

National Pollutant Discharge Elimination System (NPDES) Permit for

**Nampa Highway District No. 1
Municipal Separate Storm Sewer System (MS4)**

NPDES Permit No. IDS-028142

Response to Comments on Proposed Permit

**August 2009
U.S. Environmental Protection Agency, Region 10**

Table of Contents

I. Introduction	2
II. State Certification under Clean Water Act §401.....	3
III. Response to Comments.....	3
General Comments.....	3
Comments Related to Part I Applicability.....	7
Comments Related to Part II - SWMP Requirement.....	12
Comments Related to Part III - Schedule for Implementation & Compliance....	23
Comments Related to Part IV - Monitoring, Recordkeeping and Reporting.....	24
Comments Related to Parts V, VI, and VII.....	25
Comments Unique to Highway Districts.....	25
Appendix A: Final CWA §401 Certification from Idaho Dept. of Environmental Quality.....	29
Appendix B: Snow Dumping and Disposal Practices.....	32

I. Introduction

On July, 11, 2008, the U.S. Environmental Protection Agency Region 10 (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer system (MS4) owned or operated by the Nampa Highway District No. 1 (NHD). This NPDES permit, # IDS-028142, will be referred to in this document as the NHD Permit or Permit.

EPA published a public notice announcing the proposed Permit in the *Idaho Statesman* and the *Idaho Press Tribune* on July 11, 2008. EPA also concurrently proposed seven similar NPDES permits for the following entities within both the Nampa and Boise Urbanized Areas: City of Caldwell (NPDES Permit #IDS-028118); Ada County Highway District (NPDES Permit #IDS-028185); Notus Parma Highway District #2 (NPDES Permit #IDS-028151); Idaho Transportation Department District #3 (NPDES Permit #IDS-028177); Canyon Highway District #4 (NPDES Permit #IDS-028134); City of Middleton (NPDES Permit #IDS-028100); and City of Nampa (NPDES Permit #IDS-028126). EPA hosted two public hearings regarding the proposed permits, on August 13, 2008, at the Nampa Police Station conference room, and on August 14, 2008, at the Boise Public Library. In response to requests from NHD and each of the other MS4 operators, EPA announced a 60 day extension to the comment period on September 2, 2008, through publication in the *Idaho Statesman* and *Idaho Press Tribune*; the extended comment period ended on November 19, 2008.

This document provides a response to comments received on the proposed NHD 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.

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

- City of Middleton (M)
- City of Caldwell (C)
- City of Nampa (N)
- Ada County Highway District (ACHD)
- Canyon Highway District No. 4 (CHD)
- Nampa Highway District No. 1 (NHD)
- Notus-Parma Highway District (NPHD)
- Idaho Transportation Department District 3 (ITD3)
- Lower Boise Watershed Council (LBWC)
- Association of Idaho Cities (AIC)
- Matthew Johnson, White Peterson, representing City of Nampa (MJ)

Comments which are relevant to each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas are included and are attributed to their author as indicated. In general, comments are organized in the order the topic or issue is found in the proposed NHD Permit. Comments which are unique to NHD, or to Highway Districts in general, are included at the end of Section III. Where indicated, EPA has made changes to the final Permit.

II. State Certification under Clean Water Act §401

On May 27, 2008, Idaho Department of Environmental Quality (IDEQ) provided a draft Clean Water Act (CWA) §401 certification which found that the proposed NHD Permit provides reasonable assurance that Idaho water quality standards will be met. IDEQ accepted public comment on the draft certification concurrently with the EPA comment period through November 19, 2008.

IDEQ issued a final CWA §401 certification on August 11, 2009. A copy of IDEQ's final certification is included in Appendix A.

III. Response to Comments

General Comments

1. **General comment (LBWC, AIC, ACHD):** EPA's approach for issuing similar NPDES permits to establish consistent, area wide expectations for the management of municipal storm water is appreciated.

Response: Comment noted.

2. **Comment regarding comment period extension (MJ):** During the 8/13/2008

public hearing, the commenter noted that EPA encourages and expects the regulated MS4s within the Urbanized Areas to cooperate in the implementation of SWMPs; however, the Agency only provided 70 days during the initial public comment period. The commenter suggested that an extension of 240 days is reasonable, given the complexity of the situation in the Treasure Valley, as well as to provide the opportunity for each of the Phase II MS4 entities to properly coordinate with each other and report back to their respective governing boards.

