



December 10, 2018

Mr. Dan Opalski
Director of US EPA Region 10
Office of Water & Watersheds
US EPA Region 10
1200 6th Avenue, Suite 155
OWW-191
Seattle, WA 98101

**Re: Lakes Highway District, Post Falls Highway District, and East Side Highway District
Comments on the North Idaho Highway Districts MS4 Permit, NPDES #IDS028207**

Dear Mr. Opalski,

Representing the Lakes Highway District, Post Falls Highway District, and East Side Highway District, hereafter referred to as the North Idaho Highway Districts, I, Laura Winter, as their professional engineer, present the following comments in response to the public notice for comments in reference to the North Idaho Highway Districts MS4 Permit, NPDES #IDS028207.

The North Idaho Highway Districts recognize the efforts expended the last several years in developing the Statewide General Permit. However, the Highway Districts presented numerous concerns with requirements in the Statewide General Permit that were unattainable for a Highway District based on the limited capabilities of a special use district under Idaho law.

The North Idaho Highway Districts support the issuance of the “individual-joint” permit and were optimistic to see the removal of unobtainable requirements in the new permit. It seemed the opportunity of an “individual-joint” permit offered the chance to tailor the Permit to the unique capabilities and linear permit characteristics of a Highway District. The North Idaho Highway Districts still have numerous concerns with requirements found within the “individual-joint” permit that are beyond the jurisdictional or enforcement capabilities of the Highway Districts. The North Idaho Highway Districts urgently request these be considered for elimination or revision in the permit prior to issuance, as the Highway Districts are not supportive in waiting to address these unobtainable requirements after permit issuance in the Stormwater Management Program.

In categorizing these concerns, they fall into three distinct groups. The first group concerns the limited jurisdiction of Highway Districts under Idaho law. Except for Ada County, Highway Districts in Idaho have no ordinance authority. Though the Highway Districts appreciate a general acknowledgement of limited legal authority, there are still implied requirements for enforcement that falls outside the Highway Districts’ authority to take such action. The second group concerns the limited scope of jurisdictional area (right-of-way) Idaho Highway Districts have control over. The typical extent of the Highway Districts’ jurisdiction is contained within

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the narrow corridor of the roadway, with no authority for areas outside of this corridor, or for the many areas that may contribute stormwater to the Highway Districts' MS4. And the third group is presented as an overreach in requirements in the permit, placing a financial burden on the Highway Districts, making the catch phrase "maximum extent practical" become impractical due to funding or staffing constraints.

The Highway Districts have had no instances of illicit discharge or discharge causing an excursion above the Idaho Water Quality standards. Based on the record of attainment presented in the last nine years of MS4 Permittee activities, the Highway Districts request that requirements be reduced, not increased.

Please feel free to schedule a meeting to discuss these comments and concerns, as the North Idaho Highway Districts fully support collaboration to achieve a permit acceptable to all parties.

Kind Regards,



Laura Winter, PE, CFM

RUEN-YEAGER & ASSOCIATES, INC.



**NORTH IDAHO HIGHWAY DISTRICTS MS4 PERMIT
PUBLIC NOTICE DRAFT – OCT 2018 #IDS028207**

**PERMIT PUBLIC COMMENTS ON BEHALF OF
LAKES HIGHWAY DISTRICT,
POST FALLS HIGHWAY DISTRICT, AND
EAST SIDE HIGHWAY DISTRICT**

General Comments:

Permit Effective Date

The North Idaho Highway Districts (NIHD) request the Permit become effective on October 1, 2019, the start of the NIHDs fiscal year. This start date was previously discussed and agreed to during the development of the Idaho MS4 General Permit. This provides the opportunity for planning the funding for the new requirements in the Permit.

Requirements Outside of Highway District Jurisdictional Authority or Right-of-Way

The NIHD request the removal of requirements from the permit that are unobtainable based on the unique characteristics of a Special Use District according to Idaho State Law. The NIHD requests removal prior to permit issuance, rather than EPA recommendation to address these occurrences of inability to perform after permit issuance in the development of the Stormwater Management Program.

Schedule

The NIHD request an extension to the Alternate Control Measure Requests from Effective Date + 180 days to Effective Date + 2 Years.

The NIHD request an extension to the Monitoring/Assessment Plan from Effective Date + 180 days to Effective Date + 2 years

The NIHD request an extension to the Pollution Reduction Activities for Discharge to Impaired Water Submittal from Effective Date + 180 days to Effective Date + 2 years

Section Specific Comments:

2.2 Snow Disposal to Receiving Waters

The Permittees are not authorized to dispose of snow plowed in the geographic area of permit coverage directly into waters of the United States, or directly into the MS4(s). Discharges from the Permittees' snow disposal and snow management practices are

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authorized under this Permit only when such practices and disposal sites are conducted, operated, designed, and maintained to reduce pollutants in the discharges pursuant to Part 3.5 (Pollution Prevention/Good Housekeeping for MS4 Operations) so as to avoid excursions above the Idaho Water Quality Standards.

