National Pollutant Discharge Elimination System (NPDES) Permit for

City of Pocatello, City of Chubbuck, Bannock County, and Idaho Transportation Department – District #5 Municipal Separate Storm Sewer Systems (MS4s)

NPDES Permit No. IDS-028053

Response to Comments on Proposed Permit

October 27, 2006

U.S. Environmental Protection Agency, Region 10

Table of Contents

Introduction

On February 17, 2006, the U.S. Environmental Protection Agency (EPA) proposed a draft NPDES permit for discharges from municipal separate storm sewer systems (MS4s) owned and operated by the City of Pocatello (Pocatello), City of Chubbuck (Chubbuck), Bannock County (County) and Idaho Transportation Department – District #5 (ITD). This NPDES permit, No. IDS-028053, will be referred to in this document as the Pocatello Permit or Permit. The MS4 operators will be collectively referred to as the "co-permittees."

EPA published a public notice announcing the proposed Permit in the *Idaho State Journal* on February 17, 2006, and announced the proposal via direct mail through the EPA-published newsletter, *The Southeast Idaho Update*. At the request of the co-permittees, EPA extended the original forty-five (45) day comment period for an additional sixty-five (65) days, and hosted a public hearing on the evening of May 31, 2006, at the Pocatello City Council Chambers. The comment period closed on June 9, 2006.

This document provides a response to comments received on the proposed Pocatello Permit. In some cases, the exact phrasing of the comment is presented. In other cases, substantive portions of the comment were excerpted or summarized. The Administrative Record

contains complete copies of each comment letter.

In general, comments are organized in the order the topic or issue is found in the proposed Pocatello Permit. Where indicated, EPA has made changes to the final Pocatello Permit; a summary of all changes made is found in Appendix B of this document.

Comments were received from parties listed below. Each comment is credited to its author using the abbreviations indicated:

- Ada County Highway District (ACHD)
- Boise City (B)
- Stan Baldwin (StB)
- Dr. Colden Baxter (CB)
- Darrell Buffaloe, Idaho State University (DB)
- Brad Christenson (BC)
- Greater Pocatello Chamber of Commerce (CC)
- Idaho Association of Cities (IAC)
- Steven England, Mayor of Chubbuck (MofC)
- Larry Gahn, Bannock County Commissioner (LG)
- City of Lewiston (L)
- Nampa Wastewater Division (N)
- City of Pocatello, on behalf of the City, City of Chubbuck, Bannock County and Idaho Transportation Department (P)
- Mike Settell (MS)
- Shoshone-Bannock Tribes (SB) and
- Roger Turner (RT)

In addition, Idaho Department of Environmental Quality (IDEQ) provided editorial comments regarding the manner in which EPA cited the Idaho water quality standards in EPA's *Preliminary Draft MS4 Permit Template* (September 2005). Because IDEQ's specific editorial corrections were not reflected in the proposed Pocatello Permit, EPA has addressed those comments in this document and made appropriate changes to the Pocatello Permit as indicated.

IDEQ Certification of the Pocatello Permit under Clean Water Act §401

On September 13, 2006, IDEQ proposed a draft Clean Water Act (CWA) §401 certification that the Pocatello Permit, as revised based on public comment, provides reasonable assurance that Idaho water quality standards will be met. IDEQ accepted public comment on the proposal through October 13, 2006, and issued a final CWA §401 certification on October 24, 2006. A copy of the IDEQ's final certification is included in Appendix A.

General Issues

1. **Comment (P, IAC): The Pocatello Permit is more stringent than other MS4 permits previously issued by EPA Region 10.** Two commenters questioned why certain proposed Pocatello Permit requirements are substantively different than comparable requirements in the Fairbanks Area MS4 permits[1] issued by EPA in 2005. Examples

[1] NPDES Permit No. AKS-053406 - Fairbanks, North Pole, AK DOT & PF, University of AK MS4s

include Pocatello Permit Parts I.D.1.c (Discharge Limitations); II.C. (Structural Control Requirements); and IV.A (Monitoring, Recordkeeping and Reporting). The commenters feel EPA inappropriately included specific monitoring and structural control program requirements in the proposed Permit, which are not found in similar Fairbanks Area MS4 permits.

Response: EPA considers both site- and state- specific factors when developing appropriate MS4 permit conditions. The Fairbanks Area MS4 permits reflect Alaska water quality standards, waterbody impairment listings under CWA § 303(d), and water quality monitoring activities. The receiving water for the Fairbanks Area MS4s is the Chena River. Although the Chena River is an impaired water body, a Total Maximum Daily Load (TMDL) analysis has not yet been completed for the Chena River in the Fairbanks area. In contrast, the Pocatello Permit represents Idaho water quality standards, waterbody impairment listings, monitoring activities, as well as the EPA-approved Portneuf River TMDL analysis. In sum, the permits reflect the unique water quality needs and situations in each respective area.

2. **Comment (P, IAC, N): The Pocatello Permit includes many stringent requirements beyond the minimum requirements of EPA's Phase II stormwater regulations.** EPA's proposed conditions exceed the Phase II stormwater regulations and expand upon activities outlined in the co-permittee's 2003 permit application. The monitoring requirements for both stormwater discharges and surface water, combined with a structural stormwater pollution control program, inappropriately attempt to incorporate the Portneuf River TMDL into the Permit. By referencing the numeric wasteload allocations (WLAs) of the Portneuf River TMDL in the Pocatello Permit Fact Sheet, EPA has effectively included "numeric effluent limits" into the Pocatello Permit. One commenter asks that the discussion of the TMDL be struck from the Fact Sheet, feeling that it is excessive and beyond the intent of the Phase II stormwater program. Commenters collectively urge EPA to evaluate these concerns and consider revised the language as suggested.

   Response: As EPA set forth in the Fact Sheet, the additional narrative permit requirements beyond the minimum Phase II stormwater program requirements implement the urban stormwater WLAs of the EPA-approved Portneuf River TMDL. The Pocatello Permit does not contain numeric effluent limits. The Permit contains narrative requirements sufficient to fulfill the Phase II stormwater requirements and implement controls necessary to achieve the WLAs outlined in the Portneuf River TMDL. See Comments #18-28.

   The Pocatello Permit must include specific requirements to implement the WLAs of the Portneuf River TMDL. (See 40 C.F.R. §§ 122.34(e)(1) and 122.44(d)(1)(vii)(B).) The Permit is consistent with EPA's November 2002, guidance entitled "*Establishing TMDLS and Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs*"(TMDL Guidance Document); a copy of this memo is contained in the Administrative Record supporting the Pocatello Permit. This TMDL Guidance Document states that: 1) all NPDES permit conditions be consistent with the assumptions and requirements of available WLAs; 2) stormwater permit limits may be expressed as narrative best management practices (BMPs); 3) where such non-numeric

narrative limits are imposed, the permit's Administrative Record must support the use of those BMPs expected to achieve the WLAs; and 4) the permit must also specify monitoring necessary to determine compliance with those non-numeric limits.

3. **Comment (P): The draft Pocatello Permit contains requirements that significantly exceed the co-permittee's 2003 permit application submitted in February 2003**. Commenter requests that the Permit be revised to conform to the approach of the 2003 permit application.

   Response: EPA has considered Pocatello's suggestions, and has made changes to the permit as detailed in responses below. EPA notes that the co-permittees' 2003 permit application did not include activities to address the WLAs in the Portneuf River TMDL nor the actions subsequently identified by the various co-permittees in the Portneuf TMDL Implementation Plan. As stated above, EPA must implement approved TMDLs in NPDES permits. Thus, in addition to the Storm Water Management Program (SWMP) actions and activities described in the 2003 permit application, EPA has required additional actions and activities as necessary to implement the approved TMDL.

4. **Comment (BC): Commenter supports the draft Pocatello Permit to control pollution in stormwater discharges to the Portneuf River as a tool for guiding sustainability in the context of a healthier watershed.**

   Response: Comment noted.

5. **Comment (CB): It is appropriate to require Pocatello to do some type of stormwater cleanup through the Pocatello Permit because they won't do it of their own volition.**

   Response: Comment noted.

6. **Comment (BC)**: **Pocatello has not complied with the Operation and Maintenance Manual for the Portneuf River Flow Control Project**. This manual requires Pocatello to take measures to retard bank erosion by planting willows or other suitable growth on areas riverward of the levees. Pocatello has made no effort to protect this watershed.

   Response: Actions that Pocatello is required to take to protect water quality in the context of existing flood management projects such as the Portneuf River Flow Control Project are addressed by Part II.B.6.d of the Permit. See Response to Comment # 90.

7. **Comment (IAC, P): There are additional regulated MS4 operators in the Pocatello Urban Area that should be permitted through the Phase II stormwater program.** These entities within the Pocatello Urban Area include, for example, Idaho State University (ISU) and Bureau of Land Management. (There are possibly others throughout Idaho). EPA should identify and notify all such entities of the NPDES permit requirements for this program.

   Response: EPA agrees. EPA contacted most known MS4 operators in 2003 regarding the NPDES permit application requirements. EPA has subsequently contacted ISU and requested the necessary NPDES application. EPA seeks more information about discharges from the Bureau of Land Management within the Pocatello Urban Area. EPA continues to educate other municipal entities regarding their permit obligations on a case-

by-case basis. In addition, any person may petition EPA for the designation of a small municipal storm sewer system to be permitted (See 40 CFR §122.26(f)(4)).

All regulated MS4 operators have a responsibility to submit a NPDES permit application for regulated storm water discharges, and should not wait to be contacted by EPA. Permit application instructions are available through EPA's website (www.epa.gov/region10/stormwater.htm). Any MS4 operator with questions about their status under this program may also contact EPA directly at (800) 424-4372, extension 6650.

8. **Comment (DB): When would be the best time for an entity like ISU or other organizations to partner with the co-permittees to accomplish the SWMP?** Has the opportunity passed now that the Pocatello Permit is being issued?

   Response: EPA encourages the co-permittees to work with other entities in their area to accomplish the goals of the SWMP. Such partnership agreements may occur at any time. The section now numbered Part II.A.7 of the final Pocatello Permit addresses cooperation with other entities.

9. **Comment (RT): The effective date of the Pocatello Permit should not be extended beyond what is proposed in the Permit.**

   Response: Comment noted. 40 C.F.R § 122.46 specifies that NPDES permits may be effective for a fixed term not to exceed five years.

10. **Comment (IAC): It is difficult for the public to determine which SWMP requirements were proposed by EPA and which were identified by IDEQ or the Shoshone-Bannock Tribes during pre-draft review under CWA Section 401 and/or EPA's government-to-government consultation.** Future draft permits should identify NPDES permit conditions required by federal and state CWA § 401 requirements, respectively.

    Response: Comment noted. EPA did explain the genesis of the permit requirements in the Pocatello Fact Sheet. In the future, EPA will work with IDEQ to provide a draft CWA §401 certification when EPA proposes a NPDES municipal stormwater permit for public comment, and will also more explicitly describe any requirements resulting from consultation with Tribal governments.

11. **Comment (P): Is there a draft CWA § 401 certification from IDEQ to consider? Will it be included with the Pocatello Permit or Fact Sheet?** In the Pocatello Fact Sheet document, EPA states, "*Numeric effluent limitations are not proposed at this time. Numeric limitations will be included in the final permit if required by the State as a condition for certification of the permit pursuant to Section 401 of the CWA, 33U.S.C. § 1341.*" Commenter asks whether numeric limitations will be included or not? Other permits issued by EPA (*i.e.*, Fairbanks Area MS4 permits) include a draft § 401 certification from the state as an appendix.

    Response: As previously noted, IDEQ conducted its CWA §401 certification process separately, after the close of EPA's public comment period. IDEQ's final certification, included in Appendix A of this document, does not include such numeric limits.

12. **Comment (IAC, B, N, L): The draft Pocatello Permit sets a precedent for the MS4 program in the State of Idaho, which is not necessarily a good precedent.** The Cities of Boise and Lewiston support the comments submitted by Idaho Association of Cities and the City of Pocatello on behalf of the co-permittees, and encourages EPA to revise the permit as requested therein.

    Response: EPA has considered the suggestions by all commenters, and has made changes to the Pocatello Permit as described in this document.

13. **Comment (N): The requirements of the Pocatello Permit are "doable" if manpower, monies and time were not factored into the equation.** Commenter feels it is unreasonable to expect a city to go from near zero to full implementation within the first five year permit cycle.

    Response: Sufficient time has been provided to municipalities to anticipate the type of storm water management activities necessary to protect water quality in their area. EPA's Phase II stormwater regulations were finalized in late 1999; permit applications were due to EPA from all regulated MS4s in March 2003. EPA is required to "specify a time period of up to 5 years from the date of permit issuance….to develop and implement [a] program." See 40 CFR §122.34(a). Through the public comment process, EPA has refined various timelines as requested by the co-permittees to provide a reasonable schedule for program implementation.

14. **Comment (RT): Is Simplot a party to this permit?** Simplot discharges into the Portneuf River either through springs or a direct discharge.

    Response: No. This permit authorizes stormwater discharges from MS4s within the Pocatello Urban Area. Simplot is a private company located downstream of the Pocatello Urban Area and does not own or operate a MS4.

15. **Comment (LG): The loss of the Federal Conservation Reserve Program (CRP) has significant consequences for water quality in the Portneuf watershed.** If this program is reduced, traditional family farm and ranch land uses elsewhere in the basin will be negatively impacted economically, and may encourage speculative development in these areas. This could set up a domino effect that could increase runoff and pollution problems in the watershed and the Portneuf River.

    Response: Comment noted. The CRP is administered by the U.S. Department of Agriculture and is focused on rural agricultural areas. However, there is no direct regulatory link between the CRP program and EPA's proposed NPDES permit which regulates MS4 discharges to the Portneuf River.

16. **Comment (RT): When will EPA issue the Pocatello Permit?**

    Response: EPA will issue the final permit shortly after receiving the final certification under CWA §401 from IDEQ.

17. **Comment (RT): How will EPA determine success of the SWMP?**

    Response: Through the Annual Reports, EPA will evaluate incremental progress made by the co-permittees to accomplish the actions and activities of the SWMP as described in the permit. In addition, EPA will examine the success of the local SWMP as a whole at the end of the five year permit term as EPA proposes a subsequent permit for the next five year permit term.

Comments Related to Incorporating the Portneuf River TMDL into the Pocatello Permit

18. **Comment (P): Pocatello has challenged the Portneuf River TMDL, thus EPA should not cite to or use the TMDL as a basis to establish any permit conditions in the Pocatello Permit.** Pocatello filed two challenges to the Portneuf River TMDL before the Idaho Board of Environmental Quality and the Idaho 4th Judicial District Court (Ada County).[2] IDEQ plans to revise the Portneuf River TMDL based on additional water quality information.[3] Pocatello therefore requests that all discussion of the Portneuf River TMDL, as well as various permit conditions supported by those discussions, be deleted from the Pocatello Permit documents.