Response: In response to these comment period extension requests, EPA extended the original comment period by 60 days, providing a 130-day public comment period through November 19, 2008. To further clarify issues of concern to permittees, EPA and IDEQ staff met separately with representatives of Nampa, Nampa Highway District, Canyon Highway District, Caldwell, and Ada County Highway District over September 17-19, 2008.

- 3. Comment regarding changes to Permit text and compliance dates which may be relevant to all of the MS4 Permits. (M, C, N, AIC, LBWC):** To maintain consistency among each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas, the commenters suggest that EPA consider text corrections requested by one entity to be relevant to each of the other eight permits. In addition, commenters request that several compliance dates be revised to better organize resources, and to establish coherent and efficient storm water management approach among permittees. Where conflicting schedules are suggested, EPA should use the longer period requested in all final permits.

Response: Comment noted. EPA will indicate in the comment response those changes which are made to each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

- 4. Comment regarding the Permit effective date (M, N, C, CHD, NHD, LBWC):** Commenters request that EPA use its discretion to specify a Permit effective date of October 1, 2009. Because the Permit compliance dates are determined based on the Permit effective date, EPA should establish a specific date which corresponds with the MS4 operators' fiscal year. This allows permittees to obtain the necessary budgets within their respective organizations. The Permits' issuance (i.e., signature) date should be four to six months prior to the effective date to facilitate such planning.

Response: Pursuant to 40 CFR 124.15, EPA has the discretion to specify an effective date at the time of permit issuance. EPA is specifying an effective date of **October 15, 2009**, for each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

- 5. Comment regarding compliance dates and the unique characteristics of the Nampa & Boise Urbanized Areas (LBWC, N):** The unique characteristics of this area complicate the management of urban storm water, and permittees will require additional time to initiate many of the permit requirements. Historically, these

Urbanized Areas have been predominately agricultural with an extensive irrigation system. As the population grows, and the areas convert from agricultural to urban land use, the potential for agricultural return flow to discharge into the canals and receiving waters (which also receive discharge from the existing MS4s) creates a unique situation. In addition, the large number of canals, receiving waters, storm water outfalls, irrigation companies, and highway districts add to the complexity of the situation.

Response: EPA acknowledges the complexity of the situation within the Nampa and Boise Urbanized Areas. EPA has attempted to accommodate the implementation challenges faced by the Cities, Highway Districts, and ITD3, by providing additional time to implement the required SWMP.

6. **Comment regarding authorization for New Discharges (AIC):** The EPA Region 10 seeks to authorize Lower Boise Phase 2 MS4 entities “to discharge from all MS4 outfalls *existing as of the effective date*” of the permits, “in accordance with the conditions and requirements set forth” in the final MS4 permits (draft Phase 2 MS4 permits open for public comment, emphasis added).

AIC understands that the urbanized areas in the Lower Boise have a high rate of population growth. And that the associated drainage infrastructure will also experience growth during the five year permit period. Therefore, even though the permittees are expected to apply the “best available technology” (BAT) to the “maximum extent practicable” (MEP), the urban growth and additional annexations to corporate boundaries will result in new storm water sources, including a potential to increase the quantity of pollutants during storm events greater than the drainage structure’s engineered design storms. In order to ensure adequate authorization for these new discharges, AIC suggests that EPA Region 10 and IDEQ pursue one of the following two options:

- a. Revise the final Phase 2 MS4 permits to authorize “all existing *and new* discharges” from the municipal separate storm sewer systems (MS4s). Note: This approach is consistent with the exiting 2004 City of Portland MS4 permit issued by the State of Oregon (Permit Number 101314); or
- b. That the NPDES requirements for planned changes, including new discharges (i.e., per Part V.G. of the draft Phase 2 MS4 permits), be added as an annual reporting element in the final permits.

Response: These Permits only authorize discharges from the existing MS4 and its associated outfalls located within the Urbanized Area. EPA recognizes that the permittee may find additional outfalls or may construct additional outfalls within the Urbanized Area. As such, EPA is adding a requirement to Part IV.C regarding the Annual Report to each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas that requires the permittee to report to EPA and IDEQ any additional outfalls not previously identified. At that point, EPA

will determine whether these outfalls result in a permit modification. A new Part IV.C.9 has been added to the final NHD Permit as follows:

“The following information must be contained in each Annual Report:

9) A description of the location, size, receiving water, and drainage area associated with of any new MS4 outfall(s) owned or operated by the permittee which have been added to the system since the previous annual reporting period.”