The NIHD do not feel there is sufficient accommodation for winter snow plowing activities in this section. As the NIHD plow snow off the roads for the safety of the traveling public, snow is stored in the ditches of the MS4, and at times the snow plow will spray snow off the side of a bridge and into waters below or may spray snow directly into water when the roadway is adjacent to a water body. Section 3.5 – Pollution Prevention/Good

Housekeeping for MS4 Operations has requirements the NIHD objects to. The NIHDs request the permit provide a broader description of acceptances for potential snow discharges to Waters of the US, and cite in the Fact Sheet this applies to stockpiling of snow, not to snow that is stored in the MS4 ditches.

2.5.3 Shared Implementation with Outside Entities

The Permittee(s) may share or delegate implementation of one or more of the stormwater management control measures to an entity other than one covered by this Permit. The Permittee(s) may rely on another entity if:

- 2.5.3.1 The other entity, in fact, implements the stormwater management control measure, or component thereof;*
- 2.5.3.2 The particular stormwater management control measure, or component thereof, is at least as stringent as the corresponding Permit requirement; and*
- 2.5.3.3 The other entity agrees to implement the stormwater management control measure, or component thereof, on the Permittee's behalf.*

The Permittee(s) and the outside entity must maintain a written and binding agreement between the parties. The written agreement must describe each organization's respective roles and responsibilities related to this Permit, and identify all aspects of stormwater management where the entities will share or delegate implementation responsibility. Any previously signed agreement may be updated, as necessary, to comply with this requirement. Any such agreement must be described in the Permittees' SWMP Document (Part 2.5.5., SWMP Document), and a copy of the agreement between parties must be available to the EPA and/or IDEQ upon request. The Permittees remain responsible for compliance with the permit obligations if the other entity fails to implement the stormwater management control measure (or component thereof).

The NIHDs do not have a current written agreement with any outside entity and cannot guarantee an outside entity would be willing to sign an agreement to take on responsibility of a permit not their own. Therefore, the NIHD object to the requirement above that we “must maintain a written and binding agreement with an outside entity”.

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The NIHD have no jurisdictional authority outside of their right-of-way. Therefore, if there is an instance of discharge from an adjacent property (outside Highway District right-of-way) into highway district right-of-way (i.e. flows into one of our ditches), our course of response includes notifying the outside entity with jurisdictional authority for enforcement of any action. The NIHDs object to being “*responsible for compliance with the permit obligations if the other entity fails to implement the stormwater management control measure (or component thereof)*”. The NIHD cannot assume responsibility for an entity’s actions or lack of action, in particular when the outside entity is not a joint-permittee holder.

2.5.4 Maintain Adequate Legal Authority

The Permittees must maintain relevant regulatory mechanisms to control pollutant discharges into and from its MS4 and comply with this Permit.

While the NIHD agrees with maintaining relevant regulatory mechanisms to control pollutant discharges from its MS4, the NIHD have no authority to control pollutant discharges into their MS4. The NIHD request this requirement be revised to reflect the authority of the NIHDs.

It is also requested the Fact Sheet be revised to acknowledge these limitations for outside Highway District right-of-ways, as the Fact Sheet states the NIHD does maintain sufficient legal authority to impose and enforce the required control measure components, which is a false statement for discharges *into* their MS4.

In the SWMP Document required by Part 2.5.5, the Permittees must summarize all of their legal authorities that address the six criteria listed below.

If existing regulatory mechanisms are insufficient to meet the criteria, the Permittees must adopt new regulatory mechanisms. If the Permittees do not have the authority to adopt ordinances, the Permittees must utilize all relevant regulatory mechanisms available to it as allowed pursuant to applicable Idaho law. In such cases, the Permittees must report on its progress towards adopting or utilizing available regulatory mechanisms, in each Annual Report required by Part 6.4.2.

No later than (180 days before Permit Expiration), and to the extent allowable pursuant to authority granted the Permittees under applicable Idaho law, the Permittees must develop and/or update (as needed) relevant regulatory mechanisms to:*

- 2.5.4.1 *Prohibit and eliminate, through statute, ordinance, policy, permit, contract, court or administrative order, or other similar means, illicit discharges to the MS4;*
- 2.5.4.2 *Control, through statute, ordinance, policy, permit, contract, court or administrative order, or other similar means, the discharge to the MS4 of spills, dumping or disposal of materials other than stormwater, pursuant to Part 3.2.3 (Illicit Discharge Detection and Elimination –ordinance);*

The NIHD request revision to section 2.5.4.2 and to portions of section 3.2.3 that reference areas outside of the jurisdictional authority of the NIHD that may discharge to NIHD right-of-way.