    Response: EPA declines to remove the discussion of the TMDL from the Pocatello Permit. On April 23, 2001, EPA approved the Portneuf River TMDL submitted by IDEQ. The Portneuf River TMDL contains WLAs for urban stormwater for oil & grease, phosphorus and nitrogen. The TMDL also contains urban stormwater load reduction targets for bacteria and sediment.

    EPA must ensure that NPDES permit conditions are consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B). As of August 2006, IDEQ had not yet revised the Portneuf River TMDL. EPA therefore based the conditions of the Pocatello Permit on the approved Portneuf River TMDL and the Portneuf River TMDL Implementation Plan.

19. **Comment (P): Because the Portneuf River TMDL will be revised, the Pocatello Permit should not reference the TMDL analysis at this time.** Commenter feels the existing TMDL is based on very limited monitoring data, and questions technical aspects of the TMDL. IDEQ is expected to significantly revise the TMDL. Pocatello argues that 1) the TMDL does not contain any load allocation for oil and grease, 2) the technical basis of the nitrogen and phosphorus requirement is questionable, and 3) the TMDL mentions fecal coliform, not *E. coli*, and does not assign any load allocation for fecal coliform bacteria. The final Permit should incorporate a "BMP approach" to implement EPA's minimum storm water management measures, until it is demonstrated through

[2] On April 23, 2001, Pocatello filed a Petition for Administrative Review by the Board of Environmental Quality of the DEQ decision to submit the Portneuf TMDL to EPA for approval. On the same day, the City filed a Petition for Judicial Review and a Complaint for Injunction, Writ of Mandate and Declaratory Relief regarding the Portneuf TMDL in the Fourth Judicial District Court. The Board of Environmental Quality subsequently stayed the City's Petition on July 23, 2001. On August 1, 2001, a district judge administratively terminated the complaint filed in the Idaho 4th Judicial District Court.

[3] IDEQ response to EPA comments on the Portneuf River TMDL, letter from D. Mabe, March 26, 2001

water quality monitoring, modeling, and TMDL review and revision that more stringent controls are necessary.

Response: Until the Portneuf River TMDL is revised and subsequently submitted to EPA for approval, EPA is required to implement the WLAs in the TMDL. See Response to Comment #2. Part VII of the Pocatello Permit contains a clause allowing EPA to reopen and modify the terms of this permit if IDEQ substantively revises the TMDL and EPA approves it. Questions regarding technical aspects of the TMDL must be resolved with IDEQ during the TMDL revision process.

20. **Comment (P): The Pocatello Permit is too prescriptive.** Commenter notes that the TMDL Guidance Document recommends that the permitting authority use BMPs to implement WLAs and load reduction targets in a stormwater NPDES permit. If BMPs are to be used, why are the draft Pocatello Permit conditions so solidly defined and above such a BMP –based approach? Commenter feels EPA fails to follow this guidance.

    Response: EPA has used the format of an individual NPDES permit to explicitly describe the actions and activities that are considered BMPs. These BMPs are based on EPA regulations, the co-permittee's 2003 permit application, the Portneuf River TMDL, and the TMDL Implementation Plan. The prescriptive language in the Pocatello Permit provides clarity to both the co-permittees and the public regarding the activities that must be completed for the SWMP, and defines EPA's expectation of Maximum Extent Practicable (MEP) for MS4s in the Pocatello Urban Area. EPA defined the actions and activities, but the co-permittees have the discretion to accomplish those activities as appropriate in their jurisdiction.

21. **Comment (IAC) the Portneuf River TMDL is incorrectly cited in the Pocatello Permit.** The Fact Sheet incorrectly lists load allocation reductions for urban stormwater discharges. The Portneuf River TMDL does not identify WLAs for sediment or bacteria. The only load allocation is for nutrients (nitrogen and phosphorus). Commenter questions the technical basis for the requirement for both nitrogen and phosphorus, and suggests that the final Pocatello Permit use a BMP approach to implement EPA's Phase II requirements until it is demonstrated through water quality monitoring, modeling, and TMDL review processes that more stringent controls are necessary.

    Response: Urban stormwater runoff originating within a Census Bureau defined Urban Area is considered a point source discharge subject to NPDES permitting. NPDES regulated storm water discharges must be addressed by the WLA component of a TMDL, and may not be addressed by the load allocation component of a TMDL.[4] IDEQ established three WLAs and two load allocations for urban stormwater as summarized in Table 1 of the Pocatello Permit Fact Sheet, excerpted from the Portneuf River TMDL. The TMDL identifies runoff-related WLAs for oil and grease, nitrogen and phosphorus; further, the TMDL assigns load allocations for bacteria and suspended sediment from urban stormwater, and acknowledges gaps in monitoring data that prevented further analysis. EPA has addressed both the TMDL WLAs and identified data gaps in the Pocatello Permit by requiring actions and activities to address all of the pollutants of concern and provide additional data for future stormwater management decisions.

[4] See 40 CFR § 130.2(g) & (h), and EPA Memorandum "Establishing Total Maximum Daily Load Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs," November 22, 2002 (TMDL Guidance Document).

22. **Comment (P): Commenter disagrees that a direct conversion of fecal coliform data to *E. coli* is acceptable and will result in realistic target levels** (see the Fact Sheet's Table 1, footnotes). Co-permittees question this direct conversion, and request all available data be reviewed using a science-based approach to establish the pollutant load for bacteria. Commenter requests that Table 1 and all related information be removed from the Pocatello Permit Fact Sheet. In addition, all current data that has been through an appropriate Quality Assurance process should be used in the permit process.

    Response: Table 1 reflects the approved TMDL analysis in the Pocatello Permit Fact Sheet as it currently exists. See Response to Comments #18, 19, and 21. Issues related to how the WLAs were developed, and the datasets supporting that development, should be directed to IDEQ to assist with the revision of the Portneuf River TMDL.

23. **Comment (SB): The Pocatello Permit does not assign the WLAs issued in the Portneuf River TMDL approved by EPA in April 2001 as numeric limits.** The Shoshone-Bannock Tribes feel enough data exists documenting a significant impairment to water quality in the Portneuf River, as a result of the MS4 outfalls in the river reach from Edson Fichter Park to Highway 30, to warrant the WLAs to be incorporated as numeric limits in the Pocatello Permit.

    Response: The Pocatello Permit implements the WLAs for urban stormwater, by using narrative limits in the form of BMPs meet those WLAs. See 40 C.F.R. § 122.34(e)(1) and Response to Comment #2. EPA will consider establishing numeric limits in subsequent permit terms pursuant to EPA's TMDL Guidance Document.

24. **Comment (SB): If EPA is not issuing WLAs due to a lack of "end of pipe" data correlated with instream conditions, the monitoring requirements of the Pocatello Permit need to be revised to adequately address the need for WLAs.** The four outfalls identified for monitoring will not adequately characterize the pollutant contribution from the remaining 177 known outfalls.

    Response: The conditions in the Pocatello Permit are consistent with the approved Portneuf River TMDL developed by IDEQ. The monitoring requirements of the Pocatello Permit provide a minimum monitoring expectation that recognizes both the need to better characterize pollutant loading from urban sources and the inherent challenge of obtaining valid, representative data in a cost effective manner. See also Response to Comment #95.

25. **Comment (P): The co-permittees request that all non-BMP requirements be removed from the Pocatello Permit.** The Fact Sheet states, *"In the preamble to the Phase II regulations, EPA has stated that it 'considers narrative effluent limitations requiring implementation of BMPs to be the most appropriate form of effluent limitations for MS4s.'" "Moreover…[use an].interim permitting approach that uses BMPs in first 5-year permit round permits, [and expanded] or better tailored BMPs in subsequent permits."* The co-permittees agree that narrative effluent limitations requiring implementation of BMPs are the most appropriate form of effluent limitations for MS4 permits. The co-permittees request that all non-BMP requirements be removed from the Permit. This will allow the co-permittees to study and document actual status of the MS4 in the Pocatello Urban Area and focus limited resources on appropriate locations during

the second permit cycle.

Response: As previously noted in Response to Comments #2 and 20, the Pocatello Permit contains only narrative permit requirements. These narrative requirements describe the practices, actions and activities to be accomplished. These requirements are prescriptive to provide explicit direction and clarity to the co-permittees and members of the public. EPA declines to revise the Pocatello Permit as suggested by this comment.

26. **Comment (N): Commenter wonders how their community (located outside of Pocatello) will be required through an NPDES Permit to accommodate issues such as an approved TMDL for bacteria, state sediment standards, and phosphorus pollution through the SWMP in their area.**

    Response: When drafting NPDES permit requirements, EPA intends to require controls for municipal stormwater discharges using relevant information specific to the watershed and receiving water body as necessary. EPA encourages all MS4 operators to provide EPA with updated information regarding how the SWMP activities previously identified in their submitted permit application(s) address any TMDLs, water quality standards or other water quality issues in their respective area(s).

27. **Comment (P): The co-permittees agree that BMPs are the most effective means for reducing the discharge of pollutants to the MEP.** The Fact Sheet states, *"After reviewing all of this information, EPA has determined that BMPs, implemented and enforced through a comprehensive local storm water management program (SWMP), are the most effective means for reducing the discharge of pollutants to the MEP and for complying with the water quality provisions of the CWA. Thus, the draft permit proposes the use of BMPs as the primary means to control sources of pollution in urban storm water discharges."* The co-permittees support the inclusion of appropriate BMPs in the requirements of the draft Pocatello Permit.

    Response: Comment noted.

28. **Comment (CC, B, L, P, LG, MofC): Many commenters expressed concern that the focus of the initial Phase II permit cycle should be the six minimum control measures, and that BMPs should be used to achieve the measures.** These actions should be implemented with an adaptive management approach through the process identified in the TMDL Implementation Plan.

    Response: EPA agrees. The NPDES permit outlines the specific activities to be accomplished within the five year permit term. EPA believes that the Pocatello Permit includes BMPs that will achieve the six minimum control measures as well as the WLAs of the Portneuf River TMDL. Information gathered during the first permit term will inform future permit requirements and adapt specific activities required in subsequent permit terms.

Comments Related to the Pocatello Permit - Part I

29. **Comment (RT): Regarding Parts I.A and I.B of the Permit**, commenter suggests that the area west of Chubbuck/Pocatello, mainly in Power County's jurisdiction, is heavily industrial and is experiencing development growth which impacts the Portneuf River.

Defining the permit area using the Pocatello Urban Area defined by the Year 2000 Census is not enough. Commenter suggests EPA expand the permit area to include all Chubbuck outfalls directed to Portneuf River and American Falls Reservoir, as well as areas outside of Pocatello and Chubbuck, including Power County as necessary.

Response: EPA elects not to expand the permit area boundary at this time. EPA requires the co-permittees to develop a SWMP for their jurisdictions within the Pocatello Urban Area as defined in the EPA regulations (40 CFR § 122.32(a)). EPA encourages the co-permittees to consider addressing stormwater issues throughout their jurisdictions, as there is benefit to a consistent approach to stormwater management. The commenter does not provide enough specific information regarding outfall location, maps, etc., to increase the permit area at this time. The commenter may submit specific information and formally petition EPA to include other municipal entities or areas pursuant to 40 CFR § 122.26(f)(4).

30. **Comment (IAC): Regarding Part I.C. of the Permit**, commenter supports the existing approach and language in the draft Permit regarding co-permittee responsibilities, and recommends similar language should be used in all other Idaho MS4 permits issued by EPA.

    Response: Comment noted. As the situation warrants, such permit language will be used consistently in Idaho MS4 permits issued by EPA.

31. **Comment (P): Part I.C.3 of the Permit** states, "*The cooperative agreement …must be submitted to the Director [EPA] … and the Idaho Department of Quality (IDEQ)"*. Commenter asks why the cooperative agreement of a federally issued permit would be subject to local/state review and approval, and what jurisdiction the IDEQ has in this situation.

    Response: Part I.C.3 does not require approval by EPA or the IDEQ; rather, EPA requires submittal of the agreement to better understand the working relationships between the Pocatello Area MS4 operators. IDEQ is EPA's partner environmental agency in protecting water quality in Idaho. Copies of documents and reports required by this permit must be submitted to both agencies.

32. **Comment (P): Regarding Part I.C.3 of the Permit**, commenter requests extending the submission of the cooperative agreement to 120 days from permit effective date. It would be difficult to negotiate changes and obtain necessary signatures in the short timeline proposed.

    Response: EPA agrees, and has changed the dates in both Part I.C.3 and Table III.

33. **Comment (IDEQ): Regarding Part I.D.1 of the Permit,** IDEQ requests that EPA add the following language to the Idaho MS4 Permit Template, the Pocatello Permit and/or Part I.D.1 as relevant: a) a definition for the phrase "unforeseen weather event;" b) the phrase "for the purposes of this permit" in the second sentence of the relevant section discussing sources of pollution to waters of the U.S.(Part I.D.1.c.ii; and c) a discussion about discharges characterized by elevated temperatures as Part I.D.1.c.ii.*i*, such as:

    "(i) Contains materials in concentrations that exceed applicable natural

background conditions in receiving waters (IDAPA 58.01.02.09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.01.02.401."

Response: To address suggestion a), EPA has replaced the phrase "unforeseen weather event" with "unusual and severe weather event" to capture the idea that the situation is not a normal, expected weather pattern for the area. EPA has added the language suggested in b) and c). See Comment #36 below for complete text revision.

34. **Comment (ACHD**): **Regarding Part I.D.1.c.ii of the Permit,** the commenter is concerned that this section may eliminate from coverage under this permit many non-stormwater discharges recognized under the CWA as prevalent and acceptable in urban areas. For example, the Permit appears to prohibit low pollutant discharges such as landscape irrigation, etc, if such discharges contain "floating, suspended or submerged matter of any kind in concentrations that may impair designated beneficial uses." Such discharges are prevalent and difficult, if not impossible, to monitor and control. Such language is not contained in EPA's Fairbanks Area MS4 permits.

    Response: See Response to Comment #1. The language contained in Part I.D.1.c.ii reflects Idaho water quality standards. Part I.D.1.c does not prohibit the listed allowable non-stormwater discharges, provided those discharges do not violate Idaho water quality standards. EPA expects that MS4 operators, through knowledge of their community and receiving water bodies, will (as necessary) prescribe appropriate management practices to prevent these allowed non-stormwater discharges from impairing a receiving water body's designated uses.

35. **Comment (IAC, ACHD)**: **Amend the list of allowable non-stormwater in Part 1.D.1.c.i of the Pocatello Permit to be consistent with the similar list in EPA's draft MSGP** (No. IDR05-0000), to provide a consistent approach to the regulation of stormwater. The commenter provided specific language revisions.

    Response: EPA agrees with the commenter's suggestion, and has revised the Part I.D.1.c of the Pocatello Permit to be consistent with the MSGP; see complete revised text Comment # 36 below. EPA has modified the commenter's suggested language slightly, however, and declines to include "non-profit car washing" as an allowable discharge to MS4s. Such car washing activity is not listed as an allowable discharge in the MSGP; further, EPA believes that through education and preventative measures, communities can and should promote practical alternatives to allowing the direct discharge of car wash water to the MS4.