7. **General comment (N, LBWC):** The streets and highways of Nampa are considered to be a part of its MS4 system. The street system requires constant maintenance, repair, and construction, all of which will be conducted under the Stormwater Management Plan and associated BMP framework; therefore these activities will not be construed as an “illicit discharge” to the MS4 system.

Response: EPA clarifies that storm water discharges which are specifically regulated under the NPDES program at 40 CFR § 122.26 may be discharged to and from the permittee’s MS4 system, only when they are authorized under an appropriate NPDES permit. In the example provided, storm water discharges associated with construction activities disturbing 1 or more acres must be permitted under the NPDES General Permit for Construction Activities, #IDR10-0000. Storm water discharges associated with routine maintenance of the street or highway system is not considered a type of regulated “stormwater associated with ‘small’ construction activities”, and thus, do not require separate NPDES permit coverage. See 40 CFR § 122.26(b)(16). The Permit has been revised to clarify this issue by adding the text below as a new Part I. C.5; each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas have been revised accordingly:

“Storm Water Discharges Associated with Industrial and Construction Activity. Permittees are authorized to discharge storm water associated with industrial activity (as defined in 40 CFR 122.26(b)(14)), and storm water associated with construction activity (as defined in 40 CFR 122.26(b)(14)(x) and (b)(15)), from their MS4s, only when such discharges are otherwise authorized under an appropriate NPDES permit.”

8. **Comment regarding corrections to Fact Sheet Language (N):** Certain comments on the Draft Permit reference sections in the Fact Sheet related to the Draft Permit conditions. In those circumstances, the commenter requests that the Fact Sheet language be revised in accordance with the requested changes to the Draft Permit.

Response: EPA does not revise the Fact Sheet text; instead, this Response to Comments document supplements the Fact Sheet supporting issuance of the final NPDES permit.

Comments Related to Permit Part I -Applicability

9. **Comment regarding Part 1.C.1.b.i -Non stormwater discharges (C):** Commenter requests clarification to this section, as it appears to link non-stormwater discharges to severe weather events. For clarification, the commenter proposes the phrase “are the result of an unusual and severe weather event” be deleted.

Response: EPA declines to make the change requested. It is EPA’s intent to conditionally allow discharges associated with an accidental spill that occurs as a result of severe weather events.

10. **Comment regarding Part I.C.1.c (i) and (ii) – Limitations on Permit Coverage/non-stormwater discharges (M):** These sections contain references to “uncontaminated” and “concentrations” for non-stormwater discharges with no actual way of quantifying the specific item. It is unclear how this is controlled for the referenced items. The commenter suggests that the wording be changed to reference items with “no known contaminants” or disallowing items with “known concentrations that may impair.”

Response: EPA declines to revise the permit as requested. The language as proposed is consistent with federal regulations and IDEQ water quality standards (see 40 CFR§ 122.34(b)(3)(iii) and IDAPA 58.01.02.200). In general, as used in this Permit, the term, “uncontaminated” means “containing no pollutants,” and the term “concentration” means “detectable amounts of a pollutant”.

11. **Comment Regarding Part 1.C.1.c.i – Limitations on Permit Coverage/non-stormwater discharges (ITD3, ACHD, C, CHD, NHD, N, M, LBWC, AIC) –** Commenters suggest that “irrigation water” be added to the list, as is currently allowed in Phase I MS4 permit for Boise, and provided for within EPA’s Phase II regulations. Commenters note that the list of non-storm water discharges proposed in this Part includes “landscape irrigation,” which is not the same as “irrigation water.”

In addition, several commenters suggest that non-profit car washing, flows from riparian habitats and wetlands, residential building wash waters without detergents, fire fighting system testing and blow down for fire sprinklers be added as “allowable non-storm water” discharges.

Response: Allowable non-storm water discharges are outlined by EPA regulations at 40 CFR 122.26(d)(2)(iv)(B)(1) and 122.34(b)(3)(iii). In addition, EPA proposed to include several types of allowable non-storm water discharges in the 2008 version of the NPDES Multi-Sector General Permit (MSGP).