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It is also requested the Fact Sheet be revised to acknowledge these limitations for outside NIHD right-of-ways, as the Fact Sheet states the NIHD does maintain sufficient legal authority to impose and enforce the required control measure components, which is a false statement for discharges into their MS4.

2.5.4.3 *Control the discharge of stormwater and pollutants from land disturbance and development, both during the construction phase and after site stabilization has been achieved, consistent with Parts 3.3 (Construction Site Runoff Control Program) and 3.4 (Stormwater Management for Areas of New Development and Redevelopment);*

The NIHD request section 2.5.4.3 and sections 3.3 and 3.4 to clarify this applies to construction and development within NIHD right-of-way. The NIHD have no jurisdictional authority over development and construction outside, yet adjacent to their right-of-way.

2.5.4.4 *Control through interagency agreements among Permittees as necessary or appropriate, the contribution of pollutants from one MS4 to another interconnected MS4;*

2.5.4.5 *Require compliance with conditions in ordinances, permits, contracts, or orders; and*

2.5.4.6 *Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with these Permit conditions, including the prohibition of illicit discharges to the MS4.*

The NIHD request this section be clarified to reflect the NIHD have no jurisdictional authority to inspect, provide surveillance, or monitor procedures outside of their right-of-ways.

2.5.7 SWMP Resources

The Permittees must provide finances, staff, equipment and other support capabilities to implement the control measures and other requirements outlined in this Permit.

The NIHD request this section be modified to read:

The Permittees must provide adequate finances, staff, equipment and other support capabilities to implement the control measures and other requirements outlined in this Permit to the extent its budget allows.

2.6 Alternative Control Measure Requests

The Permittees may request that the EPA and IDEQ consider any alternative documents, plans, or programs that the Permittees believe to be equivalent to a required SWMP control measure, or control measure component, specified in Part 3 or Part 4 of this Permit.

*Alternative documents, plans, or programs must be submitted pursuant to Part 2.6.3 (Content of ACM Request) for EPA and IDEQ review and consideration no later than [180 days from Permit Effective Date].**

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The NIHD request that the EPA and IDEQ consider alternatives “that are a reasonable alternative in meeting the requirements of the SWMP control measure or control measure component it is meant to replace”.

The reason for this comment stems from the likelihood that an alternative request is likely to be submitted due to the original requirement deemed burdensome, therefore an alternative request most likely will not meet or exceed the original request but is proposed to be a reasonable alternative to the original control measure or component.

The NIHD request extension to the Alternative Control Measure Requests to Effective Date + 2 years.

2.6.2 Actions to Address Discharges to Impaired Waters

As specified in Part 4.2 and Part 4.3, East Side Highway District and Post Falls Highway District must submit Monitoring/Assessment Plans and written descriptions of at least two (2) Pollutant Reduction Activities designed to assess and address pollutant discharges to Coeur d'Alene Lake and Spokane River. These documents must be submitted pursuant to Part 2.6.3 for EPA review and consideration no later than [180 days from Permit Effective Date].

The NIHD request extension to the Monitoring/Assessment Plan to Effective Date + 2 years.

2.6.3.1 A detailed written discussion identifying the original required minimum SWMP control measure or control measure component that is addressed by the Permittees' submittal, and the reasons, rationale, citations, and/or references sufficient to demonstrate that the alternative document, plan, or program meets or exceeds the requirements of the SWMP control measure or control measure component it is meant to replace;

The NIHD request that the EPA and IDEQ consider alternatives “that are a reasonable alternative in meeting the requirements of the SWMP control measure or control measure component it is meant to replace”, rather than “meets or exceeds”.

The reason for this comment stems from the likelihood that an alternative request is likely to be submitted due to the original requirement deemed burdensome, therefore an alternative request most likely will not meet or exceed the original request but is proposed to be a reasonable alternative to the original control measure or component.

2.6.4 Recognition of Alternative Control Measures

Upon receipt of a Permittees' ACM Request, and in consultation with IDEQ, the EPA will assess if the document, plan, or program meets the requirements of this Permit to be deemed equivalent to the SWMP control measure or control measure component.

The NIHD request this section be revised to read:

Upon receipt of a Permittees' ACM Request, and in consultation with IDEQ, the EPA will assess if the document, plan, or program meets the requirements of this Permit to be deemed equivalent or a reasonable alternative to the SWMP control measure or control measure component.