36. **Comment (IAC): Commenter recommends amending Part I.D.1.c.ii (a-h) to include specific language in each subpart referencing "in receiving waters."** Allowable non-stormwater discharges must not threaten water quality or uses of receiving waters. The commenter feels that the draft language in Part 1.D.1.c of the Pocatello Permit is inconsistent with federal requirements, as it does not specify that such non-stormwater discharge related impacts are to receiving waters. The draft language is also inconsistent with IDAPA 58.01.02.

    Response: EPA consulted with IDEQ to address the commenter's concern, and agrees with this comment. To provide additional clarity, EPA has included the term "in

receiving waters" to each subpart as suggested. EPA has revised the full text of Part I.D.1.c. as follows (changes are indicated *in italics*):

D. Limitations on Permit Coverage

1. Non-Storm Water Discharges. The permittee is not authorized to discharge non-storm water, except where such discharges satisfy one of the following three conditions: …

a) The non-storm water discharges result from a spill and:

b) are the result of *an unusual and severe weather event* where reasonable and prudent measures have been taken to minimize the impact of such discharge; or…

c) The non-storm water discharges satisfy each of the following two conditions:

(i) The discharges consist of uncontaminated water line flushing; landscape watering *(provided all pesticides, herbicides and fertilizer have been applied in accordance with manufacturer's instructions*); diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)); uncontaminated pumped ground water *or spring water*; potable water, *including water line flushings; foundation and footing drains (where flows are not contaminated with process materials such as solvents*); uncontaminated air conditioning or compressor condensate; irrigation water; springs; water from crawlspace pumps; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; residential building wash waters without detergents; *routine external building wash down which does not use detergents; pavement wash waters, where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed); fire hydrant flushing;* or flows from emergency firefighting activities; and

(ii) The discharges are not sources of pollution to waters of the United States. A discharge is considered a source of pollution to waters of the United States for the purposes of this permit if it:

(a) Contains hazardous materials in concentrations found to be of public health significance or to impair beneficial uses *in receiving waters*. (Hazardous materials are those that are harmful to humans and animals from exposure, but not necessarily ingestion);

(b) Contains toxic substances in concentrations that impair designated beneficial uses *in receiving waters*. (Toxic substances are those that can that can cause disease, malignancy, genetic mutation, death, or similar consequences);

(c) Contains deleterious materials in concentrations that impair designated beneficial uses *in receiving waters*. (Deleterious materials are generally substances that taint edible species of fish, cause taste in drinking waters, or cause harm to fish or other aquatic life);

(d) Contains radioactive materials or radioactivity at levels exceeding the values listed in 10 CFR Part 20 *in receiving waters*;

(e) Contains floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or in concentrations that may impair designated beneficial uses *in receiving waters*;

(f) Contains excessive nutrients that can cause visible slime growths or other nuisance aquatic growths *in receiving waters* that impair designated beneficial uses;

(g) Contains oxygen-demanding materials in concentrations that would result in anaerobic water conditions *in receiving waters*; or

(h) Contains sediment above quantities specified in IDAPA 58.01.02.250 and .02.252 in receiving waters, or in the absence of specific sediment criteria, above quantities that impair beneficial uses *in receiving waters*, or

(i) *Contains materials in concentrations that exceed applicable natural background conditions in receiving waters (IDAPA 58.01.02.09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.01.02.401.*

37. **Comment (P): Regarding Part I.D.1.c.ii.(c), (d), (e), & (f) of the Permit**, the commenter asks if there is a reference, or better definition for the terms "generally," "nuisance," "objectionable," and "excessive."

    Response: These terms are quoted directly from the Idaho Water Quality Standards, which are found in IDAPA 58.01.02. The Permit specifically describes the water quality conditions that would violate these standards.

38. **Comment (P): Regarding Part I.D.1.c.ii.g of the Permit**, which states, *"Contains oxygen-demanding materials in concentrations that would result in anaerobic water conditions…"* Commenter asks how this assessment would be made on a short term basis.

    Response: See Response to Comment #37.

39. **Comment (P): Regarding Part I.D.1.c.ii.(h) of the Permit** which states, "*Contains sediment above quantities specified in IDAPA 58.01.02.250 and .02.252, or in the absence of specific sediment criteria, above quantities that impair designated beneficial uses."* This requirement does not seem to reflect the intent of the Phase II stormwater regulations under a BMP or adaptive management approach.

    Response: See Response to Comment #37.

40. **Comment (ACHD): Regarding Part I.D.1.c.ii.(h) of the Permit**, the commenter feels this provision eliminates from permit coverage all discharges containing sediment above quantities specified; commenter is concerned this sets a precedent for inclusion of what are essentially effluent limits into MS4 permits, which would likely require additional monitoring to ensure compliance. Inclusion of such a limit is not warranted, as concerns about sediment are adequately addresses without such limits by BMPs and other measures, including those in the CGP. This part should be revised to be consistent with the Fairbanks Area MS4 permits.

    Response: See Response to Comments # 1 and #37.

41. **Comment (IAC): Compliance with Idaho Water Quality Standards, Anti-**

Degradation, and CWA § 316. Commenter supports the Pocatello Permit's acknowledgement of Idaho water quality standards and anti-degradation, but notes that the draft document is silent on application of CWA § 316 (thermal discharges). In the existing Boise Area MS4 permit, EPA has previously stated that CWA § 316 is applicable to MS4 discharges. Commenter recommends revising the anti-degradation section of the permit (Part I.D.3) via suggested language to account for CWA § 316.

Response: EPA declines to add specific reference to CWA § 316 in the Pocatello Permit as requested by the commenter. CWA § 316 states that the Administrator may impose an effluent limitation for the control of the thermal component of a discharge when the owner or operator of a point source can demonstrate that the effluent limitation is more stringent than necessary to assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in the receiving water body. See 33 U.S.C. § 1326. Here, there is no evidence to indicate that there is concern over any potential thermal component of the storm water discharge. As such, there is no indication that an effluent limitation for any potential thermal component is warranted. The commenter did not provide any additional information or evidence to show why an effluent limitation is needed for any potential thermal component of the municipal stormwater discharges in the Pocatello Urban Area.

Moreover, through discussions with IDEQ, EPA has included language addressing natural background and temperature impacts consistent with IDAPA 58.01.02.09 and 58.01.02.401. (See Response to Comment #36) EPA believes that the Idaho water quality standards that are incorporated into the Pocatello Permit provide sufficient acknowledgement regarding the control of temperature-impacted discharges into the MS4. The previously issued Boise MS4 Area Permit did not specifically mention Idaho water quality standards other than in the associated Fact Sheet text.

42. Comment (N): Regarding Part I.D.2 of the Permit, commenter notes that it is excessive for EPA to prohibit storm water discharges that may threaten water quality. Every storm event in the commenter's city discharges to surface waters.

Response: 40 CFR § 122.44(d) requires EPA to include permit conditions that ensure that there will not be a reasonable potential for the storm water discharges to exceed Idaho water quality standards. 40 CFR §122.34 further refines the NPDES program's goal of compliance with applicable water quality standards for the MS4 discharger, in that a NPDES permit for municipal stormwater must outline a SWMP designed to reduce pollutants to the MEP. As such, EPA has included Part I.D.2 in the Pocatello Permit, plus actions and activities to better manage the pollutants discharged to and from the MS4.

43. Comment (P): Regarding Part I.D.2 of the Pocatello Permit, the commenter asks when EPA will make the determination that "*a discharge will cause, or have reasonable potential to cause or contribute to, a violation of water quality standards*?" The commenter further requests clarification whether this condition is in addition to the specified "pollutants of concern" addressed elsewhere in the permit.

Response: EPA can make a determination that a discharge causes or contributes to a violation of a water quality standard through data submitted by the co-permittees, data collected from an inspection of the MS4, or other data submitted to EPA. Part I.D.2 concerns all applicable water quality standards for the portion of the Portneuf River

receiving discharges from the MS4s. The pollutants of concern are those for which this portion of the Portneuf River is listed as "impaired" on IDEQ's 2002 Integrated Report – namely, bacteria, nutrients, sediment, and oil & grease.

44. **Comment (RT, P): Regarding Part I.D.4 of the Pocatello Permit** which states, *"Co-permittees are not authorized to dispose of snow directly to waters of the United States or directly to the MS4(s)."* Commenters suggest the language in this Part should be clarified to prohibit snow melt from being discharged directly or indirectly to the Portneuf River or the MS4.

    Response: The definition of "storm water" in Part VIII of the Pocatello Permit is consistent with the regulatory definition found at 40 CFR 122.26(b)(13) and means "stormwater runoff, snow melt runoff and surface runoff and drainage." This permit authorizes the discharge of stormwater from Pocatello Area MS4s to waters of the United States. EPA does not believe further clarification of this Part is necessary.

45. **Comment (P): Regarding Part I.D.4 of the Pocatello Permit**, commenter questions what regulatory reference exists for this section. The commenter infers this statement probably means contaminated snow piled in or near the river, but requests clarification whether "directly to the MS4" somehow prohibits snow (untouched, plowed or piled) from melting into a storm drain.

    Response: EPA includes this language in all regionally issued MS4 permits to prohibit the practice of disposing of excess snow by dumping it directly to waters of the United States. In general, snow can contain a wide range of potential pollutants (including sand, salt, litter and other pollutants picked up from roadways during plowing) which may cause serious impacts to the receiving waters. Moreover, the discharge of such collected snow to waters of the United States requires a NPDES permit. Consistent with the draft Snow Dumping Policy (April 1996), which is included in the Administrative Record for the Pocatello Permit, EPA Region 10's MS4 permit language prohibits the practice of disposing excess snow through dumping directly to waters of the United States. EPA encourages MS4 operators to define appropriate BMPs to control pollutants in snow melt runoff from publicly –owned snow disposal areas through the "Pollution Prevention for Municipal Operations" section of the Stormwater Management Program (Part II.B.6).

Comments Related to Pocatello Permit Part II - SWMP Requirements

46. **Comment (P)**: **Regarding Part II.A.1 of the Permit**, which states, "*The SWMP actions and activities are outlined though the minimum control measures in Part II.B, the Structural Control Plan described in Part II.C, and the monitoring activities described in Part IV.* " Commenter asks for clarification of the purpose of this sentence. It is redundant with the referenced sections and should be deleted.

    Response: EPA has chosen to explicitly define the SWMP as the required actions and activities contained in specific Parts of the permit. As such, the sentence referenced above has been revised based on subsequent comments, but has not deleted from the final Pocatello Permit. See Response to Comment #92.

47. **Comment (P**): **Regarding Part II.B.1 and Part II.B.2**, specifically the discussion in the Fact Sheet of the Public Education and Outreach and Public Involvement &

Participation requirements, these sections align well with the 2003 permit application submitted by the co-permittees, and are in keeping with the intent of these minimum measures.

Response: Comment noted.

48. **Comment (P): Regarding Part II.B.1.b of the Permit**, commenter asks why is there a requirement to "update" the educational material produced and distributed by the co-permittees. It is conceivable that the material developed in the first year will maintain currency for at least two or more years.

    Response: EPA agrees. The Permit requires that the co-permittees update, reprint and distribute informational materials only "as necessary."

49. **Comment (P): Regarding Part II.B.1.d of the Permit**, who will staff this "speakers bureau?"

    Response: This activity was proposed by the co-permittees in the 2003 permit application. EPA assumes that the co-permittees will decide how to staff the speaker's bureau.

50. **Comment (P)**: **Regarding Part II.B.2.a of the Permit**, commenter questions the necessity of including a requirement that "*The co-permittees must comply with applicable State and local public notice requirements when implementing a public involvement/participation program*."

    Response: This is a minimum requirement pursuant to 40 CFR § 122.34(b)(2).

51. **Comment (RT): Regarding Parts II.B.3, 4, and 5 of the Permit, and the development of ordinances and/or specific programs, the commenter is concerned that the local public participation process is flawed, and that the general public does not have sufficient opportunity to comment on proposed local ordinances.** Without EPA review/approval procedures, individuals outside one jurisdiction will have limited ability to provide public comments when they live in another. Commenter suggests that the permit be revised to include: a) specific EPA review and approval procedures of all draft local ordinances and programs, and b) specific requirements for public input on these draft local ordinances and programs directly to EPA. As proposed, commenter speculates that the public participation conditions of the Pocatello Permit violate the CWA.

    Response: EPA and IDEQ will review the ordinances and programs as submitted through the required Annual Report(s), and provide feedback to the co-permittees at EPA's discretion; however, EPA approval of these local requirements or programs is not required. Procedures for adopting local ordinances are matters of state and/or local law, not federal law. Part II.B.2 of the Pocatello Permit requires that the permittees comply with all applicable state and local rules for public involvement. As such, EPA does not believe the public participation requirements violate the CWA.

52. **Comment (LG): Which co-permittees must specifically adopt local ordinances?**

Response: Parts II.B.3, 4, and 5 of the Pocatello Permit require each of the co-permittees to adopt an ordinance or other regulatory mechanism for their jurisdiction to the extent allowable under state or local law.

53. **Comment (P): Regarding Part II.B.2.e of the Permit**, the commenter acknowledges that the co-permittees have proposed an aggressive storm drain stenciling program, and does not oppose this requirement.

    Response: Comment noted.

54. **Comment (P): Regarding Part II.B.1.e of the Permit**, which states: "…C*o-permittees must partner with Idaho State University to create age appropriate lesson plans regarding storm water runoff and water quality issues for school age students."* Commenter notes that the co-permittees have no control over use or management of ISU staff, resources, or funds, and asks what mechanism will ensure that ISU cooperates to create curriculum materials. Co-permittees cannot direct a state entity to participate or contribute to a federal mandate to the municipalities. Therefore, the commenter suggests adding language to Part I.B.1.e to reflect this situation, such as "the co-permittees *must exercise best efforts to* partner with…"

    Response: EPA included the requirement based on the co-permittees' 2003 application, which called for "encouraging [the] School District and Idaho State University staff to create lesson plans addressing stormwater and environmental issues." EPA assumed this activity had already been discussed with ISU, and strengthened the requirement to provide a direct, straightforward requirement. As previously discussed, ISU has been identified as a regulated MS4 in the Pocatello Urban Area, and will likely be a partner to the co-permittees in this and other SWMP actions. However, since ISU is not subject to this Permit, the commenter is correct that the co-permittees cannot compel ISU to work with them, and EPA has made the language change to Part II.B.1.e as suggested.

55. **Comment (P)**: **Regarding Part II.B.2.c of the Permit** which states that the co-permittees "*must organize and host a community River Clean up Day(s)."* The commenter notes that the 2003 permit application used the verb "*help organize*", and questions why the requirement has been changed to "*must organize."* Pocatello is a partner in the cleanups but has not been the lead due to lack of resources and excellent community involvement already.

    Response: The 2003 permit application was not clear on the co-permittees level of involvement in this clean up activity. EPA acknowledges the commenter's concern, however, and has revised the language to read "*Within two years of the effective date of this permit, and annually thereafter, co-permittees must help organize and host a community River Clean up Day(s)."*

56. **Comment (P): Regarding Part II.B.2.d of the Permit**, which requires the co-permittees to "*establish a partnership with local off-road vehicle retailers and organizations to ..."* Commenter notes that a) the 2003 permit application asked for a four year timeframe to accomplish this activity and b) that co-permittees have no authority to require retailers to participate in any process or practice, and although the co-permittees will try to establish a relationship, it cannot be guaranteed. Commenter suggests this requirement be modified as a best-efforts requirement or deleted.

