SPOKANE RIVERKEEPER®

It's Your River ♦ We Protect It

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Spokane Riverkeeper is a non-profit, advocacy organization that works to protect the Spokane River Watershed. The mission of the organization is to protect and restore the health of the Spokane River watershed, defend access to clean water, and the opportunity for all communities to enjoy the benefits of a clean and healthy Spokane River.

We at the Spokane Riverkeeper appreciate your efforts in revising and drafting the new Stormwater Municipal Manual for Eastern Washington. We wish to offer this brief comment letter to include our thoughts on the draft manual and permit.

Legal Background

Federal and state law prohibit the discharge of any pollutant without complying with a National Pollutant Discharge Elimination System Permit. 33 U.S.C. § 1311(a); RCW 90.48.080; WAC 173-220-020. Discharge of stormwater through outfalls is a point source discharge under the Clean Water Act. 33 U.S.C. §§ 1362(14) and 1342(p); see also WAC 173-226-050 and 173-220-030(18). "Permits for discharges from municipal storm sewers…(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. § 1342 (p)(3)(B).

Washington statutes require that stormwater permits use AKART to control pollutants in stormwater discharges and that in no event shall the discharge of toxicants be allowed to violate Washington water quality standards. RCW 90.48.010 and RCW 90.48.520; WAC 173-201A. AKART requires the application of "the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge[]" and specifically applies to stormwater. *Id.*; WAC 173-201A-020. Permit conditions must apply AKART to ensure compliance with these state laws.

Further, permits that authorize stormwater discharges must contain specific controls sufficient to ensure that the discharges do not cause or contribute to a violation of a Washington water quality standard. RCW 90.48.520; RCW 90.48.010; WAC 173-213-110(1)(d), 173-226- 070(2) and (3). Washington law prohibits the discharge of any pollutants where such discharge will degrade the receiving water's quality, regardless of its quality at the time of reception. RCW 90.54.020(3). Ecology's rules also require that (1) all discharge permits be conditioned so they meet water quality standards and (2) no permit can be issued that causes, or contributes to, a violation of water quality standards. WAC 173-201A-510(1) and (3), 173-226-070(2)(b) and (3)

Under this legal framework, Ecology must require BMPs that meet the AKART standards of treatment and ensure that stormwater discharges do not cause or contribute to standards violations.

Comments regarding the Draft Stormwater Municipal Manual for Eastern Washington:

2.4.8 CE8: under the section "How Do I Reconcile the Flow Control Performance Standard from CE6 with CE8?" the type of documentation required by designers unable to meet both should be more specific. We appreciate requiring designers to make attempts to meet both limits. However, in order to comply with the AKART standards, if designers are truly unable to meet both the Wetlands Protection and Flow Control Performance Standards, the designer should be required to provide scientific or technical documentation as to why both requirements cannot be met, or the designer should be required to provide documentation of their attempts to meet both standards. A generic requirement to provide "documentation" detailing why they cannot meet them both is not enough to adequately promote meeting both requirements where possible. Further, the designers should not be permitted to submit economic, project-based reasoning, or any other documentation that is unsupported by the technical and scientific data available.

6.1.8 Cold Weather Considerations for Runoff Treatment and Flow Control BMPs: We recognize that cold weather does cause challenges and appreciate your efforts to address these challenges. However, these considerations should differentiate between swales and vegetation using native plant species. Native plant species tend to be hardier and more tolerant of local climate conditions. Using native plant species reduces the impact caused by cold weather by extending the growing period. Moreover, choosing native plants can result in higher water retention, and lessen the impact of high melt periods. Ecology should provide guidance on the design challenges relative to native vs. non-native plants, not this hyper-generalized list.

(*See*, Shrestha, P., Hurley, S. E., & Wemple, B. C. (2018). Effects of different soil media, vegetation, and hydrologic treatments on nutrient and sediment removal in roadside bioretention systems. Ecological Engineering, 112, 116–131. https://doi.org/10.1016/j.ecoleng.2017.12.004;

T. Fitzgerald and M.D. Terrell. 2000. Landscaping with Native Plants in the Inland Northwest. Washington State University, Spokane County, MISC0267; BUL 1010 - University of Idaho Extension. (n.d.). Www.uidaho.edu. Retrieved November 10, 2023, from https://www.uidaho.edu/extension/publications/bul/bul1010).