The reason for this comment stems from the likelihood that an alternative request is likely to be submitted due to the original requirement deemed burdensome, therefore an

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alternative request most likely will not meet or exceed the original request but is proposed to be a reasonable alternative to the original control measure or component.

3.2.3 Ordinance and/or other regulatory mechanisms

The Permittees must prohibit non-stormwater discharges into the MS4 (except those conditionally allowed by Part 2.4) through enforcement of a regulatory mechanism to the extent allowable under Idaho state law. The Permittees must implement appropriate enforcement procedures and actions, including a written policy of enforcement escalation procedures for recalcitrant or repeat offenders, to ensure compliance.

The NIHD's only regulatory mechanism allowable under state law is to call Kootenai County to report spills, illicit discharges, and all of the items in 3.2.3.3. The extent of the policy for "enforcement escalation" under Idaho state law is to call Kootenai County again. The NIHD requests the requirements in section 3.2.3 be revised to reflect this as adequate.

3.2.3.3 Authorize the Permittee to prohibit, and eliminate, at a minimum, the following discharges to the MS4 to the extent allowable pursuant to authority granted the individual Permittee under Idaho law:

The NIHDs have no authority to prohibit or eliminate discharges that originate outside their right-of-way, yet flow into their right-of-way. Most of the discharges listed below in 3.2.3.3 would originate outside of Highway District right-of-way. The NIHDs request the requirements of this section to reflect this.

3.2.5 Dry Weather Outfall Screening Program

The Permittees must conduct a dry weather analytical and field screening monitoring program to identify non-stormwater flows from MS4 outfalls during dry weather. This program must emphasize screening activities to detect and identify illicit discharges and illegal connections, and to reinvestigate potentially problematic MS4 outfalls throughout the Permit Area defined in Part 1.1. At a minimum, this program must include the following SWMP control measure components:

It is unreasonable to require testing of all dry-weather flows, as this area has many outfalls that convey groundwater. The NIHD inspects flows every year for any visual evidence of illicit discharge, and if found suspect, then perform testing.

3.2.5.1 Outfall Identification and Screening Protocols

The Permittees must use reconnaissance activities, information recorded through the complaint reporting program, and (if available) existing watershed assessment or Total Maximum Daily Load (TMDL) analyses, to prioritize and target outfalls for screening throughout their Permit Area defined in Part 1.1.

The Permittees must develop a written plan that outlines how chemical and microbiological field screening analysis will be conducted on the dry weather flows identified during the reconnaissance and screening efforts, including field

screening methodologies and associated trigger thresholds used by the Permittees for determining follow-up action(s).

The NIHD requests that only suspect flows during dry weather monitoring be tested, as there are numerous outfalls that convey groundwater in our jurisdictions. Therefor the wording is requested to be revised to state: “chemical and microbiological field screening analysis will be conducted on the dry weather flows identified as suspect during the reconnaissance and screening efforts....”

3.2.5.3 Monitoring of Illicit Discharges

Where dry weather flows from the MS4 are identified by the Permittees, the Permittees must identify the source of such flows, and take appropriate action to eliminate the flows to the extent allowable pursuant to authority granted the individual Permittee under Idaho law. At a minimum, the Permittees must conduct sampling of dry weather flows via grab samples of the discharge for in-field analysis and identification, and may elect to use the following as indicator constituents: pH; total chlorine; detergents as surfactants; total phenols; E. coli; total phosphorus; turbidity; temperature; and suspended solids concentrations. Results of any field sampling must be compared to established trigger threshold levels and/or existing state water quality standards to direct appropriate follow-up actions by the Permittees in accordance with existing protocols and the ordinance/regulatory mechanism established by the Permittee.

The NIHD requests that only suspect flows during dry weather monitoring be tested, as there are numerous outfalls that convey groundwater in our jurisdictions. Therefor the wording is requested to be revised to state: “the Permittees must conduct sampling of suspect dry weather flows via grab samples of the discharge for in-field analysis and identification,...”

3.2.7 Prevention and Response to Spills to the MS4

The Permittees must maintain written spill response procedures, and must coordinate their own spill prevention, containment, and response activities with the appropriate departments, programs, and agencies in the Permit Area to prevent spill related discharges from the MS4 to waters of the U.S. The Permittees must respond to, contain, and clean up any spill of sewage and other material that may discharge into the MS4 from any source (including private laterals and/or failing septic systems) in the Permit Area to the extent allowable pursuant to authority granted the individual Permittee under Idaho law.