Response: EPA has revised the timeframe as requested.

57. **Editorial Comment regarding Part II.B.3.a of the Permit**, EPA notes a typographical error, and has revised the first sentence of this subpart to read:
"No later than two years……..the co-permittees must develop and implement a program to detect and eliminate illicit discharges *into* ~~from~~ their MS4s…"

58. **Comment (P): Regarding Part II.B.3.a of the Permit,** the required telephone "*hotline*" was not part of the 2003 permit application submitted in March 2003. What is involved and is this requirement standard for Phase II municipalities? As written, this section appears to require four hotlines, which seems unnecessary.

Response: In addition to actions and activities outlined by the co-permittees in the 2003 permit application, EPA also reviewed the Portneuf River TMDL and the TMDL Implementation Plan developed by the Portneuf River Valley stakeholders. The *Supplement to the Portneuf River TMDL Plan* (dated February 2001) contains a short-term control strategy commitment by Pocatello to "create a hotline that citizens can call to report problems" related to urban runoff. The TMDL Implementation Plan (July 2003) contains further descriptions of actions to control pollutants in urban stormwater to meet the WLAs. The Pocatello Permit includes all actions and activities defined through the co-applicants' 2003 permit application and relevant stormwater related actions and activities outlined in the approved TMDL and TMDL Implementation Plan.

EPA does not expect that each co-permittee support their own hotline for citizens to report problems, EPA has therefore revised Part II.B.3.a to read:

> "*Each co-permittee must develop an information management system to track illicit discharges. Co-permittees must work together to provide and promote at least one telephone "hotline" for citizens to call to report problems.*"

Table III of the Pocatello Permit has also been updated to reflect that co-permittees are collectively responsible for only one telephone "hotline" in the Pocatello Urban Area.

59. **Comment (P)**: **Elimination of illicit discharges may not be possible given the presence of septic pumpers in the municipalities.**

Response: Part II.B.3 and regulations at 40 CFR § 122.34(b)(3) requires that the permittees effectively prohibit all non-stormwater discharges to their MS4.

60. **Comment (P):** Regarding Part II.B.3.b of the Permit, which states, *"…prohibit non-storm water discharges into their system through ordinance or other regulatory mechanism to the extent allowable under state or local law… including enforcement escalation procedures for recalcitrant or repeat offenders."* Commenter notes that penalties under the permit vary from civil to criminal and include fines in the tens of thousands of dollars. However, an ordinance under local law will carry a misdemeanor with a maximum penalty of $300; this program will be cumbersome and likely ineffective with such minor penalties. The commenter asks EPA to clarify the EPA's expectation of "maximum extent of local law" or "procedures for recalcitrant offenders" to address illicit discharges, and whether IDEQ or EPA will still respond to spills and take enforcement action through state and federal law.

Response: 40 CFR § 122.34(b)(3)(i) requires the permittee to develop, implement and enforce a program to detect and eliminate illicit discharges into the MS4. 40 CFR § 122.34(b)(3)(ii)(B) further elaborates that, to the extent allowable under state or local law, a permittee must prohibit non-stormwater discharges into the MS4 and implement appropriate enforcement procedures and actions. Locally developed rules and enforcement are the appropriate first response to address non-stormwater discharges. EPA expects that the enforcement procedures developed for this program will include procedures for coordination with adjacent municipalities, state and/or federal regulatory agencies to address situations where investigation shows the discharge originates outside the co-permittees' (physical or legal) jurisdiction. Procedures for notifying EPA and/or IDEQ for enforcement assistance are appropriate where the co-permittee lacks legal authority to establish enforceable rules, or if the discharger repeatedly fails to comply with procedures or policies established by the co-permittee.

61. **Comment (P): Regarding Part II.B.3.c of the Permit**, which states: *"flows are identified (by EPA or the co-permittees) as the source of pollutants to the MS4."* Commenter questions why this requirement does not include the IDEQ, while in other references, such as Part I.D.c.ii. and other areas of the Permit, IDEQ has been given jurisdiction. Commenter requests clarification on the role of the IDEQ in this permit, and how that role can be made consistent throughout the document.

    Response: EPA is the NPDES permitting authority and has responsibility for determining compliance and enforcing this Permit. As mentioned previously, IDEQ and EPA are partner agencies with respect to water quality management. IDEQ establishes water quality standards within the state, monitors state waters, and establishes TMDLs and TMDL Implementation Plans for waterbodies that do not meet Idaho state water quality standards. EPA intends to work closely with IDEQ, but issues related to compliance with this permit will be communicated to permittees directly by EPA.

62. **Comment (P): Regarding Part II.B.3.d of the Pocatello Permit**, which states, "*Co-permittees must continue the hazardous waste disposal program…*" Commenter points out that the word "must" was not used in the 2003 permit application; the co-permittees (especially non-county permittees) cannot bind future county commissioners and ensure the continued waste disposal program. Commenter suggests the following editorial changes "Co-permittees must *support the continuation of* the hazardous waste disposal program at Bannock county landfill *which is operated by Bannock County."*

    Response: Comment noted. EPA has made the changes as suggested.

63. **Comment (P): Regarding Part II.B.3.e of the Pocatello Permit which states**, "*Develop a comprehensive storm sewer map, "…including any public or private snow disposal sites"*. The co-permittees proposed mapping the system; however "public and private snow disposal sites" is an addition to the 2003 permit application. Commenter asks whether it is EPA's expectation to map and ultimately design and regulate certain or all private sites? Commenter is concerned this may not be possible (such as legal access to private property) and could be a substantial task in effort and expense.

    Response: The requirement for a comprehensive storm sewer map is required in 40 CFR § 122.34(b)(3)(ii)(A). EPA has requested mapping of snow disposal locations to better assess the location of runoff-related pollutant sources with the potential to negatively

impact the Portneuf River. EPA is not requiring the co-permittees to regulate private snow disposal sites.

64. Comment (RT): What are the monitoring requirements for the illicit discharge program?

Response: See Part II.B.3 of the Permit.

65. Comment (StB): Will there be illicit discharge sampling of Chubbuck's discharge points to the Tyhee Canal and ultimately to American Falls Reservoir?

Response: EPA is unaware of stormwater outfalls owned by Chubbuck which discharge to the canal. As such, EPA has not included sampling of any discharge point to the Tyhee Canal. Through the mapping requirement, the co-permittees will locate and or re-confirm all their MS4 outfalls within the five year permit term. EPA will review the completed map, and determine whether additional actions are necessary in the subsequent permit term.

66. Comment (P, ACHD): Regarding Part II.B.3.f of the Pocatello Permit which states, "*Within three years "…must begin dry weather field screening for non-storm water flows from all outfalls."* Commenters note that this is beyond what was proposed in the 2003 permit application, and overall is an overly burdensome requirement that sets an expensive precedent and burden for regulated MS4s. A suggestion is made to require dry weather monitoring of only major outfalls.

Response: EPA agrees, and has revised the language to read *"…must begin dry weather field screening for non-storm water flows from stormwater outfalls. By the expiration date of the permit, at least 50% of the co-permittees' outfalls within the Pocatello Urbanized Area must be screened for dry weather flows."*

67. Comment (P, ACHD): Regarding Part II.B.3.f of the Permit, which states, *"By the expiration date of this permit, at least 50% of the storm sewer lines must be surveyed using closed-circuit television to identify illicit connections."* Pocatello concurs with this statement as it was proposed in the 2003 permit application, and suggests that it should be numbered separately in the Permit. Pocatello notes that all other requirements of this section are additions, and are different from the 2003 permit application and should be deleted. ACHD suggests that this requirement be eliminated, as it sets an overly burdensome precedent for MS4 permits.

Response: The requirement to survey sewer lines in this fashion was proposed by the co-permittees in the 2003 permit application; EPA does not consider this requirement as setting precedent for other MS4 permittees. EPA has included detail in this Part that is consistent with the illicit discharge detection and elimination guidance provided in 40 CFR § 122.34(b)(3)(iv). EPA disagrees that this section must be numbered differently, and declines to change this section as requested.

68. Comment (P): Regarding Part II.B.3.f of the Permit which states, *"co-permittees must investigate any illicit discharge within fifteen (15) days of its detection, and take action to eliminate the source of the discharge within 45 days…"* Commenter is concerned that detail of this sort should be determined over the next few years with reference to EPA

guidance and approval of the governing body.

Response: EPA believes that it is prudent to establish a succinct goal for MS4 operators to provide timely response and elimination of discovered illicit discharges. EPA declines to revise the Permit as requested.

69. Comment (P): Regarding Part II.B.3.g of the Permit, which states, *"co-permittees must inventory those industrial facilities that discharge into the co-permittees' MS4 or to waters of the United States within the Pocatello Urbanized Area."* Co-permittees do not believe they have statutory authority to regulate discharge of non-municipal entities relative to discharges to waters of the United States (*i.e.*, private property). This goes beyond what was proposed in the 2003 permit application and is not contained in the guidance material given to prepare the application. Commenter suggests deleting the terms "those" and "or to waters of the United States within the Pocatello Urban Area."

Response: EPA is not requiring the co-permittees to regulate the discharges from industrial facilities within their jurisdiction. Instead, EPA is requiring the co-permittees to identify those facilities which may be contributing runoff into their MS4s through identification of all facilities within their jurisdictions. EPA has chosen to include this requirement to inventory industrial facilities discharging for two reasons. First, to reduce "pollutants of concern" from entering the MS4s, it is reasonable and appropriate for the co-permittees to know the physical location and type of discharge from those industrial operations within each jurisdiction which may be a source of one or more of these pollutants. Second, the inventory will allow EPA to ensure that such facilities are properly permitted through the NPDES Program. EPA declines to make the editorial changes suggested by the commenter.

70. Comment (P): Regarding the discussion of Part II.B.3 (Illicit Detection and Elimination program) contained in the Fact Sheet, which states, *"Because the pollutants of concern for the Portneuf River (i.e., sediment, bacteria, nutrients, and oil and grease) are often generated through a variety of industrial activities, EPA is also requiring the co-applicants to inventory all industrial facilities in their jurisdictions that discharge runoff to either the MS4s or directly to waters of the United States. The types… The inventory shall…"* Commenter asks a series of questions related to this requirement: a) Is there a reference in the Phase II stormwater regulations or guidance for this activity? b) The term "often generated" is a speculative statement - why require such an intense activity when this has not been determined through the adaptive management approach of a first round permit? c) Is the term "pollutants of concern" found in the Phase II stormwater regulations or guidance? d) Are discharges directly to waters of the United States from industry required to obtain a permit from EPA, and if so, what role does the EPA (or State if given primacy) have in such an effort? Commenter suggests that the reference to industrial activity and the related Appendix C of the Fact Sheet should be removed from both the Permit and Fact Sheet documents.

Response: EPA declines to remove Part II.B.3.g from the Permit. Responding to the questions in order:

a) Pursuant to 40 CFR § 122.34(e), EPA may include more stringent limitations "based on a TMDL….that determines such limitations are needed to protect water quality." Here, WLAs of the Portneuf River TMDL have been assigned to municipal stormwater discharges. In order to implement the WLAs, EPA is

including this requirement to inventory industrial facilities located within the Pocatello Urban Area to support further pollutant source identification of the pollutants of concern within the permitted area. See Response to Comment #69.

b) Industrial facilities are a recognized source of pollutants in urban settings. EPA's Nationwide Urban Runoff Program, as well as studies referenced by EPA in the Phase II stormwater regulation preamble (64 FR 68724 – 68731), document that urban settings, characterized by extensive impervious surfaces and human activity, generate a host of pollutants discharged to surface water via runoff. The type and quantity of such pollutants are dependent on the industries present in the area.

c) The term "pollutants of concern" is used throughout the preamble of the Phase II stormwater regulations. The term referenced specifically in the stormwater regulations at: 40 CFR §122.26(a)(9)(i)(C), stating that the permitting authority may designate stormwater discharges that require NPDES permits based on TMDLs that address the pollutants of concern; and 40 CFR §§ 122.26(b)(15)(i)(B) and 122.32(e)(3), providing waivers where it may be determined that stormwater controls are not needed based on TMDLs that address sediment and any other pollutants of concern. In the Pocatello Permit and Fact Sheet, EPA has used the term in keeping with this definition. To provide clarity, EPA has added the following definition of "pollutants of concern" to Part VIII (Definitions and Acronyms) of the Pocatello Permit: *"Pollutants of concern" include any pollutant identified as a cause of impairment of any water body that will receive a discharge from a MS4 authorized under this permit.*

d) As previously discussed, industrial storm water discharges directly to waters of the U.S. are separately subject to NPDES permitting. The inventory compiled by the permittees will allow EPA to ensure that all stormwater discharges from regulated industrial activities are properly controlled and permitted.

71. Comment (MS): The Permit should include specific remedies to halt the flood of oil and grease to the Portneuf River. Examples of such controls include spill kits and appropriate containment at service stations, inspecting grease traps at car washes more frequently, and inspection of all mechanic garages to assure such facilities are not dumping directly to the storm sewers.

Response: Through the illicit discharge detection and elimination program, EPA expects the MS4 operator to assess the sources of pollution to its MS4 and to actively prohibit the discharge of non-stormwater through the MS4. The commenter's suggestions are appropriate to bring to the attention of the co-permittees as they develop their ordinance and program.

72. Comment (P): **Regarding Part II.B.4,** and the discussion in the Fact Sheet which states, "*Sediment is usually the main pollutant of concern, as it has been demonstrated that sediment runoff rates from construction sites are typically 10 to 20 times greater than those of agricultural lands, and 1,000 to 2,000 times greater than those of forest lands.*" Commenter notes that references for studies supporting these statements should be provided so the conclusions can be assessed against data in the Pocatello Urban Area. Commenter requests this statement be deleted from the Fact Sheet.

Response: EPA declines to remove or refine this statement as requested by the commenter. The statement is supported by various studies cited by EPA in the preamble to the Phase II stormwater regulation and summarizes the basis of EPA's requirements to regulate discharges from construction sites, and to require MS4s to oversee construction within their jurisdictions to control erosion and sedimentation. See 64 FR 68728-68730 (December 8, 1999). A short bibliography of studies from this section of EPA's preamble is included as Appendix C to this document. EPA is unaware of any information suggesting the Pocatello Urban Area would be different.

73. **Comment (P**): Regarding Part II.B.4, and the discussion in the Fact Sheet which states, "*Although discharges from all construction sites disturbing more than one acre in Idaho are independently subject to the NPDES General Permit for Storm Water Discharges from Construction Activity, #IDR10-000 (Construction General Permit or CGP) issued by EPA, this minimum program measure is necessary to enable the local MS4 operators to effectively and directly control construction site discharges into their MS4s."* Commenter asks, if construction operators are independently subject to the General Permit, then why must the co-permittees duplicate some or all of the requirements? What will the EPA (or IDEQ) role be after implementation of this requirement? Help from the State and EPA is essential, especially when it comes to enforcement/protection of the waters of the U.S. Later in this section, it states, "*Such information sharing (*referring to development and redevelopment and the CGP*) can be accomplished by distributing EPA's existing brochures or by directing construction site operators to EPA's web-based information…*"; which is a good requirement, necessary, and in keeping with the intent of the Pocatello Permit.

