City of Moscow, City Hall
c/o Gary J. Riedner, City Supervisor
206 East 3rd Street
P.O. Box 9203
Moscow ID 83843
Phone (208) 883-7000
Fax (208) 883-7018

Website: www.ci.moscow.id.us
Hearing Impaired (208) 883-7019

January 4, 2019

Misha Vakoc, Municipal Storm Water Permit Coordinator
NPDES Permits Unit, Office of Water and Watersheds
U.S. EPA Region 10
1200 6th Avenue, Suite 155
OWW-191
Seattle, WA 98101

RE: City of Moscow MS4 Permit – Public Notice Draft - November 2018

Dear Ms. Vakoc:

The City of Moscow, Idaho appreciates the opportunity to make comments on the Phase II MS4 Individual Permit Public Notice Draft and associated Fact Sheet, and we look forward to ongoing discussions with you as the draft evolves.

Comment #1: Permit Effective Date (Page 1 of 67)

The City of Moscow (hereinafter "City"), requests that the Effective Date for City's proposed MS4 Individual Permit align with the Effective Date for the University of Idaho (hereinafter "UI"), Individual Permit, but no earlier than October 1, 2019. City and UI have inter-connected MS4s. EPA's prior general permitting approach would have covered City and UI at the same time. The benefits of simultaneous coverage would foster the implementation of cooperative and well-coordinated programs, including the potential for significant cost savings to both City and UI through the sharing of compliance capabilities and resources. Simultaneous coverage would also make it easier for City to implement some permit requirements that will financially impact UI, such as requiring construction and post-construction BMPs and development reviews within City's jurisdiction. UI operates its development program independently of City. Joint MS4 Permit coverage will promote awareness by UI of why City's storm water standards and development review requirements changed and why City's compliance with those updated procedures is required. Not aligning City's and UI's MS4 Effective Dates will likely lead to unnecessary inter-agency confusion, compliance challenges, and costs.

With respect to other designated MS4s that are proposed to be regulated, since EPA has issued individual permits to small MS4s as opposed to issuing a statewide general permit, we urge you to implement a standard permit Effective Date statewide that coincides with MS4 fiscal years. The standardized process

will simplify and facilitate budgeting and implementation schedules for municipalities, as well as provide a uniform timeline for Idaho Department of Environmental Quality (IDEQ) to monitor compliance and renew permits in a timely manner.

Comment #2: References to "Stormwater" or "Storm Water" (throughout document)

Pursuant to 40 CFR § 122.26(b)(13), the definition of stormwater is written as two words, "storm water". We recommend the use of "storm water," not "stormwater," throughout the draft Permit and Fact Sheet documents in order to be consistent with the CFR.

Comment #3: SWMP Document (Section 2.5.3, Page 11 of 67)

The first paragraph states in part, "[t]he Permittee must maintain a written SWMP document or documents that, at a minimum, describes in detail how the Permittee intends to comply with the requirements for each minimum control measure in this Permit. As necessary the SWMP Document must be updated and must describes **[sic]** the Permittee's interim schedule(s) for implementation of any SWMP control measure components to be developed during the term of this Permit."

We recommend changing the paragraph to state, "[t]he Permittee must maintain a written SWMP document or documents that, at a minimum, describes in detail how the Permittee intends to comply with the requirements for each minimum control measure in this Permit. As necessary, the SWMP Document must be updated and must describe the Permittee's interim schedule(s) for implementation of any SWMP control measure components to be developed during the term of this Permit. ***The contents of the SWMP document and the SWMP document itself are not enforceable as effluent limitations of the permit."***

Comment #4: Alternative Control Measures Request (Section 2.6, Page 12 of 67)

We request that the Permit provide for Alternative Control Measures development throughout the term of Permit (i.e. up to 4.5 years from the Permit Effective Date), and that all references (to the ACM Requests) state the ability to provide such a request up to 4.5 years from the Permit Effective Date.

Comment #5: Public Education and Outreach on Storm Water Impacts Compliance Date (Section 3.1.1, Page 14 of 67)

The draft states, "[n]o later than [One year from Effective Date],* the Permittee must begin implementation of the required SWMP control measure components described in Parts 3.1.2 through 3.1.8 below."

Given the financial burdens and affordability considerations that first-time MS4 Permittees face, City requests that the deadline for this programmatic measure be set for 4.5 years following the Effective Date of the Permit, which would be consistent with the deadline to comply with all other five programmatic measures and concurrent with the re-application deadline.

Comment #6: Ordinance and/or Other regulatory mechanism (Section 3.4.2, Page 28 of 67)

The draft in the 2nd paragraph states, "[r]equired 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 the pollutant removal expected by using onsite retention of runoff volume produced from a 24 hour, 95th percentile storm event."