The NIHDs will respond to a spill within their right-of-way but have no jurisdiction to contain or clean up a spill outside of their right-of-way, as in a failing septic system or private lateral as mentioned above, both most likely on private property. The NIHDs request the requirements of the above section be revised to reflect their responsibility for containment and clean up lies only within their right-of-way.

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3.3.4 Preconstruction Site Plan Review

At a minimum, the Permittees must review preconstruction site plans from construction project site activity that will result in land disturbance of one (1) or more acres, including construction project site activity less than one acre that is part of a larger common plan of development or sale that would disturb one acre or more, using a checklist or similar process to determine compliance with the ordinance or other regulatory mechanism required by Part 3.3.2.

The Permittees must use individuals knowledgeable in the technical understanding of erosion, sediment, and waste material management controls to conduct such preconstruction site plan reviews.

Site plan review procedures must include consideration of the site's potential water quality impacts, and must provide an opportunity for the public to submit information about whether the site plan under consideration demonstrates compliance with the regulatory mechanism required by Part 3.3.2.

The Permittees must ensure that any preconstruction site plan contains site-specific measures that meet the Permittee's runoff control specifications as outlined in Part 3.3.3 above, and includes any permanent stormwater management controls as outlined in Part 3.4.3 (Permanent Stormwater Control Specifications).

The NIHD request this section be revised to clarify this applies only to construction project sites within their jurisdictional right-of-way.

The NIHD objects to the requirement to provide the public an opportunity to submit information about whether the site plan under consideration demonstrates compliance with the regulatory mechanism required by Part 3.3.2. This requirement places an undue burden, (both in schedule and staff to manage) on the NIHD to include public comment in their review of construction site plans. Most of the general public is not familiar with site plan reviews, and this has never been a requirement in the past.

3.4 Post-Construction Stormwater Management for New Development and Redevelopment

Upon the effective Date of this Permit, East Side Highway District must begin to implement the post-construction stormwater management control measures as required by this Part.

The NIHD request this be revised to Effective Date + 1 Year, as this is the schedule for implementation of the Stormwater Management Program control measures (see Page 2 of Permit).

3.4.2 Ordinance and/or other regulatory mechanism

Through a regulatory mechanism to the extent allowable under Idaho state law, the Permittees must require the installation and long-term maintenance of permanent stormwater controls at new development and redevelopment project sites that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre

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that are part of a larger common plan of development or sale that would disturb one acre or more) and that discharge into the MS4.

The NIHD request clarification on this requirement. The requirement reads “that discharge into the MS4”. This indicates the potential for this to be a development or redevelopment adjacent, yet outside Highway Districts right-of-way. The NIHDs have no jurisdictional authority for developments outside of their right-of-way.

Required permanent stormwater controls must be sufficient to retain onsite the runoff volume produced from a 24-hour, 95th percentile storm event; or sufficient to provide the level of pollutant removal greater than pollutant removal expected by using onsite retention of runoff volume produced from a 24-hour, 95th percentile storm event.

The NIHD objects to this level of retention. This is higher than the industry standard of 80th percentile. In the EPA document, “Summary of State Post Construction Stormwater Standards” updated July of 2016, there are no states listed requiring retention of a 95th percentile storm event https://www.epa.gov/sites/production/files/2016.../swstdsummary_7-13-16_508.pdf.

The NIHD requests a date be specified for a set milestone after which new projects would require this onsite retention requirement.

3.4.2.1 Treatment equivalent to the onsite stormwater design standard

Using a continuous simulation hydrologic model or other comparable evaluation tool, the Permittee may establish stormwater treatment requirements which attain an equal or greater level of water quality benefits as onsite retention of stormwater discharges from new development and redevelopment sites. Such equivalent expressions of the onsite retention of the 95th percentile storm volume must be submitted to the EPA as an ACM Request pursuant to Part 2.6.

The NIHD objects to this level of retention. This is higher than the industry standard of 80th percentile. In the EPA document, “Summary of State Post Construction Stormwater Standards” updated July of 2016, there are no states listed requiring retention of a 95th percentile storm event https://www.epa.gov/sites/production/files/2016.../swstdsummary_7-13-16_508.pdf.

The NIHD requests a date be specified for a set milestone after which new projects would require this onsite retention requirement.

3.4.3 Permanent Stormwater Controls Specifications

The Permittees must specify permanent stormwater controls for project sites to install for sites that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more)

and that discharge into the MS4. The Permittees may define appropriate controls for different types and/or sizes of site development activity occurring in their jurisdiction.

The NIHD request clarification on this requirement. The requirement reads “that discharge into the MS4”. This indicates the potential for this to be a development or redevelopment adjacent, yet outside Highway Districts right-of-way. The NIHDs have no jurisdictional authority for developments outside of their right-of-way.