Response: Many people involved in the construction industry are still unaware of the stormwater NPDES permitting requirements for construction activities or don't understand them. Local governments are uniquely positioned to play an important role by providing information to people in the construction industry who might need NPDES permit coverage. As the NPDES permitting authority, EPA will continue to inspect and enforce the requirements of the statewide CGP. However, EPA expects local governments to use their ordinance and enforcement powers to enact local requirements for the construction industry that complements these CWA construction requirements to protect water quality.

74. **Comment (P): Regarding Part II.B.4 a of the Pocatello Permit**, commenter suggests deleting the last sentence of the section which states, "*Through this program, co-permittees must provide adequate direction to representatives of proposed new development and redevelopment projects regarding the NPDES General Permit for Storm Water Discharges for Construction Activity in Idaho, #IDR10-0000 (Construction General Permit)."*

Response: Commenter does not provide a reason to delete this sentence. As described above, EPA feels it is necessary for the co-permittees to help educate the construction community regarding water quality protection, and declines to revise the permit as requested.

75. **Comment (P)**: **Regarding Part II.B.4.a of the Pocatello Permit**, the commenter asks whether EPA is requiring the co-permittees to take over enforcement of the CGP requirements, and notes it is inappropriate for Phase II communities to take over such enforcement. Commenter asks whether the community can continue to expect EPA and

IDEQ to enforce state and federal law and to take action if they see a violation.

Response: No, EPA does not expect the co-permittees to enforce the CGP. As the NPDES permitting authority, EPA will continue to require permit coverage for construction sites disturbing one or more acres, and will continue to enforce the CGP within the State of Idaho. The purpose of this Part is to require the co-permittees to enact appropriate construction site requirements and to use local enforcement power to protect water quality. These local requirements are intended to complement, not replace, the basic NPDES permit requirements for erosion, sediment and on-site material control at construction sites.

76. **Comment (P): Regarding Part II.B.4.b of the Pocatello Permit**, commenter notes that this is an addition to the 2003 permit application, and observes that it may be difficult to "ensure compliance" given the local jurisdiction restrictions in code and resources, especially not knowing the extent of the problem. The intent in the 2003 permit application was to study or gather information, define the problem (if any) and develop a plan in the first permit cycle.

    Response: 40 CFR § 122.34(b)(4)(ii)(A) states that the ordinance must "require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal or local law." EPA included Part II.B.4.b to meet this regulation.

77. **Comment (MS): Developers in the Pocatello/Bannock County area continue to flaunt the requirement to manage runoff from their construction sites. Pocatello and the County must include an enforcement provision for those entities that insist on allowing sediment to collect in storm sewers.**

    Response: Comment noted. Part II.B.4 of the Permit is intended to direct that such a locally enforceable program be developed in the Pocatello Urban Area.

78. **Comment (P, ACHD): Regarding Part II.B.4.c of the Pocatello Permit** which states that co-permittees "*must publish and distribute local requirements for construction site operators…and to control waste (such as discarded building material, [etc])…that may cause adverse impacts to water quality.*" Commenters note the latter statement goes beyond what was proposed in the 2003 permit application, and combines "must" requirements with a statement of "may cause adverse impacts," leaving a lot of room for interpretation. Commenter asks how the MS4 operator would determine what "may cause adverse impact."

    Response: EPA's permit language reflects the minimum measure to which the co-applicants were directed to target their SWMP activities as contained in 40 CFR 122.34(b)(4)(ii)(C). This regulation states that the construction site runoff control program must include the development and implementation of "requirements to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality." Since sediment, oil and grease, bacteria and nutrients are pollutants of concern for the Pocatello Urban Area, EPA expects that the local construction requirements will specifically target and control those pollutants.

79. **Comment (ACHD): Regarding Part II.B.4.c of the Permit** which states that the co-

permittees "*must publish and distribute local requirements for construction site operators."* Commenter feels this provision is redundant, given the existing requirement under the CGP for development of storm water prevention plans that contain such measures, and recommends deleting this provision.

Response: This subpart implements 40 CFR § 122.34(b)(4)(ii)(B) and requires locally relevant requirements to be developed by the co-permittees for the benefit of the local construction site operator to better control pollutants from construction sites. The CGP does not provide such specific BMP requirements.

80. **Comment (P): There are incorrect permit citations in Parts II.B.4 d, e, f and II.B.5.e**.

    Response: Comment noted. EPA has corrected these typographical errors.

81. **Comment (ACHD): Regarding Part II.B.4 e of the Pocatello Permit**, the commenter is concerned the requirement to inspect all construction sites greater than 1 acre at least once per construction season, if implemented in their particular area, would result in significant financial and staffing burdens. Commenter suggests reducing the number of required construction site inspections to a reasonable and limited number.

    Response: The Pocatello Permit addresses site-specific factors in the Pocatello Urban Area. Other MS4s for other areas may not have identical provisions as found in Part II.B.4.e. The Pocatello co-permittees did not express concern over this requirement for the Pocatello Urban Area. EPA declines to revise this requirement.

82. **Comment (P)**: **Regarding Part II.B.5.c of the Pocatello Permit** which states, "*This design manual must include, but is not limited to, requirements for the appropriate design and construction of septic systems, parking lots, and snow disposal sites."* This is an addition to the 2003 permit application and although not a difficult task, septic systems are the jurisdiction of the state health districts. Is there an expectation that the co-permittees will administer septic system requirements? Should the Health District be included as a co-applicant in the permit? Commenter suggests deleting "septic systems" from this subpart.

    Response: EPA has required only that co-permittees establish design specifications to the extent they have the authority to do so. EPA declines to revise this requirement.

83. **Comment (MS): Current design practices in Pocatello allow developers to set storm sewers prior to treating conveyance ditches. Pocatello and the County also allow "hard armoring" of ditches with asphalt, which replaces the infiltration capacity of an unpaved ditch and has resulted in increasing flows and sedimentation to local streams. These practices must be discontinued immediately.**

    Response: Part II.B.5 of the Pocatello Permit requires the co-permittees to develop and or reevaluate their post-construction design requirements to protect water quality. EPA encourages the commenter to participate in the local rule adoption process to provide input on these requirements as necessary.

84. **Comment (P**): **Regarding Part II.B.5.d of the Pocatello Permit,** which states that the

co-permittees *"must ensure proper long-term operation and maintenance of post-construction BMPs."* Commenter notes that this requirement is an addition to the 2003 permit application, and requests clarity from EPA about the intention of this requirement. For those BMPs on private property and maintained by the private sector, the commenter asks whether it is the intent to enforce on or maintain private property.

Response: 40 CFR § 122.34(b)(5)(ii)(C) states that the MS4 operator must ensure proper long term operation and maintenance of post-construction BMPs. As mentioned previously, EPA is requiring the co-permittees to ensure long term operation and maintenance to the extent they have the authority to do so. As EPA set forth in the preamble to the Phase II stormwater regulations, "In order to meet the… requirement (ensuring adequate long-term O&M of BMPs), EPA recommends that small MS4 operators evaluate various O&M options. The most common options are agreements between the MS4 operator and other party such as post-development landowners (e.g., homeowners association, office park owners, other government departments or entities….) These agreements typically require the post-construction property owner to be responsible for the O&M and may include conditions which allow the MS4 operator to be reimbursed for O&M performed by the MS4 operator that is the responsibility of the property owner but is not performed; allow the MS4 operator to enter the property for inspection purposes and in some cases specify that the property owner submit periodic reports." EPA goes on to stress that "…MS4 operators have significant flexibility both to develop this measure as appropriate to address local concerns and to apply new control technologies as they become available." (See 64 FR 68760-68761)

85. Comment (P): Regarding Part II.B.5.f of the Pocatello Permit which states that the co-permittees *"…must initiate and sponsor at least one independent field assessment or demonstration project to confirm the effectiveness of the local requirement(s) for post-construction storm water management."* Commenter feels this could be costly. End-of-pipe treatment for instance, may not be effective as determined by other measures in this permit. "Verifying effectiveness" may also be difficult and expensive depending on the methods and expertise of analysis required.

Response: The co-permittees have flexibility to conduct such an assessment in a cost effective and appropriate manner. However, this activity was identified in the Portneuf River TMDL as an activity that would assist in implementing the WLAs for municipal stormwater runoff. See Response to Comment #2.

86. Comment (P): Regarding Part II.B.6.a of the Pocatello Permit, which states that "*Within two years, Co-permittees must, at a minimum, address **all** of the following activities occurring within their jurisdiction:"* Commenter notes that this is a difficult, potentially expensive task, and goes beyond the 2003 permit application. Many items are addressed in other local code or regulation already. For example, "land disturbances" and "storm system maintenance" are addressed in the other minimum measures of the permit. Commenter asks how non-municipal co-permittees are bound by this subpart. One or all of these requirements may be necessary, but only after information is collected and an effective program is developed and recommended. Commenter suggests specific language changes to Part II.B.6.a.

Response: EPA agrees that evaluating all of the activities for impacts on water quality in the time proposed in this subpart is challenging. EPA also agrees to extend the implementation timing and revise the requirement in the spirit of the commenter's

suggestion. Given the breadth of municipal responsibilities, however, EPA feels it is not unreasonable for each co-permittee to consider all of the listed activities (as pertains to their organization), and prioritize procedures that can be improved upon (or re-confirmed) to minimize negative water quality impact. Municipal storm sewer system maintenance is not previously addressed in the Pocatello Permit, and remains a primary focus of this subpart. Part II.B.6.c addresses the requirement for training municipal personnel, and will remain a separate requirement.

EPA has revised the permit language as follows:

a) *Not later than four years from the effective date of this permit, the co-permittees must develop and implement an operation and maintenance program intended to prevent or reduce pollutant runoff from municipal operations. This program must address municipal activities occurring within their jurisdiction with potential for negative storm water related water quality impacts including grounds/park and open space maintenance operations, fleet maintenance and vehicle washing operations building maintenance; storm water system maintenance; and snow disposal site operation and maintenance. Examples of other municipal activities which may also be evaluated as relevant to the jurisdiction include, but are not limited to: street cleaning and maintenance; solid waste transfer activities; water treatment plant operations; municipal golf course maintenance; materials storage; hazardous materials storage; used oil recycling; spill control and prevention measures for municipal refueling facilities; municipal new construction and land disturbances; and snow removal practices*.

87. Comment (P): Regarding Part II.B.6 of the Pocatello Permit, the Fact Sheet states, "*The permit does not specify particular housekeeping BMPs, nor specify a frequency for any BMPs. It is expected that each co-applicant will determine the appropriate good housekeeping BMPs that are necessary to protect water quality, and will train their employees on proper techniques to ensure such activities are accomplished*." Commenter suggests that this section describes flexibility but conflicts with the very prescriptive listing in the Permit requiring an operation and maintenance program for over a dozen programs and activities. This requirement is well beyond the scope of the application.

Response: See Response to Comment #86.

88. Comment (P): Regarding the mention in Part II.6.a of the Pocatello Permit of *"water treatment plant operations,"* commenter requests that EPA clarify whether such water treatment plant operations include the separately permitted waste water treatment plant.

Response: If the water treatment plant operations are located within the Pocatello Urban Area, storm water discharge impacts from such a facility should be evaluated by the municipal operator. Publicly owned treatment plants in Idaho with a design capacity of 1 million gallons per day or more must obtain NPDES permit coverage for storm water discharges under the MSGP, if such discharges are not already authorized under a NPDES permit.

89. **Comment (P): Regarding Part II.B.6.b of the Pocatello Permit**, related to evaluating effectiveness of street cleaning operations and other actions, commenter requests extending the time frame to 4 years, in keeping with the 2003 permit application. Commenter notes that the concept of a study is undefined and potentially expensive, and asks EPA to clarify 1) which co-permittees must accomplish these tasks, and 2) how the co-permittees are to measure "effectiveness of practices" in a cost effective manner.

    Response: Each co-permittee must evaluate their existing procedures for street and catch basin maintenance, as well as street sand/salt operations. EPA agrees with the commenter's observation, and has revised the permit language of Part II.B.6.b in the following way:

    > "*Not later than four years…, must evaluate existing street cleaning operations, catch basin cleaning operations, and street sanding and salt practices occurring within their jurisdiction to minimize any negative impacts to water quality. This evaluation must also examine the existing practices for the disposal of waste removed from the MS4 and MS4 operations. This evaluation must identify any actions or improvements necessary to minimize negative impacts on water quality, and timelines for incorporating such actions or improvements"*.

90. **Comment: (P)**: **Regarding Part II.B.6.d of the Permit,** pertaining to flood control projects, and the associated discussion in the Fact Sheet, commenter questions where this BMP is suggested in the Phase II stormwater regulation or guidance, and suggests deleting this section, as it goes beyond what was proposed in the 2003 permit application.

    Response: 40 CFR § 122.34(b)(6)(ii) recommends that MS4 operators consider a variety of activities when developing their good housekeeping and pollution prevention program, including the assessment of flood control projects for water quality protection. As appropriate, co-permittees with responsibility to flood management projects should be attentive to water quality concerns in the context of these activities. Examples include responsibilities assigned through the Portneuf River Flow Control Project, or other such projects in the Pocatello Urban Area. See Response to Comment # 6. EPA has revised the last clause of this Part to read:

    > "…co-permittees…..*must ensure that existing projects are assessed to incorporate ongoing or additional water quality protection devices or practices*.

91. **Comment (P): All changes made in to body of the Pocatello Permit must be included in the referenced summary section of Part III**.

    Response: Where EPA has made changes to the Permit text, corresponding adjustments have been made to Table III.

Comments related to Pocatello Permit Part II.C Structural Control Program

92. **Comment (IAC, ACHD, CofC, P, LG, and MofC**): **The proposed requirements of Part II.C are onerous and unnecessary at this time.** Commenters expressed serious concern over EPA's proposal of a structural control program in previously numbered Part II.C. The general feeling was that a specific Structural Control Program would be onerous and cost prohibitive, and would constitute an extreme economic hardship on the

communities. Commenters noted that, with better analysis of the Pocatello Urban Area stormwater discharges and water quality in the Portneuf River, any necessary structural controls can be better defined and initiated in the future.

Pocatello and the Mayor of Chubbuck, on behalf of the co-permittees, requested EPA to revise the permit, allowing evaluation and documentation of the stormwater pollutant contribution to the Portneuf River within the first permit term. Pocatello provided specific permit language revisions to replace proposed Part II.C , suggesting that the permit discuss this evaluation effort and operating principle in Part II.A (General Requirements of the Storm Water Management Program).