We recommend changing this to state, "[r]equired permanent storm water controls must be sufficient to retain on site the runoff volume produced from a 24-hour, 95th percentile storm event, or local jurisdiction equivalent standard; or sufficient to provide the level of pollutant removal greater than the pollutant removal expected by using on site retention of runoff volume produced from a 24 hour, 95th percentile storm event, ***or local jurisdiction equivalent standard. Permittees shall develop and implement criteria to determine when it is infeasible for a project to meet this requirement, including, but not limited to, Site/Engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff***." This language is largely consistent with the current Eastern Washington Phase II MS4 GP.

Comment #7: Alternatives for Local Compliance (Section 3.4.2.2., Page 28 of 67)

Please include the following language "Site/Engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff" within this provision.

Comment #8: Operation and Maintenance (O&M) of Permanent Storm Water Controls (Section 3.4.6, Page 30 of 67)

The draft outlines an inventory tracking system that the Permittee must manage operational conditions of permanent storm water controls within the Permittee's jurisdiction. The level of detail required by the O&M inventory tracking system creates an insurmountable burden for small MS4s. We propose that small MS4s be excluded from the requirements noted above and be permitted to submit a plan of how they will track such information in a manner that will not create an undue financial burden. In the plan, only Permittee-owned permanent storm water controls need to be tracked.

Comment #9: Special Conditions and Monitoring/Assessment (Sections 4 and 6, Appendix 5)

Please delete all references to outfall monitoring/assessment and related requirements in Section 4 and Section 6 of the draft (e.g., monitoring plan development, storm water discharge monitoring, PCBs and bacteria monitoring/assessment activities), and Appendix 5 of the Fact Sheet. EPA states in the Fact Sheet on Page 30, that, "The EPA proposes that the Permittee collect objective data that can be used to evaluate the relative success of SWMP control measures and can be used to assess whether MS4 discharges cause or contribute to violations of the Idaho Water Quality Standards."

Most, if not all, small MS4s in Idaho have been neglected to date because the entities lack a constant funding source that would allow them to conduct ongoing O&M activities (e.g., routine MS4 cleaning), and implement capital improvement projects. As a result, discharges from the MS4 to waters of the U.S. may, at times, cause or contribute to violations of the water quality standards. Requiring small MS4s, that have not had a formal and ongoing SWMP for at least a permit term, to collect a limited number of samples, creates serious liability and risk for the MS4. As such, City believes that the focus of this first permit term should be centered on expending resources on tangible BMPs (sweeping, infrastructure cleaning and maintenance, infrastructure repair and/or improvement, dry weather outfall screening, illicit discharge investigations, etc.), that will systematically improve water quality to and from the MS4.

The EPA has acknowledged that the NPDES Phase II Storm Water Regulations do not explicitly require MS4 Permittees to conduct analytical monitoring. In addition, Appendix 5 of the Fact Sheet repeatedly states, in summary and conclusion statements, that the EPA has determined that with implementation of the comprehensive SWMP control measures, pursuant to Part 3 of the Permit, City will be in compliance with the EPA approved TMDLs for Paradise Creek and the South Fork in Idaho. The EPA has also stated that additional requirements by City, in the form of target actions to address the pollutants of concern, are not necessary to ensure compliance with the respective TMDLs for each water body in Idaho, and should therefore comply with Water Quality Standards downstream in Washington.

City believes that utilizing limited funds on BMPs and associated activities that actually result in improvements to the MS4 and water quality of the receiving water bodies is consistent with the intent of the NPDES Phase II Storm Water Regulations. Judging the success of City's SWMP, on limited grab sample water quality data, is not a good indicator of program effectiveness, and will undermine the true effectiveness of the tangible efforts that the MS4 implements. There is also no evidence-based scientific research to support the premise that outfall monitoring relates to compliance with implementation of the six (6) minimum control measures required by the NPDES Phase II Storm Water Regulations.

Comment #10: Polychlorinated Biphenyls (PCBs) Monitoring/Assessment and Reduction Activity (Sections 4 and 6, Appendix 5 of Fact Sheet)

Please delete all references related to PCBs in the draft Permit and associated Fact Sheet since City does not discharge to waters listed as impaired for PCBs (see Table 4.3, Page 37 of 67). The inclusion of PCBs as "Pollutants of Concern" for the City's MS4 is not supported by scientific evidence in the draft Permit or Fact Sheet.

The Fact Sheet (pages 61 and 62) states in part,

> "[t]he SF Palouse River, downstream of the ID/WA border, does not meet the Washington WQS for PCBs. WDOE's current water quality criterion for total PCBs is 170 picograms per liter (pg/L). In January 2015, WDOE proposed revisions to its water quality criteria established to protect human health; including a generally applicable narrative water quality criterion that '[all] waters shall maintain a level of water quality when entering downstream waters that provides

for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state.'

The Palouse River Chlorinated Pesticide and PCB Total Maximum Daily Load, Water Quality Improvement Report and Implementation Plan (Palouse River PCB TMDL), established numeric targets based on the WDOE fish tissue criteria that WDOE used in 2007 to identify waterbodies that exceed WDOE standards. Between 2004 and 2006, WDOE conducted field studies of chlorinated pesticides, and PCBs in water samples, fish fillet samples and storm water runoff in the City of Pullman, Washington. Water samples showed moderate PCB and dieldrin exceedances in the SF Palouse River, and the fish fillet analysis showed zero (0) exceedances of the human health criterion in all samples. However, the storm water runoff analysis (i) detected the presence of dieldrin and PCBs in all storm water samples; (ii) had the highest concentrations; and (iii) exceeded the human health criteria.

