



**Association of Idaho Cities**  
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September 14, 2016

Barry Burnell  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83705

RE: AIC Comments on EPA Region 10 Pre-Draft MS4 GP

Dear Mr. Burnell:

The Association of Idaho Cities (AIC) was founded in 1947 and is a nonpartisan, nonprofit corporation owned, organized, and operated by Idaho's city governments. The organization serves to advance the interests of the cities of Idaho through legislative advocacy, technical assistance, training and research. AIC is actively engaged in water quality issues through the work of our Environment Committee, chaired by Boise City Councilmember Elaine Clegg.

Idaho cities play an important role as the primary implementers of the Clean Water Act and have a significant interest in the development of rules and guidance related to MS4 permit regulations.

IDEQ and EPA Region 10 have requested comments concerning modifications to the MS4 permit program. AIC's comments are included as an attachment to this letter.

AIC appreciates the opportunity to comment on the development of modifications to the MS4 permit program and looks forward to working with our state and federal partners in the development of this important resource for city officials. Should you have questions concerning our comments, please feel free to contact me.

Sincerely,

Seth Grigg

Executive Director

Cc: Elaine Clegg, AIC Environment Committee Chair; Tom Dupuis, AIC Environmental Consultant



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#### **AIC COMMENTS ON EPA REGION 10 PRE-DRAFT MS4 GP**

The pre-draft permit was originally circulated in late June 2016 coincident with the AIPWP meeting (June 22) and AIC annual meeting (June 22-24), both in Boise, and posted on the EPA Region 10 website at that time. EPA Region 10 staff (Misha Vakoc) provided presentations at the AIPWP and AIC meetings and indicated that input and suggestions from permittees was welcome, that this early pre-draft was still a work in progress. At that time, Region 10 anticipated that input would not lead to a revised pre-draft, but that a public comment version of the draft would be released sometime in mid-September 2016, assuming IDEQ 401 certification sometime in August.

Since those meetings in Boise, a number of the MS4 permittees in Idaho have had the opportunity to review that version of the pre-draft and associated fact sheet in more detail. Informal conversations were underway amongst several of these permittees, identifying a number of concerns and issues with the permit. Most recently, AIC has reached out to large (Phase I) and smaller (Phase II) MS4s to determine if there were substantive concerns and if compilation and submittal of joint comments from AIC on behalf the permittees was warranted. The result of those communications indicated that there were substantive concerns and that an AIC comment letter would be appropriate.

A number of these permittees met in Boise on August 31, 2016 in the morning and compiled a list of detailed comments on the permit (and associated fact sheet). The pre-draft and fact sheet available for this morning meeting was still the same one posted by Region 10 in late June. Those detailed comments are included as Attachment 1 to this letter. These permittees also met with IDEQ staff that afternoon and discussed the more important of the issues and concerns. At that meeting, IDEQ stated that Region 10 had just re-drafted the permit and submitted it to IDEQ for certification (requested by September 16, 2016).

The most substantive, over-arching concern of the Phase II permittees was that the June pre-draft included a number of elements and requirements from the existing Phase I permit that went beyond federal EPA Phase II permit regulations. The June pre-draft was to cover both Phase I and II permittees. Many of the Phase II permittees thought that there should be a separate GP for Phase II communities, who have much more limited resources and funds and thus many of the Phase I requirements brought into the GP would be very burdensome to implement, particularly in the time frames indicated. Thus, the view of the Phase II permittees was that a separate Phase II GP should be developed and not go beyond federal Phase II regulatory requirements.

At the August 31 afternoon meeting, IDEQ noted that the revised version (August re-draft) they had just received for certification from Region 10 had removed the Phase I permittees from coverage and now was only applicable to Phase II permittees, but otherwise appeared to be very similar to the June pre-draft.

With that history, AIC believes it is critical to provide more detailed input to both Region 10 and IDEQ regarding the concerns that the Phase II permittees share, regarding both the June pre-draft and the later August re-draft, as both contain essentially the same list of substantive concerns and issues. As noted earlier, Attachment 1 lists detailed comments on the June pre-draft by permit section and page number. These comments are also pertinent to the re-draft, although section and page numbers may vary.

The major, over-arching concerns and issues are as follows:

- Phase II permittees should not be subjected to MS4 requirements that go beyond the federal EPA Phase II regulatory requirements for the following reasons:
  - Phase II permittees in Idaho do not have the financial funding or staff resources to effectively implement these new requirements.
  - Neither EPA nor IDEQ have funding programs in place that would provide substantive financial relief to Idaho Phase II permittees, such as grants, loans, stormwater utility authorizations, etc., that have been made available in some states such as Washington.
  - If a Region 10 pre-draft or re-draft permit is issued and becomes effective in Idaho, it is likely that anti-backsliding constraints would lock them in perpetuity, even after IDEQ assumes delegated authority for the MS4 program several years from now.
  - Idaho law establishes that state regulations cannot be more restrictive than federal regulations, a law that would be compromised in relation to the bullet immediately above.
- Examples of the specific areas where the pre-draft and re-draft Region 10 MS4 GP go beyond federal EPA Phase II MS4 regulations are listed below:
  - Expansion of the geographical area of permit coverage.
  - Addition of the requirement to retain runoff from a specified design storm (95<sup>th</sup> percentile large storm) on site.
  - Reduction in the size of areas of disturbance or development/redevelopment (to 5,000 square feet) such that many more projects would have to be regulated by the permittees (including tracking, inspections, compliance, enforcement, etc.).
  - Substantial increases in the level of effort and cost required for monitoring, including the requirement for flow-weighted monitoring of outfalls.
  - The PCB related requirements for several permittees in the Panhandle region are particularly problematic and are based on a court case submittal and not on established policy, procedures, or EPA MS4 Phase II regulations.
  - The six minimum control measures are defined differently in these draft permits than in federal EPA MS4 Phase II regulations.

Given the substantive concerns of the Phase II permittees summarized above and in Attachment 1, and associated cost and compliance challenges they will face, AIC respectfully recommends that IDEQ not certify the June pre-draft or August re-draft versions of the MS4 GPs developed by Region 10. AIC also recommends that IDEQ and Region 10 work collaboratively to resolve the issues and concerns with the permittees, and hopefully result in a Phase II MS4 GP for Idaho permittees that conforms with federal EPA Phase II regulations, protects water quality in Idaho in areas where stormwater may be having the most potential effect, and thus achieves a cost-effective use of local funding and resources to manage stormwater.

