. 45-46, Construction Stormwater WLA section)

Comment: As written, this section will raise numerous questions for project planning, permitting, and compliance expectations during construction.

We interpret the primary compliance expectations of this draft TMDL to be summarized as follows: Stormwater discharges are prohibited during non-runoff conditions year-round. Non-stormwater discharges defined in the NPDES Construction Stormwater General Permit (CSWGP) S1.C3.f, g, and h are allowed year-round if they meet the groundwater dewatering WLA in Table 11. All other non-stormwater discharges authorized by the CSWGP are prohibited year-round. Stormwater discharges during runoff conditions in the critical condition period (May 1<sup>st</sup> – October 31<sup>st</sup>) must meet the turbidity and pH requirements in Special Condition S8 of the CSWGP. Please clarify it we have misinterpreted.

We interpret the language to mean projects are eligible year-round for coverage under the CSWGP despite Special Condition 8.E.1.d. However, the compliance implications of a zero WLA during non-runoff conditions could be clearer.

Consider clarifying the following points:

- The draft TMDL appears to prohibit 8 of 11 non-stormwater discharges authorized by the CSWGP. If such discharges constitute a noncompliance event, that should be made clear.
- The draft language speaks to expectations when a noncompliance event is caused by another permitted entity, however it does not describe expectations in the event the noncompliance is due to a non-regulated entity or unanticipated event that may occur during non-runoff conditions

shortly after a large rain event (e.g., stormwater treatment system upsets or illicit discharges/connections from private landowners).

- In a noncompliance event, clarify how this should be reported (e.g., is a call to Environmental Report Tracking System under the CSWGP adequate for notification?).

The expectations for monitoring daily average river flow and sampling for soluble reactive phosphorus are generally unclear. The CSWGP uses turbidity as a surrogate test measure for phosphorus, is the draft TMDL proposing a new test measure? If so, the compliance expectations should be clearer.

The Notice of Intent (NOI) process for projects in Indian Country is already confusing for projects, and the presence of 303(d) listings and TMDLs increase confusion. The Environmental Protection Agency Construction General Permit (CGP) and Ecology's CSWGP are different in significant ways that also add to the confusion (e.g., they speak differently to pollutants like pH, phosphorus, and nutrients). WSDOT would be happy to provide more details about the challenges projects face during the NOI process if regulators are interested in improving process clarity. Our hope is that construction project staff will be able to understand both the Ecology CSWGP and the EPA CGP (including the language in 9.10.3 and 9.10.4) to get through the NOI process correctly, plan for and meet compliance expectations.

Recommendations: Use plain talk principles to clarify expectations to facilitate project planning, permitting procedures, and compliance efforts. For example:

- Confirm projects are eligible for CSWGP coverage year-round despite the zero WLA.
- Define “non-runoff conditions” and “runoff conditions” in the glossary. It appears that both are solely based on precipitation and time, and neither are based on the critical condition period (May 1<sup>st</sup> – October 31<sup>st</sup>).
- Work with the EPA and tribal governments to help clarify permitting procedures and compliance expectations for projects in Indian Country.
- Clarify compliance expectations when caused by a non-regulated entity or unanticipated event.
- Clarify what constitutes a noncompliance event.
- Clarify reporting and notification procedures if a noncompliant discharge occurs.
- The compliance expectations behind number 2 and 3 in the “Other Load Limits and Requirements” are generally unclear. The bullets suggest the construction project must know the daily average river flow and potentially sample for soluble reactive phosphorus even though the

CSWGP uses turbidity as a surrogate for phosphorus. If this is the expectation, we have more questions.

- The word “compost” does not show up in either the draft TMDL or Implementation Plan, yet it is a known source of phosphorus and commonly used in stormwater best management practices (BMPs). Phosphorus treatment BMPs, as triggered for use in the MS4 stormwater WLA section do not use compost. Clarify whether there are material prohibitions during construction, such as using compost-based BMPs.

**Implementation Plan general comments and recommendations:**

4. Comment: As represented in the Implementation Plan, cities and counties regulated by MS4 Permits implement numerous actions to address nonpoint sources of pollution because their jurisdictional areas include commercial, residential, and agricultural properties. WSDOT’s jurisdictional area is fundamentally different, and our agency does not use codes/ordinances to minimize incoming sources. Beyond our Illicit Discharge Detection and Elimination (IDDE) program and utility permitting pathway, WSDOT has limited authority for controlling sources of pollution in overland flows that enter our narrow jurisdiction and MS4 system. For nonpoint challenges, WSDOT very much relies on the successful implementation of the numerous regulatory and voluntary programs such as those listed in the Implementation Plan. Coordination amongst the various actors (regulatory, regulated, voluntary) remains challenging, partly because roles and responsibilities are often unclear.

Recommendation: Continue efforts to clarify roles and responsibilities to help improve coordination amongst the various actors (regulatory, regulated, voluntary) to help ensure the successful implementation of the numerous programs aimed at minimizing pollution from nonpoint sources.

Thank you for considering our comments. If you have questions or wish to discuss these comments, please contact WSDOT’s Statewide TMDL Lead, Elsa Ponde, [ponde@wsdot.wa.gov](mailto:ponde@wsdot.wa.gov).

Sincerely,



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