3.4.4 Permanent Stormwater Controls Plan Review and Approval

At a minimum, the Permittees must review and approve preconstruction plans for permanent stormwater controls at new development and redevelopment sites that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more). The Permittees must review plans for consistency with the ordinance/regulatory mechanism and specifications required by this Part. The Permittees must not approve or recommend for approval any plans for permanent controls that do not meet minimum requirements specified in their written specifications.

The NIHD requests this requirement clarify this pertains only to projects within the Highway Districts right-of-way.

3.4.5 Permanent Stormwater Controls Inspection and Enforcement

The Permittees must inspect high priority permanent stormwater controls at new development and redevelopment sites that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more) and that discharge into the MS4. The purpose of such inspections is to ensure proper installation, and long-term operation and maintenance, of such controls.

The NIHD request clarification on this requirement. The requirement reads “that discharge into the MS4”. This indicates the potential for this to be a development or redevelopment adjacent, yet outside Highway Districts right-of-way. The NIHDs have no jurisdictional authority for developments outside of their right-of-way.

3.4.5.1 Inspect High Priority Locations:

At a minimum, the Permittees must identify permanent stormwater controls at new development and redevelopment sites that result from land disturbance of at least one (1) or more acres as “high priority”, and schedule associated inspections to occur at least once annually. The inspections must determine whether permanent stormwater management or treatment practices have been properly installed (i.e., an “as built” verification). At appropriate intervals determined by the Permittees and established in compliance with Part 3.4.6 below, scheduled inspections must evaluate the ongoing operation and maintenance of such practices, identify deficiencies, and identify potential solutions to reduce negative water quality

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impacts to receiving waters. The Permittees must use inspection checklists, and maintain records of actions taken in response to inspections of permanent stormwater controls at high priority new development and redevelopment sites.

The NIHD request clarification this requirement only applied to locations within the Highway District right-of-way.

3.5.3.3 Where site conditions allow, the Permittees must consider and utilize water conservation measures for all landscaped areas as part of these updated O&M procedures to prevent landscape irrigation water from discharging through the MS4.

Landscape irrigation is an allowable non-stormwater discharge in 2.4.5.1.2. The NIHDs request this requirement be omitted.

3.5.4 Inventory and Management of Street/Road Maintenance Materials

No later than [180 days before Permit Expiration Date], the Permittees must include in the SWMP Document a complete description of all Material Storage Locations in the Permit Area that drain to the MS4. The description of each Material Storage Location must, at a minimum, include a narrative of the individual location, an estimated average annual quantity of materials stored at the location; a short description of how/where the Permittee typically uses the material(s) in its jurisdiction; and a summary description of any structural or non-structural controls used by the Permittee to prevent pollutants at material storage locations from discharging to the MS4 and to waters of the U.S.*

The NIHD requests this requirement to omit the reporting of an estimated average annual quantity of materials stored at the location. This is a record keeping burden that does not address the purpose of the permit, which is to prevent discharges to waters of the US.

3.5.5.3 An overall description of their street sweeping activities to minimize pollutant discharges into the MS4 and receiving water; including the types of sweepers used, number of swept curb and/or lane miles; general schedule or dates of sweeping by location and frequency category; volume or weight of materials removed; and any public outreach efforts or other means to address areas that are infeasible to sweep.

The NIHD requests the removal of reporting the “volume or weight of materials removed”. This is a schedule and staff burden to separate the volume of materials removed from non-MS4 street sweeping versus MS4 street sweeping activities. Many of the streets are in the geographic same location and are swept together. The NIHDs agree to the annual sweeping of streets.

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4.1.1 Submit Documents

No later than (180 days from Permit Effective Date), and pursuant to Parts 2.6 (Alternate Control Measure Requests), the Permittees named in Parts 4.2 and 4.3 below must each submit a Monitoring/Assessment Plan and descriptions of their Pollutant Reduction Activities as described therein.*

The NIHD request an extension to the Alternate Control Measure Requests from Effective Date + 180 days to Effective Date + 2 Years.

The NIHD request an extension to the Monitoring Assessment Plan from Effective Date + 180 days to Effective Date + 2 years

4.2.2 Pollutant Reduction Activities

East Side Highway District must define and implement at least two (2) pollutant reduction activities designed to reduce pollutant loadings from the MS4 into Coeur d'Alene Lake for the pollutants of concern identified in Table 4.2.2 below.