- “Lawn watering” and “irrigation water” were inadvertently omitted by EPA from the proposed text in each of the eight Phase II MS4 permits for the

Nampa and Boise Urbanized Areas. EPA has therefore corrected the text in each permit to add “lawn watering,” “landscape irrigation,” and “irrigation water” as allowable non-storm water which can be discharged from the MS4, provided the discharges are not sources of pollution to waters of the U.S. as further defined in Part I.C.1.

- Non-profit car washing, is not included in the federal regulations nor other NPDES stormwater permits as “allowable non-storm water discharges.” EPA declines to make this revision as requested because such flows generally contain pollutants. EPA believes that through education and other preventative measures, communities can (and should) promote practical alternatives to the direct discharge of non-profit car wash water to the MS4.
- The term “flows from riparian habitats and wetlands” is included in this Part as proposed; therefore, since it was already included in the permit, it does not need to be added.
- “Residential building wash waters without detergents” is the same as the proposed Permit language which states “routine external building wash down.”
- Fire fighting system testing and blow down for fire sprinklers are not included in the federal regulations nor other NPDES stormwater permits as “allowable non stormwater discharges.” Such flows may contain pollutants and the permittees should encourage fire departments to capture and dispose of such flows in a manner that does not directly discharge to the MS4.

In sum, EPA has added “lawn watering” and “irrigation water” to Part I.C.1.c.i but declines to add other items suggested by the commenters.

12. **Comment regarding Part I.C.1.c.i (NHD):** Commenter suggests that this Part be modified to exempt flows resulting from emergency firefighting activities without the added conditions identified in section I.C.1.c. ii. Placing these conditions on emergency services personnel, especially fire fighters, will ultimately result in increased response times which at some point will result in the loss of life(s) for which the EPA would be responsible.

Response: The text of 40 CFR §§ 122.26 and 122.34 says: “discharges or flows from fire fighting activities are excluded from the effective prohibition against non-stormwater discharges and need only be addressed where they are identified as a significant source of pollutants to waters of the U.S.” EPA will exercise its discretion in the event that such a discharge occurs through the permittee’s MS4, and declines at this time to revise the Permit text.

13. **Comment regarding Part I.C.2 (Discharges threatening water quality), II.C.3, (Discharges to water quality impaired receiving waters), V.G (Planned changes)**

and Part VII (definition of “significant contributor of pollutants) (C, N):

Commenters request that EPA change the language from “violation” to “exceedance.” A permit violation is established by the permitting authority based on failure to comply with a permit condition (or applicable law) and is done by legal notice process. The intent is to not “cause or contribute to exceedances.” Exceeding a water quality criterion may or may not be cause for a “violation” as some numeric criteria have a maximum exceedance frequency of once in 3 years (for acute criteria) therefore one exceedance in a permit term would not necessarily be an exceedance of the particular criterion nor a “violation”. There are several occurrences of inappropriate use of the term in this context. However, EPA correctly uses the term in Part II.A.2.a. All the other usage of “violation” is in permit/law context.

Response: EPA clarifies that these portions of the Permit implement the federal NPDES regulations at 40 CFR 122.44(d)(1), which states:

“...Each NPDES permit shall include...any requirements ...necessary to...achieve water quality standards established under section 303 of the CWA...[L]imitations must control all pollutants...which...are or may be discharges at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”

EPA recognizes that, through similar but inconsistent wording, EPA was not clear in reflecting this specific regulation. Rather than revise the text as recommended by the commenters, in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas EPA has deleted the terms “violation” and “exceedance” from the Permit. EPA has revised the text in Parts I.C.2, II.A.2.a., II.C.3, and the definition of “significant contributor of pollutants” within Part VII, in accordance with 40 CFR § 122.44(d) to include the phrase “*an excursion above [the] Idaho water quality standard.*”

14. Comment regarding Part I.C.2 – Discharges threatening water quality (ACHD):

Commenter requests clarification of this Part. This requirement is too restrictive and could be construed as an effluent limit for all outfalls. Further, this language is vague, overly-broad, and does not provide the permittee adequate notice of what discharges EPA may consider not covered or not in compliance with the permit. Commenter suggests the text be edited to state:

“The permittee is not authorized to discharge stormwater that will cause, ~~or have the reasonable potential to cause or contribute to~~, violations of water quality standards”

Response: EPA declines to revise the permit text as suggested by the commenter. 40 CFR § 122.44(d) requires EPA to include permit conditions that ensure that there will not be a potential for the storm water discharges to cause or contribute to an excursion above Idaho water quality standards.

