WASHINGTON CONSERVATION ACTION

Protecting People & Nature as One

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Abbey Stockwell (Phase II Municipal Stormwater Permit Writer) and
Amy Waterman (Phase I Municipal Stormwater Permit Writer)
Department of Ecology
300 Desmond Drive SE,
Lacey, WA 98503

Dear Ms. Stockwell and Ms. Waterman:

Thank you for the opportunity to provide early input on the Phase I and Western Washington Phase II Municipal Stormwater Permit reissuance. Washington Conservation Action Education Fund (WCA) is a 501(c)(3) organization founded in 1967 as Washington Environmental Council. Our mission is to develop, advocate for, and defend policies that ensure environmental progress and justice by centering and amplifying the voices of the most impacted communities. We are committed to clean water protections for all Washington State waters.

WCA has a deep history of pushing for measurable progress to prevent and manage stormwater to achieve watershed recovery and reduce downstream impacts to communities. We will continue to do so as the Municipal Stormwater Permits are redeveloped. Each permit cycle must make progress towards eliminating pollution that impacts water, people, and aquatic life. For this permit cycle we would like to see exceptional progress towards the goal of clean water for all and have identified three priority areas key to achieving this goal: environmental justice and tribal sovereignty, accelerating stormwater retrofits through Structural Stormwater Controls (SSCs), and reducing toxic pollution, namely 6PPD-quinone (6PPD-q).

Environmental Justice and Tribal Sovereignty

Thank you for continuing to gather input on integrating racial equity and Treaty-reserved resources into the Municipal Stormwater Permits. Given the passage of the HEAL Act and

the goals outlined in Ecology's 2023 – 2025 Strategic Plan, this permit cycle must make environmental justice a direct and actionable component of the requirements under the Municipal Stormwater Permit.

In our February 2022 letter we asked that Ecology require municipalities to report on how environmental justice is incorporated into their decision-making process for stormwater investments. We believe that requiring municipalities to incorporate the Environmental Justice Principles created by the Washington State Environmental Justice Task Force is a necessary step towards integrating environmental justice into stormwater management statewide.

Environmental Justice Principles:

1. *Achieve the highest attainable environmental quality and health outcomes for all people.*
2. *Adopt a racial justice lens.*
3. *Engage community meaningfully.*
4. *Be transparent.*
5. *Be accountable.*

We appreciate the section of the Phase I Permit that focuses on overburdened communities and the recognition that stormwater management programs must be completed in locations that improve environmental equity. To make this actionable for and consistent across municipalities, there must be a clear definition of what constitutes an overburdened community in the permit. We know that environmental pollution disproportionately affects communities of color and low-income communities, and the permit language should reflect this.

We are encouraged to see that the permit proposes incentivizing capital projects in overburdened communities, however doubling the SSC Point Factor Multiplier on its own is not enough. This tool would be made considerably stronger if coupled with a minimum SSC Program Point requirement for projects in overburdened communities. One precedent to consider is the federal government's use of 40% of resources to benefit overburdened communities. This would ensure that municipalities are investing in new stormwater control in the most impacted communities, a critically important component in closing the environmental health disparity gap. We would like to see a specific number of SSC points in

overburdened communities in the permit itself, constituting at least 40% of the overall SSC points.

In our February 2022 letter, we emphasized the importance of reducing impacts of stormwater discharges to Tribes and resources used or potentially used by Tribes. Treaty-reserved rights, such as the right to a 50-percent share of the harvestable run of fish in a Tribes' Usual and Accustomed Areas (UAAs), must be upheld by ensuring culturally and ecologically important species of fish are healthy and abundant. Understanding that mapping resources currently available do not adequately reflect Tribes with UAAs that are impacted by stormwater discharges, we strongly encourage Ecology to work directly with Tribes to understand how best to incorporate this information into stormwater permitting and planning.

Structural Stormwater Controls (SSCs) and Retrofits

As we stated in our February 2022 letter, we remain disappointed with the stagnant pace of retrofits and values proposed in this preliminary draft for required SSC Program Points for Phase I permittees. As stated in the preliminary permit and supporting materials, most permittees will exceed the current point requirement of 300, and some will do so by a large margin. We cannot afford to limit the required pace to what the slower municipalities can achieve.