Response: The 2003 Portneuf River TMDL Implementation Plan (TIP) discusses a phased implementation approach to expand existing pollution reduction programs and initiate new measures expected to meet TMDL allocations. The TIP also discusses the need for additional water quality data to reevaluate the load and wasteload allocations. EPA's Permit includes the TIP's "short term" priorities to reduce pollutants in urban runoff, as well as the activities identified in the 2003 permit application. EPA's proposal also addressed activities identified as "long term" priorities; specifically, Part II.C of the proposed permit reflected the TIP's long term goal to "Pursue the construction of detention and treatment facilities."

In light of the serious economic concerns expressed by Pocatello and others, as well as the need to collect additional data to better quantify loading of pollutants from stormwater outfalls, EPA feels it is appropriate to de-emphasize specific structural controls during the first permit term. The revised Part II.A requirements suggested by Pocatello requires revisions to the Pocatello Storm Water Master Plan and other planning documents over the next five years, but allows the permittees to develop appropriate controls. EPA will reevaluate the need for specific structural controls in the Pocatello Area based on accomplishments of the first permit term.

EPA agrees to revise the Pocatello Permit using the revised language provided by Pocatello (see below). The revised language fully acknowledges the TMDL and its relationship to the SWMP actions and activities. These changes add language to EPA's proposal, and deletes Part II.C in its entirety. EPA edited Pocatello's suggested language to maintain consistency with the remainder of the Permit (as indicated below by strikeout/italics)

> "Part II.A.
> 1. This permit requires that co-permittees develop and implement a Storm Water Management Program (SWMP) that includes comprehensive plans and approaches to manage~~ment of the~~ storm water quality discharged from the *co-permittees'* municipal separate storm water system*s* (MS4). ~~The SWMP must be updated in accordance with Part II.C~~
>
> 2. The co-permittees must develop, implement, and enforce a SWMP designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable and to protect water quality in receiving waters ~~(jurisdictional waters of the United States)~~. The SWMP ~~is the set of~~ ~~Programs and Projects~~ *actions and activities* ~~comprised of the components listed in Parts II.A and II.B of this permit, and~~ must include BMPs, system design, engineering methods, and other provisions appropriate to control discharges of pollutants from the MS4.

3. This permit requires that the co-permittees manage storm water within the *permit area* ~~MS4~~, incorporating concepts and approaches described and defined in the Portneuf River TMDL Implementation Plan (dated July 2003).

4. *Monitoring will be conducted as described in Part IV of this permit.* ~~Four separate storm sewer monitoring locations will be monitored as described in Table IV.X of this permit (Lander Street, Halliday Street, Day Street/Carson Street, and Pocatello Creek). Water quality constituents to be monitored are as defined in Table IV.A (oil and grease, total nitrogen, total phosphorus, suspended solids, and *E. coli).*~~

5. The SWMP actions and activities are outlined through the minimum control measures in Part II.B and the monitoring activities described in Part IV. Co-permittees must implement a SWMP that incorporates the following provisions:

   a) Best Management Practices that are selected, implemented, maintained and updated to ensure that storm water discharges do not cause or contribute to an exceedance of an applicable numeric or narrative water quality standard;
   b) Measurable goals, including interim milestones, for each BMP;
   c) ~~An approach for incorporating newly developed water quality monitoring data in the definition of priority water quality management approaches or applications. d)~~ A ~~"priority~~ water quality management approach~~"~~ *that evaluates* ~~incorporates an evaluation process that uses~~ existing and newly collected water quality monitoring data to define *and prioritize* the utility of specific actions and activities ~~Programs and Projects~~ *to be* ~~that will be~~ implemented ~~under the priority water quality management approach~~.
   d) Based on the approach ~~studies~~ noted above, the co-applicants will *both* jointly and independently create programs and/or projects to address water quality standards, ~~as well as~~ define~~ing~~ potential funding sources, and define a process to seek *such* funding within the initial five ~~four~~-year permit period;
   e) Data collection will proceed for a period of four years, *starting one year from the ~~issue~~ effective* date of this permit; and,
   f) Each permittee shall review, and amend as necessary, their *Storm Water Master Plan,* Comprehensive Plans or other equivalent plans, to accommodate identified water quality improvement measures to ~~of~~ the MS4.

6. Modifications to the SWMP must be made in accordance with Part II.C of this permit.
7. Implementation of one or more of the minimum control measures may be shared with another entity that is not subject to this permit, or such entity may fully take over the measure. Co-permittees may rely on another entity only if:

   a) The other entity, in fact, implements the control measure;

   b) The control measure, or component of that measure, is at least as stringent as the corresponding permit requirement;

   c) The other entity agrees to implement the control measure on the co-permittees' behalf. A legally binding written acceptance of this obligation is required. Co-permittees must maintain this obligation as part of the SWMP. If the other entity agrees to report on the minimum control measure, the co-permittees must supply the other entity with the reporting requirements in Part IV.C of this permit; and,

   d) Co-permittees remain responsible for compliance with the permit obligations if the other entity fails to implement the control measure."

Comments Related to Pocatello Permit Part IV: Monitoring, Recordkeeping and Reporting

93. **Comment (P): Commenter supports this statement from the Fact Sheet** which embodies the intent of the 2003 permit application and EPA's intent of the NPDES Phase II stormwater program: "*EPA will use the monitoring data gathered during this first five year permit term to enhance the understanding of the effects of municipal storm water on the Portneuf River and to continue or establish more tailored BMPs to meet the WLAs and load reduction targets in subsequent permit terms.*"

    Response: Comment noted.

94. **Comment (P, IAC)**: **The monitoring requirements in the Pocatello Permit should be developed with input from the co-permittees in context of the existing water quality monitoring program to minimize costs and collect data as necessary to fill data gaps**. The existing Portneuf River Regional Water Quality Data Base provides the basis for understanding water quality and improvement options in the Portneuf River**.** A regional, collaborative approach will best improve water quality in the Portneuf River. The application of sound science, through an iterative and adaptive management approach to watershed management will result in appropriate improvements to water quality. There are good monitoring efforts being conducted in the area via the Portneuf Monitoring Group, including participation and funding from Pocatello to help with the TMDL reassessment. Some or all of this monitoring data will help in the implementation of the first round of the NPDES Phase II Permit cycle

    Response: EPA concurs with this concept, and encourages the continued collaborative partnership to accomplish monitoring in the Portneuf River region. EPA believes that the Water Quality Data Base referenced above will be enhanced by data collection required in the Pocatello Permit.

95. **Comment (N, P): Monitoring requirements in the Pocatello Permit are excessive, and too prescriptive.** Commenters feel that monitoring should not be included in the Pocatello Permit for the sole purpose of evaluating progress towards meeting the TMDL for the reasons previously stated. If monitoring is required, it should be a program proposed by the co-permittees to achieve the goals of the six minimum measures and should not be overly burdensome or costly. The monitoring program in Part IV.A.1 goes beyond the intent of the Phase II stormwater regulations. Commenters question how EPA can require monitoring of surface water when the Pocatello Permit by definition refers to the ownership and maintenance of the storm drainage system (pipes, ditches, etc.). Prescriptive monitoring requirements, both in the MS4 and the Portneuf River, will not allow the co-permittees the opportunity to review, analyze and utilize the existing and future available data sets to "characterize water quality and ecosystem health…. causes of existing and future water quality … assess progress…. support documentation of compliance with permit conditions."

    Response: The monitoring required in the Pocatello Permit reflects the minimum data needed to make informed decisions in the future about the storm water management actions in the Pocatello Urban Area. Based on locally specific factors, similar or different monitoring requirements may also be proposed by EPA in other Idaho MS4 permits.

Instream data for all pollutants of concern to the Pocatello Urban Area does not currently exist. The Permit requires collection of this data to create a "baseline" of water quality information relative to upstream and downstream concentrations of the pollutants of concern. This will allow informed decisions about the effectiveness of the co-permittees' SWMP.

The Permit requires four specific locations for storm water discharge sampling. Data on the pollutants of concern in stormwater discharges will allow IDEQ to confirm or revise the load and wasteload allocations for urban runoff to the Portneuf River.

EPA's TMDL Guidance Document allows NPDES stormwater permits to use narrative, BMP-based requirements to implement WLAs, provided the permit requires monitoring to demonstrate progress towards meeting those WLAs. See Response to Comment #2.

This Pocatello Permit is the first small MS4 permit in the Northwest that addresses WLAs from approved TMDLs for urban stormwater. EPA's Pocatello Permit establishes minimum expectations for monitoring in the Pocatello Area.

96. Comment (SB): **Regarding Part IV.A of the Permit**, if outfall monitoring is limited to only four sites, it is essential to assume all pollutant gains for the pollutants of concern in the Portneuf River reach from Edson Fichter to Highway 30 are attributed to the co-permittees' outfalls.

Response: If increased pollutant concentrations are detected between the upstream and downstream monitoring sites, EPA expects that additional co-permittee attention be directed to those municipal outfalls to discern possible sources and ways to eliminate those pollutants. Such information would also focus investigative attention to other possible non-municipal sources of pollution as well.

97. Comment (SB): Regarding Part IV.A of the Pocatello Permit, timing of surface water sampling outlined in the draft Pocatello Permit is crucial to accurately assess the effects of the co-applicant's outfalls in water quality in the Portneuf River. If not already available, a "Time of Travel" study must be conducted in the reach between Edson Fichter and Highway 30 to account for lag time between outfalls and the lower station and to ensure peak impact to the Portneuf River is document. The near real-time data collected by continuous monitoring equipment currently installed at the Edson Fichter and Hwy 30 stations should be used in determining when surface water sampling would occur.

Response: EPA encourages the commenter and the co-applicants to work within the existing Portneuf Monitoring Group to conduct such studies and refine the timing of such sampling.

98. Comment (RT): Part IV of the Pocatello Permit should include sampling and analysis to determine stream impacts from snow and snow melt.

Response: See Response to Comment #46. Because snowmelt is itself considered to be stormwater, EPA believes the monitoring outlined by this permit will capture the influence of snowmelt. EPA does not believe additional sampling requirements are warranted at this time.

99. Comment (P): Why the co-permittees are being asked to expend resources to conduct such monitoring? The Fact Sheet states that "Data from this monitoring effort will… 2) increase understanding of whether sediment and *E. coli* in runoff affects beneficial uses in the Portneuf River; and 3) help to measure the co-applicants' progress towards meeting the TMDL waste load allocations for nutrients and oil & grease."

Response: The Portneuf River TMDL Implementation Plan states that, "…The allocations presented in the TMDL plan will be refined through a monitoring program that focuses on the pollutant load sources that are poorly quantified but thought to be significant." The monitoring requirements of the Pocatello Permit support this statement. As previously noted in Response to Comments #2 and 95, NPDES permits must be consistent with applicable TMDL wasteload allocations, and include monitoring to measure progress towards meeting those allocations.

100. Comment (P): Regarding Part IV.A.1.a of the Pocatello Permit, commenter suggests the language be clarified as follows: *"These estimates will be based on the four storm sewer discharge points identified in Table IV.B."*

Response: EPA has made the revision as requested.

101. Comment (P): Regarding Part IV.A.2 of the Pocatello Permit, commenter asks for clarification on the meaning of the requirement, and requests a regulatory reference.

Response: 40 CFR § 122.41(j) states "Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity." EPA incorrectly cited this requirement in the proposed document. EPA has revised Part IV.A.2 accordingly.

102. Comment (P): The timeframe in Part IV.A.4 of the Pocatello Permit is too short. This section states that *"Not later than 9 months from the effective date of this permit, the co-permittees must conduct storm water discharge sampling indicated in Table IV.A"* As previously noted, the Portneuf River Monitoring Group is already conducting monitoring using continuous water quality monitoring devices, called sondes. Commenter suggests revising Part IV.A.4 (with specific language to reflect this ongoing work) and Table IV.A (to clarify number of samples to be taken; timeframe for sampling to occur to coincide with storm season, sample type; and TSS sampling details.)

Response: EPA agrees that the co-permittees need additional time to incorporate previously collected monitoring data into the SWMP, as acknowledged in the discussion of revisions to Part II.A. EPA will revise the timeframes and text of Part IV.A.4 and Table IV.A of the Pocatello Permit. For editorial consistency, EPA has revised the commenter's suggestions as indicated with italics/strikeout:

> **Part IV.A.4.**
> **Storm Water Discharge Monitoring**. Not later than 12 months from the effective date of this permit, the co-permittees must define a storm water discharge sampling plan based on an evaluation of existing and newly collected data. Not later than 18 months from the effective date of this permit, the co-permittees must implement a storm water sampling program for pollutants identified in ~~the noted study~~ ~~(~~Table IV.A~~)~~ at the locations noted in Table IV.B. Sampling frequency and locations will be based on information and evaluation from the above noted *data review*. ~~study. Included in the study will be the~~

~~continued support of the co-applicants of the water quality sondes that are currently operating. Installation of additional sondes will be evaluated.~~

Table IV.A. Monitoring Requirements

Parameter	Monitoring requirements		
	Sample locations[1]	Sample Frequency[2]	Sample type[3]
Flow	See below	1-6 times/yr	Recording
Oil and grease	See below	1-6 times/yr	Grab
Total phosphorus	See below	1-6 times/yr	Grab
Total inorganic nitrogen[4]	See below	1-6 times/yr	Grab
Suspended solids[5]	See below	1-6 times/yr	Grab
E.coli	See below	Up to 3 times/yr	Grab

[1]Minimum four storm water outfalls defined in Table IV.B. Minimum two in-stream locations as defined in Part IV.A.5

[2]From 1-6 samples must be taken at the four designated locations annually. Sampling protocols will be designed to sample storm events throughout the February - November time frame annually. Sampling should occur within the first 30-60 minutes of storm events.

[3]Grab samples may be taken manually or with an automatic water sampler

[4] Total inorganic nitrogen = nitrate + nitrite + ammonia

[5]Suspended solids will be measured as Total Suspended Solids and Suspended Sediment Concentration. Total inorganic constituent will be determined on a 25 percent subset of the annual samples.

103. Comment (P): **Commenter asks for clarification regarding IDEQ's role** in reviewing SWMP revisions, (Part II.D), approving requests for alternative monitoring methods (Part IV.A.3), determining a "significant storm event," (Table IV.A) and receipt and review of Annual Reports (Part IV.C). Commenter also asks for clarity regarding IDEQ's role with respect to co-permittees' compliance with this permit. With regard to IDEQ's certification of the permit under CWA § 401, commenter asks whether that certification is continual through the life of the permit.

Response: As previously mentioned in Response to Comment #61, IDEQ is EPA's partner in overseeing water quality in the state. IDEQ has locally relevant information and knowledge of the area. EPA will confer with IDEQ's regional staff in reviewing reports and/or requests from the co-permittees. As the NPDES permitting authority, EPA will communicate with co-permittees directly regarding all issues pertaining to this permit, and will acknowledge, as appropriate, any consultation with IDEQ. A CWA § 401 certification by IDEQ on this permit is valid through the life of this permit.

104. Comment (P): Regarding the discussion of defining "significant storm event" in Table IV.A and the Pocatello Permit Fact Sheet, commenter asks why this important characteristic would not be defined collaboratively between EPA and the co-permittees.