40 CFR §122.34 further refines the NPDES storm water permit 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 maximum extent practicable(MEP). As such, EPA has included Part I.C.2 in the each of the MS4 permits in Idaho, plus requirements for the actions and activities to target and prevent pollutants discharged to and from the MS4.

15. **Comment regarding Part I.C.3 – Discharge Compliance with Anti-Degradation Policy (ACHD):** This Part may be problematic given that the permittee likely has little or no control over the water quality of the relevant receiving water or the quality/timing of other entities' discharges. This requirement may result in cost shifting from other dischargers to the permittee, as storm water from the permittee's MS4 may require additional treatment before entering particular receiving water. It may be difficult to determine in advance of a discharge whether such discharge may violate the anti-degradation policy. Commenter recommends revising the text to state:

“Permittee is only authorized to discharge stormwater that complies with the State of Idaho's anti-degradation policy for water quality standards (See IDAPA 58.01 .02.051).”

Response: EPA must issue a NPDES permit that ensures that state water quality standards are met. The Anti-Degradation Policy is a state water quality standard. As such EPA has included the Permit text as proposed which has been previously suggested by IDEQ in other MS4 permits issued by EPA in the State of Idaho. EPA declines to revise the Permit text as suggested by the commenter.

16. **Comment regarding Part I.C.4 – Snow Disposal to Receiving Waters (M, LBWC, N, C, NHD, CHD):** EPA has provided insufficient rationale for including the permit condition related to snow dumping/disposal. Commenters request clarification of this Part pertaining to several topics:

- 1) EPA should clarify that snow cannot be disposed directly to waters of the United States or directly to the MS4s, except where/when needed to serve public property/safety in extreme conditions.
- 2) Commenters suggest that the phrase "snow management practices" be defined so that the typical practice of snow plowing with the snow removed from the roadway surface and directly deposited along the roadway is not included, and is allowed as a storm water discharge, as well as to specifically authorize the discharges due to snow removal from the traveled way to the adjacent curb/gutter and borrow ditches within the rights of way as required for public safety.
- 3) EPA should clarify that this Part specifically pertains to disposal sites that are owned and operated by the permittee.

4) Commenters also suggest various revisions to Part I.C.4, in order to specify that discharges from permittee-owned snow disposal sites and permittee's snow management practices be authorized under these permits when such sites are operated using best management practices (BMPs) designed to prevent or treat pollutants to the Maximum Extent Practicable

Response: EPA agrees to include the phrase "owned and operated by the permittee," in Part I.C.4 of the permit, but otherwise declines to revise the text as requested by the commenters.

The definition of "storm water" found at 40 CFR §122.26(b)(13) means "stormwater runoff, snow melt runoff and surface runoff and drainage." This permit authorizes the discharge of storm water, including snow melt, from each of the eight Phase II MS4 operators within the Nampa and Boise Urbanized Areas to waters of the United States. Similar language to that found in Part I.C.4 of the Permits is contained in all MS4 permits issued by EPA Region 10. The purpose of this provision is to explicitly prohibit the practice of dumping excess snow collected from urban areas directly to waters of the United States. In addition, this Part also seeks to limit the discharge of pollutants in snow melt water from permittee-owned snow disposal sites and snow management practices through the implementation of BMPs.

Snow plowed from urban streets and parking lots can contain a variety of materials which accumulate on the snow pack and other cleared surfaces. Studies of urban snow disposal sites in northern climates demonstrate that snow melt water from such sites can be a source of significant pollutant loadings to surface water, and commonly contains pollutants such as debris, sediment, chlorides, and oil/grease. (See Appendix B of this document for references contained in the permit's Administrative Record).

In the preamble to the Phase II stormwater regulations, EPA discusses that it is appropriate for MS4 operators to consider controls for reducing or eliminating the discharge of pollutants from various municipal operations, including snow disposal areas operated by the municipality. (64 FR 68761-68762, December 8, 1999). EPA exercises its discretion to include this requirement in these MS4 permits and uses its enforcement discretion on a case-by-case basis when evaluating MS4 permit compliance with regard to snow disposal and management activities conducted by permittees.