BMP T5.40: Basic Biofiltration Swale: Consider including recommendations for native plants in swales to reduce the need for irrigation, increase stability, and reduce the maintenance needed.

8.4 S405 BMPs for Deicing Aircraft: Under Applicable BMPs for Airport Runways/Taxiways, "excessive application" of chemicals should be better defined. If excessive amounts have not been determined with specificity, airports should be required to undergo investigations to determine the best practice. As stated, there is no practical way to enforce this BMP and it does not comply with the AKART standard.

8.4 S430 BMPs for Urban Streets: Please consider adding a balanced approach to the frequencies of street sweeping. As stated, the municipalities must only consider "the most cost-effective frequency" with no real standard to meet. There should be a standard maximum level of street debris established to provide a real basis for determining an efficient frequency for each street. Then municipalities could apply the most cost-effective strategy to maintaining that standard. Moreover, this would allow for changes relative to the surrounding conditions and seasonal conditions. If street sweeping is truly to be used as an effective method of preventing and reducing the pollution in our waterways, the standard must contain specific controls sufficient to ensure that the stormwater does not cause or contribute to a violation of a Washington water quality standard. RCW 90.48.520; RCW 90.48.010; WAC 173-213-110(1)(d), 173-226- 070(2) and (3). Street sweeping has been a program used for many years, and the specific frequency with which to run the program should be specifically identifiable.

Comments regarding the Draft Eastern Washington Permit:

For general stormwater permits, BMPs must be required and applied to ensure discharges do not cause or contribute to violations of water quality standards. WAC 173-201A-510(3)(a) and (b). Large portions of the Spokane River watershed, including Hangman (Latah) Creek, are listed as impaired on the Clean Water Act's 303(d) list, meaning that the water fails to meet one or more water quality standards. 33 U.S.C. § 1313(d). And yet, there are no Permit requirements specified for permittees with stormwater discharges that plainly contribute to these identified violations of water quality standards in Hangman (Latah) Creek to ensure that those discharges are not contributing to ongoing water quality violations and worsening water quality.

Appendix 2 is lacking consideration for the existing Hangman (Latah) Creek TMDL for fecal coliform, temperature, and turbidity (Ecology Publication No.:09-10-030); the Hangman (Latah)

Creek Watershed Fecal Coliform Bacteria, Temperature, and Turbidity Total Maximum Daily Load: Water Quality Implementation Plan (Ecology Publication No. 11-10-012); or the Hangman Creek Dissolved Oxygen, pH, and Nutrients Pollutant Source Assessment (Ecology Publication No. 17-03-111). MS4s in the Spokane region, including the City of Spokane, discharge stormwater directly into Latah Creek. Failing to consider the impacts on Latah Creek and its tributaries may also violate the 2018 Hangman Creek Settlement Agreement.

Within the Hangman (Latah) Creek TMDL coverage area, the City of Spokane and Spokane County should be required to: (1) implement inventory and inspection of all municipal stormwater outfalls to Latah Creek and its tributaries no later than November 30, 2025; (2) inventory, inspect and maintain all stormwater facilities and systems that discharge to the outfalls into Latah Creek no later than November 30, 2026; and annually assess each outfall to Latah Creek and its tributaries during the critical period (May-November) to identify and detect illicit discharges, and investigate under the IDDE program (same as Little Spokane).

There appears to be a typographical error in Appendix 2 re: Little Spokane TMDL. In the "Actions Required" section, paragraph numbers 3 and 4 references paragraph numbers 1 and 2, but given the context these should be references to paragraphs 2 and 3.

Ecology must revisit these Permits and amend them to address the issues outlined herein. Thank you for this opportunity to provide feedback on the Draft 2024 Municipal Stormwater Permits.

Respectfully submitted,

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Water Protector
Spokane Riverkeeper