Response: EPA asked for public comment on the appropriate definition of a "significant storm event" for the Pocatello area, but did not receive any comments on how to better define this term. Therefore, definition of a "significant storm event" relevant for the Pocatello area will be defined collaboratively between the co-permittees, EPA and IDEQ through the development of the QAPP required by this permit.

105. Comment (P): Regarding Part IV.A.5 of the Permit (Surface Water Monitoring) commenter suggests specific changes to the permit language, and recommends that Table IV.C be deleted, as it repeats information already summarized in Table IV.A. Pocatello already participates in continuous sampling of the Portneuf River; the Permit should acknowledge this effort.

Response: For editorial consistency, EPA has slightly revised the commenter's suggestions and has made changes to the Permit as indicated by italics/strikeout:

Part IV.A.5

Portneuf River Monitoring. The co-permittees ~~will~~ *must* continue to conduct surface water quality monitoring *which meets the following requirements*

a) This program shall consist of continuous water quality monitoring devices (sondes) located in the Portneuf River. At a minimum, samplers will be operated at Edson Fichter Park and at Highway 30, reflecting water quality both upstream and downstream of the influence of storm water from the Pocatello Urbanized Area. The City of Pocatello will retain responsibility for maintenance of the water quality sondes at these locations as part of the cooperative effort of the Portneuf Water Quality Monitoring Network.

b) Sondes will collect *continuou*s surface water quality information ~~which~~ including ~~includ~~es the time frames when storm water discharges are occurring.

c) Surface water samples for oil and grease and *E.coli* shall be grab samples as noted in Table IV.A.

d) Surface water monitoring *for all parameters listed in Table IV.A.* must start no~~t~~ later than 18 months from the effective date of this permit. ~~Samples shall be analyzed for the parameters listed in Table IV.A. as defined in the study noted above~~.

106. Comment: (P) Regarding Part IV.A.6 of the Pocatello Permit, commenter feels that the 90-day timeframe is too short to develop a complex, integrated quality assurance plan on multiple parameters, and recommends a minimum 270 days to accomplish this plan. Commenter further recommends revising this subpart, to acknowledge the existing QAP for the Portneuf River monitoring efforts.

Response: EPA agrees to make changes to the Permit as indicated by italics/strikeout below:

Quality Assurance Requirements.

The co-permittees must develop a quality assurance plan (QAP) for all monitoring required in this Part. The QAP must be developed and implemented within ~~90~~ *270* days of the effective date of this permit. ~~Any existing QAPs may be modified for the requirements under this section.~~ *The QAP required for this permit will be developed based on "The Quality Assurance Project Plan for the Portneuf River Monitoring Project" (dated July 2004) which must be modified to meet requirements under this section.* Upon completion of the QAP, the co-permittees must notify EPA and IDEQ in writing, as indicated in Part IV.D."

107. Comment (P): Has there been a cost analysis prepared for the monitoring

required in the Permit? The Fact Sheet states**,** "*EPA believes that the cost of monitoring and sample analyses as proposed in the permit will not place undue financial burden on the co-applicants*."

Response: EPA has not conducted a cost analysis of the monitoring and sample analyses required by the permit.

108. Comment (P): Is the flow duration curve analysis technique is in common usage in the Northwest? The Fact Sheet states: "EPA will use (a) hydrology-based analysis technique to refine the storm water management program requirements in subsequent permit terms." The co-permittees request copies of the data used, the analysis techniques, and the peer-review documentation for the analysis included in Appendix D of the Fact Sheet. It isn't clear why or how this is being used, or what the goal of the analysis is, or how it is related to the NPDES Phase II Permit and intent. What program requirements are anticipated to be refined at this time? Is this analysis being used in any other permit? Has enough data been gathered at this time to provide valid conclusions?

Response: EPA used Portneuf River data provided by IDEQ to conduct a preliminary flow duration curve analysis as described in Appendix D of the fact sheet. This data is available as part of the Administrative Record for this permit. EPA did not base specific requirements proposed in the Pocatello Permit on this preliminary analysis; EPA merely described this technical analysis which the Agency intends to utilize in assessing data collected during the permit term.

The premise of the flow duration curve framework is fully described in Appendix D. This technique has been utilized by EPA staff and others in various areas of the country to characterize conditions contributing to local water quality concerns, estimate the relative impact of specific sources on the timing of pollution problems in the watershed, and inform the selection of appropriate best management practices that would effectively address the problems. The use of this technique to evaluate stormwater monitoring data is somewhat new, but is a viable technical framework in which to analyze new information.

109. Comment: (P): Regarding the discussion of the Flow Duration Curve analyses in the Fact Sheet and Fact Sheet Appendix D, commenter feels that, although the methodology may be a good tool to analyze pollutants, the necessary data to utilize this technique are not available. This section and Appendix should be deleted

Response: EPA declines to delete the reference to the Flow Duration Curve analysis technique.

110. Comment (P): **Regarding Parts IV.C.1 and 2 of the Permit**, commenter notes that requiring annual reports for both stormwater discharge and surface water monitoring seems beyond the scope and intent of the Phase II stormwater regulations. Commenter suggests deleting these requirements, including the language of Part IV.C.1.e requiring "cumulative estimate of pollutant loading for each parameter….."

Response: EPA declines to delete these subparts as requested. NPDES permits must specify requirements to report monitoring results at least once per year. See 40 CFR §122.44(i)(2). Because EPA has agreed to extend the timeframe in which the monitoring

efforts must begin (See Response to Comment #106), EPA has revised the text of Parts IV.C.1 and 2 for editorial consistency with changes to Part IV.A, as indicated in italics below:

> **1. Storm Water Discharge Monitoring Report**. *Not later that two years from the effective date of this permit, and annually thereafter*, all available storm water discharge monitoring data must be submitted as part of the Annual Report. At a minimum, this Storm Water Discharge Monitoring Report must include:
>
> a) Dates of sample collection and analyses
>
> b) Results of sample analyses
>
> c) Location of sample collection
>
> d) An overall assessment of the previous 12 months of data;
>
> e) A cumulative estimate of pollutant loading for each parameter at each sample location, and an overall estimate of the contribution of pollutants from all storm water emanating from the Pocatello Urban Area.
>
> **2. *Portneuf River* Water Monitoring Report.** *Not later that two years from the effective date of this permit, and annually thereafter*, all surface water monitoring data must be submitted as part of the Annual Report. At a minimum, this *Portneuf River* Water Monitoring Report must include:
>
> a) Dates of sample collection and analyses;
>
> b) Results of sample analyses; and
>
> c) Locations of samples collection.

111. Comment (RT): Commenter supports the monitoring requirements as proposed, and suggests that all monitoring data obtained during the term of the Pocatello Permit be published at least annually.

Response: Comment noted. As discussed above, Part IV.C of the Pocatello Permit requires monitoring data to be reported annually, beginning 2 years after the effective date of this permit. Annual Reports will be posted on the co-permittees' website.

112. Comment (P): Regarding Part VI.C.3 of the Permit, commenter observes that this proposed subpart requires overly detailed annual report requirements. Commenter notes many of these items are not specifically in the text of Part II.B, and goes beyond what was proposed in the 2003 permit application. Are these mandatory report requirements for Phase II? Commenter recommends that EPA revise the language as suggested by the commenter to reflect the reporting requirements as previously issued in the Fairbanks Area MS4 permits and contained in Appendix E.

Response: In the proposed Pocatello Permit, EPA attempted to be explicit about the type of information to be reported in the Annual Report. This information is outlined in detail in Appendix E of the Pocatello Permit Fact Sheet. To more closely reflect the reporting requirements at 40 CFR 122.34(g)(3), EPA agrees to revise the language of Part IV.C.3 as follows:

> 1. *One year from the effective date of this permit, and annually thereafter, the co-permittees shall prepare and submit an Annual Report to EPA and IDEQ.*

Copies of all Annual Reports shall be made available to the public, at a minimum, through a co-permittee-maintained website, or other easily accessible location. The following information must be contained in each Annual Report:

a) *Status of compliance with this permit and progress towards achieving the identified actions and activities for each minimum control measure in Part II.B. Status of each program area must be addressed, even if activity has previously been completed or not yet been implemented;*

b) *Results of any information collected and analyzed during the previous 12 month period, including stormwater discharge and water quality monitoring as noted in Parts IV.C 1 and 2 and any other information used to assess the success of the program at improving water quality to the maximum extent practicable;*

c) *A summary of the number and nature of inspections, formal enforcement actions, and/or other similar activities performed;*

d) *Copies of education materials, ordinances (or other regulatory mechanisms), inventories, guidance materials, or other products produced as a result of actions or activities required by this permit;*

e) *A general summary of the activities the co-permittees plan to undertake during the next reporting cycle (including an implementation schedule) for each minimum control measure;*

f) *A description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable water quality standards;*

g) *Notice if the co-permittee(s) are relying on another entity to satisfy any of the permit obligations, if applicable.*

In a similar fashion, EPA has also revised Part II.B.3.e to clarify that the inventory of industrial facilities in the Pocatello Urban Area must be submitted to EPA as part of the corresponding Annual Report.

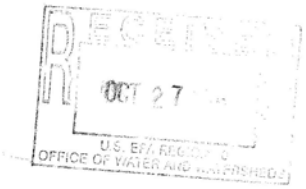
113. Comment (Pocatello): Add new language as Part IV.E of the Permit, to clarify the signature requirements for submittals sent to EPA. This will specifically detail the required certification statement specified in 40 CFR §§ 122.41(k) and 122.22.

Response: EPA declines to add a new section to the permit. Part VI.E. of the permit already defines how reports and other submittals required by the permit must be certified. However, in the interest of clarity, EPA has revised Part IV.D to read:

"*Reports and other documents required by this permit must be signed in accordance with Part VI.E. and submitted to each of the following addresses:"*

Appendix A – Final CWA §401 Certification from Idaho Department of Environmental Quality

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY



444 HOSPITAL WAY, #300 • POCATELLO, IDAHO 83201 • (208) 236-6160

JAMES E. RISCH, GOVERNOR
TONI HARDESTY, DIRECTOR

October 24, 2006

Mayor Roger Chase
City of Pocatello
PO Box 4169
911 North 7th Ave
Pocatello ID 83205

Mayor Steven England
City of Chubbuck
PO Box 5604
5161 Yellowstone
Chubbuck ID 83202

Commissioner James Guthrie
Bannock County
130 N. 6th Avenue, Suite C
Pocatello ID 83201

Mr. Ed Bala
Idaho Transportation Department
PO Box 4700
Pocatello ID 83204

RE: 401 Water Quality Certification for Pocatello and Chubbuck cities, Bannock County and Idaho Transportation Department District 5 Municipal Separate Storm Sewer Systems (MS4s) NPDES Permit No. IDS-028053

Dear Co-permittees:

The Idaho Department of Environmental Quality (DEQ) has reviewed the proposed final MS4 NPDES permit No. IDS-028053 for the Pocatello and Chubbuck cities, Bannock County and ITD District 5 (co-permittees). DEQ has set forth below section 401 certification for the permit that will authorize the co-permittees to discharge municipal storm water to the Portneuf River, Pocatello Creek and other associated waters of the United States.

DEQ has worked closely with the co-permittees and EPA to ensure appropriate conditions are included in the permit to protect water quality. DEQ feels EPA has included in the proposed final permit those conditions necessary for DEQ to provide a certification under section 401 of the Clean Water Act and applicable state law. You will note this certification contains no additional conditions. Comments regarding this certification should be addressed to Lynn Van Every, Pocatello Regional DEQ at (208) 236-6160.

401 CERTIFICATION Phase II stormwater

Based on the Department's review of the referenced permit, DEQ certifies, pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act (Clean Water Act) as amended, 33 USC Section 1341, and Idaho Code Sections 39-101 et. seq., and 39-3601 et.seq., that if the co-permittees comply with the terms and conditions as written in Permit No. IDS-028053, there is a reasonable assurance that the authorized discharges of storm water will comply with applicable requirements of Sections 301, 302, 303, 306 and 307 of the Clean Water Act.

Water quality certification provided herein may be revoked for failure of the co-permittees to comply with the conditions of the referenced permit and/or requirements contained herein. IDEQ shall provide notice of its intent to revoke, and provide an opportunity for a contested case, prior to revocation.

This section 401 certification may be appealed by submitting to IDEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the Rules of Administrative Procedure Before the Board of Environmental Quality IDAPA 58.01.23, within 35 days of the date of this letter.

Sincerely,

Lynn Van Kirk for

Mark Dietrich
Regional Administrator

Cc: Misha Vakoc, USEPA Seattle Region 10 Stormwater Coordinator
Doug Conde, Deputy AG – DEQ, Boise
Johnna Sandow, 401 Coordinator – DEQ, Boise

Appendix B - Summary of Changes to NPDES Permit# IDS-028053 as a Result of Public Comments

Note: *Italics* indicate change from February 17, 2006 proposed Permit

Permit Part	Substantive Changes
Part I.C. 3 and Table III	Extended deadline for the Cooperative Agreement to be submitted to *120 days from permit effective date*
Part I.D.1.b.i	Replaced the phrase "unforeseen weather event" with "*unusual and severe weather event*"
Part I.D.1.c.i	Revised list of allowable non-stormwater discharges to be consistent with the Multi Sector General Permit for Industrial Stormwater Discharges
Part I.D.c.ii	Revised phrase to read: "A discharge is considered a source of pollution to waters of the United States for *the purposes of this permit* if it:"
Part I.D.1.c.ii.	Added the limitation: *"(i) Contains materials in concentrations that exceed applicable natural background conditions in receiving waters (IDAPA 58.01.02.09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.01.02.401"*
Part I.D.1.c.ii.(a-h)	Inserted phrase "*in receiving waters*" to each
Part II.A.	Revised and renumbered text to read: *1. This permit requires that co-permittees develop and implement a Storm Water Management Program (SWMP) that includes comprehensive plans and approaches to manage storm water quality discharged from the co-permittees' municipal separate storm water systems (MS4).* *2. The co-permittees must develop, implement, and enforce a SWMP designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable and to protect water quality in receiving waters. The SWMP actions and activities must include BMPs, system design, engineering methods, and other provisions appropriate to control discharges of pollutants from the MS4.* *3. This permit requires that the co-permittees manage storm water within the permit area, incorporating concepts and approaches described and defined in the Portneuf River TMDL Implementation Plan (dated July 2003).* *4. Monitoring will be conducted as described in Part IV of this permit.* *5.* The SWMP actions and activities are outlined through the minimum control measures in Part II.B and the monitoring activities described in Part IV. Co-permittees must implement a SWMP that *incorporates the following provisions:* g) Best Management Practices that are selected, implemented, maintained and updated to ensure that storm water discharges do not cause or contribute to an exceedance of an applicable numeric or narrative water quality standard; h) Measurable goals, including interim milestones, for each BMP; *i) A water quality management approach that evaluates existing and newly collected water quality monitoring data to define and prioritize the utility of specific actions and activities to be*