EPA clarifies that the permittee's existing snow management activities to provide necessary public safety do not conflict with the requirements of this Permit, provided that the permittee employs all reasonable practices to minimize the accumulation of grit, litter, and other pollutants in snow plowed from the permittee's roadway. MS4 operators must define appropriate BMPs to control pollutants from municipal operations as required in Part II.B.6 –snow management throughout the permit area is one of several municipal activities that the permittee must assess in order to confirm that reasonable BMPs are being used by the permittee to protect water quality.

As described in the references listed in the Administrative Record, appropriate practices which the permittee should consider and utilize include: using upland areas for the storage and disposal of accumulated snow, preferably in flat areas at least 100 feet from adjacent water bodies, wetlands, and areas near public or private drinking water wells; dumping snow exclusively in pervious areas where it can infiltrate; conducting regular street sweeping once snow has melted to collect accumulated traction material; and/or removing sediment and debris from dump areas each spring.

17. **Adding Part I.C.5:** Also see Response to Comment # 7. By adding a new provision EPA clarifies that regulated storm water discharges are authorized to discharge from the NHD's MS4, provided the regulated industrial or construction storm water is separately permitted under the appropriate NPDES permit.

Comments Related to Permit Part II – Storm Water Management Program

18. **Comment regarding Part II.B.1.a, b & c (Public Education) (M, N, C):** The compliance dates in this Part should be extended to allow at least 18 months from the permit effective date; one commenter suggests 2 years. Further, one commenter requests clarification that public education activities begin after the initial 2 year period. Each commenter states that additional time is necessary to manage the tasks and to allow for coordination with other MS4s in the Nampa Urbanized Area.

Response: EPA agrees to extend the compliance dates in Parts II.B.1.a, b & c to 2 years from the permit effective date. EPA has changed the text accordingly in the City of Middleton, City of Nampa and City of Caldwell permits. In addition, EPA has revised the relevant dates of Parts II.B.1.a & b in the ACHD, CHD, NHD, and NPHD permits. In the ITD3 permit, only the date of Part II.B.1.a has been revised. EPA clarifies that the tasks of II.B.1 b (and c, as reflected in the Cities' permits) are to begin after the initial two year period. Table III in each permit has also been updated to reflect these changes.

19. **Comment regarding Part II.B.1.b & c (C):** The City assumes it will have the discretion to determine what educational materials are appropriate and what individuals, groups/entities are considered to be "target audiences." If not, please clarify these phrases.

Response: Yes, the permittee has the discretion to identify target audiences and to determine appropriate outreach materials for those audiences.

20. **Comment regarding Part II.B.2.b, d, & f (Public Involvement) (C):** City of Caldwell requests three changes to this Part:

1) a compliance date three years from the permit effective date be for Part II.B.2.b (posting Storm Water Management Program (SWMP) information on a website);

2) clarification that the requirement of Part II.B.2.d (public meetings regarding SWMP implementation) begins after that initial three year period; and

3) a compliance date of two years from permit effective date for initiating the storm drain stenciling program in Part II.B.2.f

Response: EPA agrees to extend the compliance date as requested for Part II.B.2.b for the Caldwell permit. For consistency, EPA has also revised this Part and Table III in the Middleton Permit and each of the other Phase II MS4 permits in the Boise/Nampa Urbanized Areas.

EPA declines to make the change requested for Part II.B.2.d of the Caldwell permit, and clarifies that the requirement to host at least one public meeting regarding the SWMP per year begins within one year from the permit effective date.

EPA agrees to revise the date by which Caldwell begins its storm drain stenciling program to two years from the permit effective date, and revises the comparable requirement of Part II.B.2.c in the Middleton Permit.

21. **Comment regarding Part II.B.2.a (NHD, CHD):** Commenters request that the compliance date be revised to two years from permit effective date.

Response: Part II.B.2.a is the basic acknowledgement that permittees must comply with existing State/local public notice requirements. There is no compliance date associated with this requirement.

22. **Comment regarding Part II.B.2 (NHD):** Commenter requests clarification that other appropriate means (i.e. website, email, etc.) may be used to receive information from the public rather than the specified "citizens hotline telephone." There are more effective methods to obtain public information.

Response: EPA agrees. The NHD, NPHD, and CHD permit applications stated that telephone hotlines would be used to implement this minimum control measure, however given available technologies, EPA has revised the text of the NHD, NPHD and CHD permits to read:

“No later than two years of the permit effective date, the permittee must establish and promote an appropriate method of ~~storm-water citizens hotline telephone~~ to receiving, tracking and considering information submitted by the public regarding stormwater concerns from the public; appropriate methods may include, but are not limited to, a telephone hotline, email, or website reporting.”