Adjusting the required SSC Program Points from 300 to 500 is not enough to incentivize permittees to complete additional stormwater projects on pace with what is needed. We would like to see a minimum of 1000 SSC Program Points required for Phase I permittees. Additionally, the SSC Program Point requirements must be extended to Phase II permittees, many of whom are already completing projects on pace with Phase I permittees. We urge Ecology to implement a 500 SSC Program Point requirement for Phase II permittees. Increasing the requirement for Phase I permittees and implementing a requirement for Phase II permittees will push municipalities to go above the current status quo.

We appreciate that Ecology is exploring avenues to reduce obstacles for municipalities implementing structural stormwater retrofit projects (types 1 – 4 and 6) by introducing a minimum number of SSC Program Points for these project types, but we would like to see

more than 150 points required for these project types. Doubling the multiplier and only requiring 150 points will allow municipalities to collect points without implementing additional retrofit projects. Knowing how critical retrofits are for biofiltration and pollution prevention, this area of the permit must be strengthened by increasing the points required to at least 300. Ecology has the ability to require municipalities to address the large retrofit needs in Washington and should do so by strengthening this permit requirement.

Additionally, we would like to see Ecology award more SSC Program Points for completed or maintenance-stage stormwater projects and fewer for projects in the design-stage. We do not agree with the proposed ratio change which shifts a greater proportion of SSC Program Points to the design-stage. We need to move strongly towards incentivizing timely completion of stormwater projects. Municipalities should be incentivized to complete these project types within the permit cycle as the current pace of retrofits does not meet the need. The points for design-stage work were an interim solution for the 2019-24 permit. Now that this concept has been in one permit cycle, Ecology should no longer award points for design-stage projects, and allot points for completed work.

6PPD-quinone (6PPD-q) and High Pollutant Generating Areas

6PPD-q has garnered significant attention as the chemical responsible for widespread coho salmon mortality in small streams across the west coast. Recently, researchers have found that coho are not the only species in the Salmonidae family that are affected. Findings indicate that the concentrations of 6PPD-q that would regularly occur in stormwater runoff cause mortality in rainbow and brook trout, as well as coho salmon. We now know that 6PPD-q as the second most toxic aquatic contaminant. While the science around 6PPD-q is evolving, we have known the solution for decades.

In our February 2022 letter, we emphasized the need to treat 6PPD-q through a combination of source control (tire formulations) and treatment (bioretention and green stormwater infrastructure that eliminates the acute toxicity). We expressed concern that the focus on treating 6PPD-q could lose sight of the fact that the chemical family was discovered only through knowing the solution itself – running stormwater through

bioretention. Because of this, we would like to see significant progress implementing green stormwater infrastructure now instead of waiting for another toxic chemical to emerge.

We agree with the proposal to add high pollutant generating areas (HPGA) as a type of "known water quality problem area." We recommend including Model Toxics Control Act (MTCA) sites in the definition along with areas draining to Superfund-designated receiving waters. MTCA sites are disproportionately located in communities of color, and this would add another layer of incentivization in addressing environmental disparities. MTCA currently has an open rulemaking process, and WCA has been engaging in that program as well. We have made numerous recommendations to address environmental justice and to crosswalk with stormwater concerns in that arena. We recommend that Ecology's Water Quality Program consult with Ecology's Toxic Cleanup Program on mutually beneficial language regarding MTCA sites and HPGA definitions in the stormwater permits.

The proposed definition makes clear that HPGAs primarily consist of highly trafficked roads and centers of industrial activity or dense development. Our hope is that this incentivizes stormwater projects in our urban cores where it has previously been neglected or minimized due to higher project costs. Retrofits in densely developed urban areas are needed to make substantive progress and appreciate the focus on HPGAs in the permit language.

Thank you again for the opportunity to comment at this preliminary stage. If you have questions on these comments, please do not hesitate to contact us. Thank you again for the opportunity to provide input on the preliminary drafts of these components.

Sincerely,

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Toxics and Stormwater Policy Manager

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