	implemented *j) Based on the approach noted above, the co-applicants will both jointly and independently create programs and/or projects to address water quality standards, define potential funding sources, and define a process to seek such funding within the initial five year permit period;* *k) Data collection will proceed for a period of four years, starting 12 months from the effective date of this permit; and,* *l) Each permittee shall review, and amend as necessary, their Storm Water Master Plan, Comprehensive Plans or other equivalent plans, to accommodate identified water quality improvement measures to the MS4.* 8. Modifications to the SWMP must be made in accordance with Part II.C of this permit 9. Implementation of one or more of the minimum control measures may be shared with another entity…. ….
Part II.B.1.e	Revised phrase to read "….co-permittees *must exercise best efforts to partner with* Idaho State University…"
Part II.B.2.c	Revised to read "Within two years of the effective date of this permit, and annually thereafter, co-permittees *must help* organize and host a community River Clean up Day(s)."
Part II.B.2.d	Extended implementation timeframe from two to four years
Part II.B.3.a	Edited phrase to be consistent with EPA regulation: "…co-permittees must develop and implement a program to detect and eliminate illicit discharges *into* their MS4s. "
Part II.B.3.a	Revised to specify one hotline for citizen reporting
Part II.B.3.d	Revised to read ""Co-permittees must *support the continuation of* the hazardous waste disposal program at Bannock county landfill *which is operated by Bannock County."*
Part II.B.3.f	Revised to read: "…co-permittees must begin dry weather field screening…from *stormwater* outfalls. By the expiration date of the permit, *at least 50% of* the co-permittees' outfalls…must be screened for dry weather flows*."*
Part II.B.3.g	Revised to read: "the co-permittees must *submit to EPA as part of the corresponding Annual Report an* inventory *of* industrial facilities that discharge into the co-permittees' MS4 or to waters of the United States within the Pocatello Urbanized Area."
Parts II.B.4 & 5	Correct citations in Parts II.B.4 d, e, f and II.B.5.e .
Part II.B.6.a	Revised timeline and requirement to read: a) Not later than *four* years from the effective date of this permit, the co-permittees must….. develop and implement an operation and maintenance program …. *This program must address municipal activities occurring within their jurisdiction with potential for negative storm water related water quality impacts including grounds/park and open space maintenance operations, fleet maintenance and vehicle washing operations building maintenance; storm water system maintenance; and snow disposal site operation and maintenance. Examples of other municipal activities which may also be evaluated as relevant to the jurisdiction include, but are not limited to*: street cleaning and maintenance; solid waste transfer activities; water treatment plant operations; municipal golf course maintenance; materials storage; hazardous materials storage; used oil recycling; spill control and prevention measures for municipal

<table>
<tr><td></td><td>refueling facilities; municipal new construction and land disturbances; and snow removal practices.</td></tr>
<tr><td>Part II.B.6.b</td><td>Revised to read: Not later than four years.…co-permittees must evaluate existing street cleaning operations, catch basin cleaning operations, and street sanding/salt practices occurring within their jurisdiction to minimize any negative impacts to water quality. This evaluation must also examine the existing practices for the disposal of waste removed from the MS4 and MS4 operations. This evaluation must identify any actions or improvements necessary to minimize negative impacts on water quality, and timelines for incorporating such actions or improvements.</td></tr>
<tr><td>Part II.B.6.d</td><td>Revised to read: co-permittees must ensure ….existing projects are assessed to incorporate ongoing or additional water quality protection devices or practices.</td></tr>
<tr><td>Part II.C</td><td>Deleted. Replaced with language added to Part II.A (above)</td></tr>
<tr><td>Part II.D, E,F</td><td>Renumbered as Parts II. C,D,E</td></tr>
<tr><td>Part IV.A.1.a</td><td>Inserted statement: These estimates will be based on the four storm sewer discharge points identified in Table IV.B</td></tr>
<tr><td>Part IVA.2</td><td>Revised sentence to be consistent with 122.41(j)</td></tr>
<tr><td>Part IV.A.4.</td><td>Revised text as follows:
Storm Water Discharge Monitoring. Not later than 12 months from the effective date of this permit, the co-permittees must define a storm water discharge sampling plan based on an evaluation of existing and newly collected data. Not later than 18 months from the effective date of this permit, the co-permittees must implement a storm water sampling program for pollutants identified in Table IV.A at the locations noted in Table IV.B. Sampling frequency and locations will be based on information and evaluation from the above noted data review.</td></tr>
<tr><td>Table IV.A</td><td>Revised Table IV.A. as follows:
<table>
<tr><th rowspan="2">Parameter</th><th colspan="3">Monitoring requirements</th></tr>
<tr><th>Sample location[1]</th><th>Sample Frequency[2]</th><th>Sample type[3]</th></tr>
<tr><td>Flow</td><td>See note</td><td>1-6 times/yr</td><td>Recording</td></tr>
<tr><td>Oil and grease</td><td>See note</td><td>1-6 times/yr</td><td>Grab</td></tr>
<tr><td>Total phosphorus</td><td>See note</td><td>1-6 times/yr</td><td>Grab</td></tr>
<tr><td>Total inorganic nitrogen[4]</td><td>See note</td><td>1-6 times/yr</td><td>Grab</td></tr>
<tr><td>Suspended solids[5]</td><td>See note</td><td>1-6 times/yr</td><td>Grab</td></tr>
<tr><td>E. coli</td><td>See note</td><td>Up to 3 times/yr</td><td>Grab</td></tr>
</table>
[1]Minimum four storm water outfalls defined in Table IV.B. Minimum two in-stream locations as defined in Part IV.A.5
[2]From 1-6 samples must be taken at the four designated locations annually. Sampling protocols will be designed to sample storm events throughout the February - November time frame annually. Sampling should occur within the first 30-60 minutes of storm events.
[3]Grab samples may be taken manually or with an automatic water sampler
[4] Total inorganic nitrogen = nitrate + nitrite + ammonia
[5]Suspended solids will be measured as Total Suspended Solids and Suspended Sediment Concentration. Total inorganic constituent will be determined on a</td></tr>
</table>

Part IV.A.5	Revised as follows: ***Portneuf River Monitoring.*** The co-permittees must *continue to* conduct surface water quality monitoring *which meets the following requirements* *2. This program shall consist of continuous water quality monitoring devices (sondes) located in the Portneuf River. At a minimum, samplers will be operated at Edson Fichter Park and at Highway 30, reflecting water quality both upstream and downstream of the influence of storm water from the Pocatello Urbanized Area. The City of Pocatello will retain responsibility for maintenance of the water quality sondes at these locations as part of the cooperative effort of the Portneuf Water Quality Monitoring Network.* *3. Sondes will collect continuous surface water quality information including the time frames when storm water discharges are occurring.* *4. Surface water samples for oil and grease and E. coli shall be grab samples as noted in Table IV.A.* *5. Surface water monitoring for all parameters listed in Table IV.A. must start not later than 18 months from the effective date of this permit.*
Table IV.C	Deleted.
Part IV.A.6	Revised text as follows: **Quality Assurance Requirements.** …. The QAP must be developed and implemented within *270* days of the effective date of this permit. *The QAP required for this permit will be developed based on "The Quality Assurance Project Plan for the Portneuf River Monitoring Project" (dated July 2004) which must be modified to meet requirements under this section…..*
Parts IV.C.1& 2	Revised the text for editorial consistency with changes to Part IV.A
Part IV.C.3	Revised and deleted requirements for Annual Reports as follows: 1. One year from the effective date of this permit, and annually thereafter, the co-permittees shall prepare and submit an Annual Report to EPA and IDEQ. Copies of all Annual Reports shall be made available to the public, at a minimum, through a co-permittee-maintained website, or other easily accessible location. The following information must be contained in each Annual Report: *II. Status of compliance with this permit and progress towards achieving the identified actions and activities for each minimum control measure in Part II.B. Status of each program area must be addressed, even if activity has previously been completed or not yet been implemented;* III. *Results of any information collected and analyzed during the previous 12 month period, including stormwater discharge and water quality monitoring as noted in Parts IV.C 1 and 2 and any other information used to assess the success of the program at improving water quality to the maximum extent practicable*; *IV. A summary of the number and nature of inspections, formal enforcement actions, and/or other similar activities performed;*

	V. Copies of education materials, ordinances (or other regulatory mechanisms), inventories, guidance materials, or other products produced as a result of actions or activities required by this permit; *VI. A general summary of the activities the co-permittees plan to undertake during the next reporting cycle (including an implementation schedule) for each minimum control measure;* *VII. A description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable water quality standards;* VIII. *Notice if the co-permittee(s) are relying on another entity to satisfy any of the permit obligations, if applicable.*
Part IV.E	Revised text to read: Reports and other documents required by this permit *must be signed in accordance with Part VI.E. and* submitted to each of the following addresses:
Part VIII	Added definition for: “Pollutant(s) of concern" includes any pollutant identified as a cause of impairment of any water body that will receive a discharge from a MS4 authorized under this permit.

Appendix C - Bibliography of Studies Supporting EPA's Regulation of Storm Water Discharges from Construction Sites

This list is excerpted from EPA's preamble to the Phase II Stormwater Regulations, December 8, 1999 (64 FR 68728-68731).

Brown, W.E. 1997. ''The Limits of Settling.'' Technical Note No. 83. *Watershed Protection Techniques* 2(3).

Brown, W. and D. Caraco. 1997. *Controlling Storm Water Runoff Discharges from Small Construction Sites: A National Review.* Submitted to Office of Wastewater Management, U.S. EPA, Washington, DC, by the Center for Watershed Protection, Silver Spring, MD.

Daniel, T.C., D. McGuire, D. Stoffel, and B. Miller. 1979. ''Sediment and Nutrient Yield from Residential Construction Sites'' *Journal of Environmental Quality* 8(3):304–08.

Downs, S.C. and D.H. Appel. 1986. *Progress Report on the Effects of Highway Construction on Suspended-Sediment Discharge in the Coal River and Trace Fork, West Virginia,* 1975–81. USGS Water Resources Investigations Report 84– 4275. Charlestown, WV.

Everest, F.H., J.C. Beschta, K.V. Scrivener, J.R. Koski, J.R. Sedell, and C.J. Cederholm. 1987. ''Fine Sediment and Salmonid Production: A Paradox.'' *Streamside Management: Forestry and Fishery Interactions,* Contract No. 57, Institute of Forest Resources, University of Washington, Seattle, WA.

Fox, H.L. 1974. ''Effects of Urbanization on the Patuxent River, with Special Emphasis on Sediment Transport, Storage, and Migration.'' Ph.D. dissertation. Johns Hopkins University, Baltimore, MD. As cited in Klein, R.D. 1979. ''Urbanization and Stream Quality Impairment.'' *Water Resources Bulletin* 15(4): 948–63.

Hainly, R.A. 1980. *The Effects of Highway Construction on Sediment Discharge into Blockhouse Creek and Stream Valley Run, Pennsylvania.* USGS Water Resources Investigations Report 80–68. Harrisburg, PA.

Hill, B.R. 1996. *Streamflow and Suspended-Sediment Loads Before and During Highway Construction, North Halawa, Haiku, and Kamooalii Drainage Basins, Oahu, Hawaii, 1983–91.* USGS Water Resources Investigations Report 96–4259. Honolulu, HI.

Kuo, C.Y. 1976. ''Evaluation of Sediment Yields Due to Urban Development.'' Bulletin No. 98. Virginia Water Resources Research Center, Virginia Polytechnic Institute and State University, Blacksburg, VA.

MacDonald, L.H. 1997. *Technical Justification for Regulating Construction Sites 1–5 Acres in Size.* Unpublished report submitted to U.S. EPA, Washington, DC.

Meyer, L.D., W.H. Wischmeier, and W.H. Daniel. 1971. ''Erosion, Runoff and Revegetation of Denuded Construction Sites.'' *Transactions of the ASAE* 14(1):138–41.

National Association of Counties Research Foundation. 1970. *Urban Soil Erosion and Sediment Control.* Water Pollution Control Research Series, Program #15030 DTL. Federal Water Quality Administration, U.S. Department of Interior. Washington, DC.

Novotny, V. and G. Chesters. 1989. ''Delivery of Sediment and Pollutants from Nonpoint Sources: A Water Quality Perspective.'' *Journal of Soil and Water Conservation,* 44(6):568–76).

Novotny, V. and H. Olem. 1994. *Water Quality: Prevention, Identification, and Management of Diffuse Pollution.* New York: Van Nostrand Reinhold.

Owen, O.S. 1975. *Natural Resource Conservation.* New York: MacMillan. As cited in Paterson, et al., 1993.

Owens, D.W., P. Jopke, D.W. Hall, J. Balousek and A. Roa. 1999. ‘‘Soil Erosion from Small Construction Sites.’’ Draft USGS Fact Sheet. USGS and Dane County Land Conservation Department, WI.

Paterson, R.G., M.I. Luger, E.J. Burby, E.J. Kaiser, H.R. Malcolm, and A.C. Beard. 1993. ‘‘Costs and Benefits of Urban Erosion and Sediment Control: North Carolina Experience.’’ *Environmental Management* 17(2):167– 78.

Paterson, R. G. 1994. ‘‘Construction Practices: the Good, the Bad, and the Ugly.’’ *Watershed Protection Techniques* 1(3)).

Reed, J.R. 1997. ‘‘Stream Community Responses to Road Construction Sediments.’’ Bulletin No. 97. Virginia Water Resources Research Center, Virginia Polytechnic Institute, Blacksburg, VA. As cited in Klein, R.D. 1990. *A Survey of Quality of Erosion and Sediment Control and Storm Water Management in the Chesapeake Bay Watershed.* Annapolis, MD: Chesapeake Bay Foundation.

Rogers, C.S. 1990. ‘‘Responses of Coral Reefs and Reef Organizations to Sedimentation.’’ *Marine Ecology Progress Series,* 62:185– 202.

Storm Water Quality Task Force. 1993. *California Storm Water Best Management Practice Handbooks—Construction Activity.* Oakland, CA: Blue Print Service.

U.S. EPA. 1991. *Monitoring Guidelines to Evaluate Effects of Forestry Activities on Streams in the Pacific Northwest and Alaska.* EPA 910/9–91–001. Seattle, WA.

U.S. Department of Agriculture. 1989. ‘‘The Second RCA Appraisal, Soil, Water and Related Resources on Nonfederal Land in the United States, Analysis of Condition and Trends.’’ Cited in Fennessey, L.A.J., and A.R. Jarrett. 1994. ‘‘The Dirt in a Hole: a Review of Sedimentation Basins for Urban Areas and Construction Sites.’’ *Journal of Soil and Water Conservation,* 49(4):317–23.

USDA. 1970. ‘‘Controlling Erosion on Construction Sites.’’ *Agriculture Information Bulletin,* Washington, DC.

Wolman, M.G. and A.P. Schick. 1967. ‘‘Effects of Construction on Fluvial Sediment, Urban and Suburban Areas of Maryland.’’ *Water Resources Research* 3(2): 451–64.

Yorke, T.H., and W.J. Herb. 1978. *Effects of Urbanization on Streamflow and Sediment Transport in the Rock Creek and Anacostia River Basins, Montgomery County, Maryland, 1962–74.* USGS Professional Paper 1003, Washington, DC.