23. **Comment regarding Part II.B.3.a, b, c, d, & e -Illicit Discharge Detection & Elimination program [IDDE]:** All commenters suggest that compliance dates in this Part should be extended to three years from the permit effective date. One

commenter suggests that compliance with the mapping requirement should occur by the end of the permit term. The reasons identified for the extended time include complexity of the MS4 system, and the need for increased resources to complete the tasks.

Response: EPA agrees to revise Part II.B.3.a, b, c, d, & e to allow three years from the permit expiration date for operators to implement the IDDE program. The compliance date for dry weather screening in Part II.B.3.f –is no later than the permit expiration date. Part II.B.3 and Table III in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas have been revised accordingly.

EPA declines to further extend the compliance dates beyond three years; EPA and IDEQ have expected this work to be in progress as required through the Boise River Total Maximum Daily Load (TMDL) Implementation Plan.

24. **Comment regarding Part II.B.3.a: (NHD):** The term "jurisdiction" should be replaced with "Permit Area" as previously noted in Part I.A. of the permit.

Response: EPA agrees to make the revision to each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

25. **Comment regarding Part II.B.3.b (NHD, CHD):** Commenters suggest deleting the term "*effectively*" since this term does not define how to measure compliance with this portion of the permit. In addition, a Highway District does not have the authority to pass ordinances which provide that violations are crimes. See Article XII §2 Constitution of the State of Idaho. Commenters suggest the following underlined changes:

"Within [three] years from the effective date of this permit, the permittee ~~must effectively~~ shall implement all reasonable regulatory controls authorized by law to prohibit non-storm water discharges into its system. MS4 through an ordinance or other regulatory mechanism to the extent allowable under State or local law. The permittee must implement appropriate enforcement procedures and actions, including a written policy of enforcement escalation procedures for recalcitrant or repeat offenders."

Response: EPA declines to revise the language as suggested by the commenters. As previously noted, EPA understands the powers of local highway districts under Idaho law, and the proposed language "to the extent allowable under State or local law" accommodates this situation. EPA will assess whether a permittee accomplishes this requirement by reviewing 1) the written description of how the operator implements its existing powers under State law; 2) evaluating the written policy of enforcement procedures, and 3) reviewing the summary of the number and nature of inspections, formal enforcement actions, and/or other similar

activities performed by the permittee. All of these items should be included in the Annual Report.

26. **Comment regarding Part II.B.3.c (CHD, NHD):** Revision of the non-storm water discharge section as requested previously is necessary to address concerns with this requirement with respect to irrigation and waste-irrigation flows in roadside ditches that serve both as storm water systems and irrigation systems.

Response: See Response to Comment #11.

27. **Comment regarding Part II.B.3.c (ACHD):** Some provisions in this permit go beyond what is required of ACHD in their current Phase I MS4 Permit for the Boise Area. These new provisions will be expensive to implement. It should also be noted that ACHD does not have the constitutionally delegated police powers of municipalities. Therefore, ACHD can only impose a civil penalty.

Response: EPA understands the powers of local highway districts under Idaho law, and the proposed language in Parts II.B.3, II.B.4, and II.B.5 stating “as allowed under State or local law” accommodates this situation.

At the time the Phase II regulations were enacted, it was noted that:

“EPA has no intention of directing State legislatures on how to allocate authority and responsibility under State law...If State law prevents political subdivisions from controlling discharge through storm sewers, EPA anticipates common sense will prevail to provide those MS4 operators with the ability to meet the requirements applicable to their discharges.”

64 FR 68757, December 8, 1999.

All regulated MS4 operators, including local highway districts, must use all regulatory controls authorized by Idaho law to prohibit non-storm water discharges to the MS4, and to prevent the discharge of pollutants from the MS4 to the maximum extent practicable as required by other provisions of this Permit.

28. **Comment regarding Part II.B.3.d- MS4 mapping (CHD, N, M).** The first sentence of this section should include "...within the Permit Area." for clarification since the mapping does not include all the area within the jurisdictional boundaries. One commenter requests that private snow disposal sites be excluded from the list of locations to be shown on the map unless specifically identified to contribute runoff to the MS4 system, and requests clarification why such sites are to be included on a MS4 system map. Due to the complexity of the MS4, one commenter requests to be given until the permit expiration date to complete their map.