The TMDL establishes WLAs applicable to the City of Pullman's MS4 discharges, but expresses these WLAs simply as 'BMPs'. The TMDL's implementation plan recommends the following: '[i]n light of elevated concentrations of dieldrin and PCBs in Pullman stormwater and the potential for adverse water quality impacts, [WDOE], the City of Pullman, and Washington State University should work cooperatively to identify and clean up sources of these chemicals to the storm drain system . . . .' The TMDL further suggests that, because dieldrin and PCBs attach to sediment particles, the best storm water BMPs to reduce these pollutants are measures that reduce the amount of sediment discharged to streams. The TMDL states that municipal SWMP activities in the urban boundary of the City of Pullman (conducted by Pullman and by Washington State University) are necessary to reduce both dieldrin and PCB loading to the SF Palouse River; such SWMP activities include requiring erosion and sediment control plans for land disturbance; revising City's design standards to reference the WDOE storm water management manual; completing the map(s) of the storm drain systems; continuing the illicit discharge detection program activities; inspecting and repairing all storm sewer lines; and increased sweeping of streets and parking lots. Although this TMDL does not mention other MS4 discharges in

> the watershed, the EPA believes it is reasonable for the City of Moscow, as an upstream contributor of MS4 discharges to the South Fork Palouse River and its tributary Paradise Creek, to conduct similar SWMP actions through compliance with the MS4 Permit."

The "BMPs" or "SWMP activities" identified in the paragraph above, and purportedly recommended in the TMDL implementation plan, such as erosion and sediment control plans for land disturbance and illicit discharge investigations of the MS4 (also referenced on Page 61 of the Fact Sheet as an appropriate example), etc., are explicitly required by Part 3 of the draft Permit. Therefore, it is not necessary to impose costly and burdensome monitoring and assessment activities for small MS4s.

We recommend removing the statements noted above as part of EPA's justification for additional management requirements for PCBs for Idaho MS4 permittees. It should not be assumed the "PCB impairments" in the City of Pullman, Washington, are the result of upstream dischargers in Idaho and there is no evidence that upstream reductions in PCB loading are needed as stated.

Comment #11: EPA Method 1668C

The Permit proposes to require City to monitor/assess MS4 discharges, if City elects, for PCBs in water using EPA Method 1668C. Method 1668C is not an approved test method under 40CFR Part 136. When EPA proposed adoption of Method 1668C, numerous parties filed comments raising serious scientific concerns with the method, which ultimately led to EPA deferring approval of Method 1668C.

It is not consistent with EPA's Federal Rule to require monitoring using methods not approved under Part 136, which requires the use of EPA approved monitoring methods to be included in NPDES Permits. Additionally, there is no scientific correlation between Method 1668C and Method 608.3. It is improper to require the use of methods which have not been promulgated or approved for use under the Clean Water Act in 40 CFR Part 136. It is also improper to require the use of methods in which EPA has declined to include in the approved list of methods.

Subject: Pollutants of Concern (Sections 4 and 6, Appendix 5 of Fact Sheet)

The draft Permit lists the Pollutants of Concern in various tables as, "Ammonia; E. coli; Fecal Coliform Bacteria; PCBs; Nutrients; sediment/siltation; and temperature."

Please delete all references to ammonia as a pollutant of concern in storm water discharges from City's MS4. The City of Moscow's Water Reclamation and Reuse Facility NPDES Wastewater Permit contains effluent limitation for ammonia that were identified in the Paradise Creek TMDL.

Please delete all references to Fecal Coliform Bacteria as a pollutant of concern. As noted in Appendix 5 of the Fact Sheet, City's implementation of the comprehensive SWMP measures required in Part 3 will address E. coli bacteria from the MS4 and will maintain compliance with Idaho and Washington's TMDL targets. The Idaho Water Quality Standard's bacteria criterion is approved by the US EPA for support of recreational beneficial uses. As such, the Idaho Water Quality Standard (E. coli) for recreational beneficial use support is comparable with Washington State's Water Quality Standard (Fecal Coliform) for support of recreational beneficial uses.

Please delete all references to PCBs as described above.

As such, please revise the pollutants of concern sections to include, "E. coli; Nutrients; Sediment / Siltation; and Temperature.".

Again, the City of Moscow appreciates the opportunity to be able to comment on the Public Notice Draft. If you have any questions regarding the comments in this letter, please feel free to contact Kyle Steele, Environmental Services Supervisor at (208) 883-7133.

Sincerely,

Bill Lambert
Mayor

c: Gary J. Riedner, City Supervisor
Mia Vowels, City Attorney
Tyler Palmer, Deputy Director – Operations
Kyle Steele, Environmental Services Supervisor