East Side Highway District must prioritize the implementation of its selected activities in the MS4 areas/locations that discharge into Coeur d'Alene Lake, based on consideration of relevant and available information, such as: previously collected Cadmium, Lead, Zinc, and/or Total Phosphorus monitoring data; cleanup activities at sites with these parameters identified as contaminant(s); and/or readily available local business records, inspections, or other records.

In the final report required by Part 4.1.3 above, East Side Highway District must quantify the estimated pollutant reduction accomplished resulting from such activities.

The East Side Highway District objects to having to “quantify the estimated pollutant reduction accomplished resulting from such activities”. The NIHDs do not have a staff of environmentalists to provide an analysis to quantify the estimated pollutant reduction accomplished from such activities. This is outside their realm of expertise.

4.3.2 Pollutant Reduction Activities

Post Falls Highway District must define and implement at least two (2) pollutant reduction activities designed to reduce pollutant loadings from the MS4 into Spokane River for the pollutants of concern identified in Table 4.3.2 below. At least one of these activities should be focused on assessing and reducing or eliminating sources of legacy PCBs.

The Post Falls Highway District objects to the requirement of monitoring of PCBs in their MS4 Permit. In the report cited in the Permit in Table 4.3.2, *Spokane River PCB Source Assessment 2003-2007, Publication No. 11-03-013*, it states on page 31, “Results showed that sources upstream of the Idaho border were negligible, but downstream there was a substantial ongoing PCB source at the Kaiser Trentwood aluminum plant, potentially significant sources

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such as the Liberty Lake wastewater treatment plant (WWTP) and the former Inland Metals site, and a historically large source from the Spokane Industrial Park, which now discharged to the Spokane WWTP.”

The Spokane River is not subject to an EPA-approved TMDL that includes a WLA or other requirements. The Spokane River is listed by IDEQ in its 2014 Integrated Report as a Category 5 water where a TMDL is necessary for Cadmium, Lead, Phosphorus (Total), and Zinc, but not PCBs. The Post Falls Highway District requests the removal of PCB testing from its MS4 Permit, as the Post Falls Highway District is located in an area determined to have negligible PCB impact.

5 REQUIRED RESPONSE TO EXCURSIONS ABOVE IDAHO WATER QUALITY STANDARDS

The NIHD request the entire section 5 be replaced with the suggested verbiage supplied by the Association of Idaho Cities Public Comment response for Section 5, as shown below:

While improved water quality is the expected outcome, the permittee's obligation is to implement BMP's designed to protect the receiving water quality to the maximum extent practicable (MEP). Compliance with conditions of the final permit shall constitute compliance with §402(p)(3)(B)(iii) of the Clean Water Act and adequate progress toward compliance with Idaho's receiving water standards for this permit term. That is, a Permittee will be presumed to be in compliance with applicable Idaho Water Quality Standards if the Permittee is in compliance with the terms and conditions of this Permit.

Excursions to Idaho Water Quality Standards (WQS) are addressed through the process of identifying impaired waters and developing Total Maximum Daily Loads (TMDL) for pollutants of concern. EPA and IDEQ expect attaining WQS will only be achieved through reduction from point and nonpoint source contributors identified in an approved TMDL. When subject to an approved TMDL, the Permittee will be considered in compliance with the TMDL when the Permittee complies with the conditions of this permit, including developing and implementing appropriate BMPs within the six (6) minimum measures to address the TMDL to the maximum extent practicable (MEP) and participating in activities identified in the Implementation Plan. While improved water quality is the expected outcome, the permittee's obligation is to implement BMP's designed to protect the receiving water quality to the maximum extent practicable (MEP).

EPA and DEQ have determined that water quality standards are not being achieved as identified on the 303d List and are yet to be addressed by an approved Total Maximum Daily Load (TMDL) and Implementation Plan. Since discharges from the MS4 are to a waterbody subject to an approved TMDL, as identified in Part 2.6.2, the permittees are subject to the requirements of Part 4 of this Permit. A permittee's compliance with applicable requirements and BMP implementation within this Permit and applicable to it will constitute the required response and compliance with the Permit.

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6.2.2 Monitoring/Assessment Plan and Objectives

No later than (180 days from Permit Effective Date), East Side Highway District and Post Falls Highway District must each develop and submit a Monitoring/Assessment Plan designed to quantify pollutant loadings from the MS4s as described in Part 4.2 and Part 4.3, respectively. Each Plan must address the quality assurance (QA) objectives defined in Part 6.2.7 below. Any existing Monitoring/Assessment Plan(s) may be modified to comply with this Part. Eastside Highway District and Post Falls Highway District must submit their complete Monitoring/Assessment Plans as an ACM Request. See Parts 2.6.2 (Actions to Address Discharges to Impaired Waters) and 4.1.1 (Submit Documents).*

The NIHDs request an extension to the Alternate Control Measure Requests from Effective Date + 180 days to Effective Date + 2 Years.

The NIHD request an extension to the Monitoring Assessment Plan from Effective Date + 180 days to Effective Date + 2 years

6.2.6 Polychlorinated Biphenyls (PCB) Monitoring

The Post Falls Highway District object to PCB monitoring as described in Part 4.3 and 6.2.6.

6.2.6.1.1 Post Falls Highway District must sample the MS4 discharge from at least one outfall location at least once per calendar year for PCB congeners using EPA Method 1668C as described in Parts 6.2.6.3 and 6.2.6.4 below; or

The Post Falls Highway District objects to PCB testing in its entirety and questions the use of the EPA non-approved method 1668C despite the explanation described in the Fact Sheet – Appendix 5.2. This method has inherent very high contamination risks, has limited availability of labs to perform the testing, and at approximately \$1000 per test would place a financial burden on the Highway District.

6.2.6.1.2 Post Falls Highway District must analyze MS4 catch basin sediment solids from at least one location at least once per calendar year for PCB congeners using EPA Method 8082 as directed in Part 6.2.6.5 below; or

The Post Falls Highway District objects to PCB testing in its entirety.

6.2.6.1.3 Post Falls Highway District must submit an alternative frequency and method in the Monitoring/Assessment Plan that describes in detail how the Permittee intends to monitor/assess the potential for PCB pollutant loading (in the form of PCB congeners) from their MS4 discharge. Any quantitative analysis of PCBs must use the analytical methods cited in Parts 6.2.6.3, 6.2.6.4, and/or 6.2.6.5 below.

The Post Falls Highway District objects to PCB testing in its entirety and questions why the Permit instructs to use the EPA non-approved method 1668C.

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6.2.6.2 Reporting: Post Falls Highway District must report the toxic equivalency of “dioxin-like” PCB congeners listed in Table 6.2.6 below as calculated using the World Health Organization 2005 convention, and submit a complete congener analysis as part of the required monitoring data report. See:
<https://academic.oup.com/toxsci/article/93/2/223/1707690/The-2005- World-Health-Organization-Reevaluation-of#63170191>

The Post Falls Highway District objects to PCB testing in its entirety.

6.2.6.3 Analysis using EPA Method 1668C: For any analysis of PCB congeners using EPA Method 1668C, Post Falls Highway District must target method detection limits (MDLs) no greater than the MDLs listed in Table 2 of EPA Method 1668 Revision C, and must analyze for each of the 209 individual congeners. See EPA Method 1668 Revision C (EPA-820-R-10-005) at
https://www.epa.gov/sites/production/files/2015-09/documents/method_1668c_2010.pdf

The Post Falls Highway District objects to PCB testing in its entirety and questions why the Permit instructs to use the EPA non-approved method 1668C. This method has inherent very high contamination risks, has limited availability of labs to perform the testing, and at approximately \$1000 per test would place a financial burden on the Highway District.

6.2.6.4 Quality Assurance: For the purposes of monitoring PCB in MS4 discharges, Post Falls Highway District should follow the provisions for data validation and blank censoring in Section 4.2.2 of the Spokane River Regional Toxics Task Force Quality Assurance Project Plan (Task Force QAPP). See Task Force QAPP at http://srrtf.org/wp-content/uploads/2013/05/QAPP_FINAL_081114.pdf. Analytes found in samples at concentrations less than 3 times the associated blank concentration must be flagged with a “B” qualifier. The Task Force QAPP states that “all qualified data will be reported with validation qualifiers, however B flagged data will not be used in congener summations for total PCB” (see page 41 of the Task Force QAPP).

The Post Falls Highway District requests the removal of the use of the SRRTTF QAPP. It is not necessarily appropriate to require the use of the SRRTTF QAPP procedures for data validation and blank censoring. The Task Force QAPP produces semi-quantitative analysis due to the extremely low levels of PCBs being measured. The Permittee may want to conduct an analysis which is intended to produce a quantitative result.

6.2.6.5 Analysis using EPA Method 8082: If Post Falls Highway District chooses to monitor and assess PCBs in sediment solids from one or more MS4 catch basins, Post Falls Highway District may use EPA Method 8082 and use a quantitation level for total PCBs no greater than 10 µg/kg dry weight.

The Post Falls Highway District objects to PCB testing in its entirety.

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7 COMPLIANCE RESPONSIBILITIES

The NIHD request the removal of sections 7.6, 7.7, and 7.11 in their entirety as they do not apply to the NIHD MS4 Permit. The sections 7.9 and 7.10 should be revised to apply to stormwater permits.