Response: EPA declines to make the changes to this Part as requested by the commenters. All requirements of this permit are effective within the permit area described in Part I.A, which does not need repeating in this Part.

EPA will clarify this Part in all eight of the Phase II MS4 permits for the Nampa and Boise Urbanized Areas that the locations of “permittee owned or operated facilities, (including all maintenance/storage facilities), and permittee owned or private snow disposal sites” are expected to be indicated on the map. See also Response to Comment #19.

The intent of mapping the snow disposal sites and their proximity to receiving waters (or the MS4) is to allow EPA and the permittee to understand where such inputs to the MS4 are located. Moreover, since snow melt from snow piles can be a significant source of pollutants, EPA is using its discretion to require the location of both permittee-owned and private snow disposal sites on the required MS4 map. If snow melt from a snow disposal site does not discharge to the MS4, the location does not need to be located on the map.

EPA declines to extend the compliance date for producing the MS4 system map; EPA and IDEQ expected that permittees have been working on the map in accordance with the TMDL Implementation Plan.

29. Comment regarding Part II.B.3.e – Illicit discharge education (CHD, NHD):

The term "hazard" implies a personal danger and should be replaced with "negatively impacts to the environment".

Response: Household hazardous waste and illegal dumping of materials to MS4s or receiving waters can pose a risk to human health and the environment. The purpose of this requirement is to instruct members of the public about these hazards. EPA declines to make the revision as requested.

- 30. Comment regarding Part II.B.3.f - Detecting illicit discharges (CHD, NHD, M, C, N):** Commenters suggest that irrigation return flow and agricultural stormwater runoff should be exempt from this requirement if discovered during dry weather screening because these discharges are allowable non-storm water discharges. Other commenters request guidance to determine the parameters to be utilized to test dry weather flows, and ask whether the permittee can select the parameters. Commenters also request a more realistic number of outfalls to be screened by the permit expiration date, and suggest 20% of total outfalls, rather than 50% as proposed.

Table A: Number of outfalls as identified in Public Comments.

	Number of outfalls	Miles of MS4
Caldwell	380	
Nampa	More than 300	
ACHD	992	576

Response: EPA has added irrigation water to the list of “allowable non-storm water discharges.” See Response to Comment #12. Any discharges of irrigation water discharging during dry weather from the MS4 should be identified as such by the permittee. The permittee is not required to eliminate such discharge from the MS4.

Permittees may select the parameters to test dry weather flows, EPA suggests that the permittees consult the Center for Watershed Protection’s *Illicit Discharge Detection and Elimination A Guidance Manual for Program Development and Technical Assessments*, for guidance regarding selection of appropriate parameters for dry weather testing. This guidance is found on EPA’s website at http://www.epa.gov/npdes/pubs/idde_manualwithappendices.pdf.

EPA agrees to revise the target number of outfalls to be screened and has revised each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas to reflect that 20% of the outfalls must be screened for dry weather discharges during the permit term.

31. **Comment regarding Part II.B.3.g - Inventory of industrial discharges (M, N, CHD, NHD):** Commenters suggest revisions to clarify that the inventory must be done only within the permit area, and must only identify those facilities which discharge to the MS4. Commenters also request that EPA delete the requirement to report the NPDES permit status of an identified industrial facility because determining NPDES permitting status is EPA’s responsibility.

The Highway Districts further note that they have no regulatory authority over direct discharges by industrial facilities into waters of the United States nor would such discharges have any connection to the MS4. Therefore, they propose that the text be revised to include only those industrial facilities directly discharging into the regulated MS4.

Response: All requirements of this permit apply within the permit area. EPA agrees to make the following changes to the text of this Part in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas to clarify that this inventory is required only within the permit area (*i.e.*, the Urbanized Area) for industrial facilities that discharge storm water to the MS4:

“Within three years from the effective date of this permit, the permittee must inventory all industrial facilities that discharge directly to the permittee's MS4 ~~or directly to waters of the United States located within the permittee's jurisdiction~~ and submit this inventory as part of the corresponding Annual Report. The types of industrial facilities that must be inventoried are set forth in 40 CFR § 122.26(b)(14)(i-ix). This inventory must include the name and address ~~location~~ of the facility, and the location of its outfall. ~~and the NPDES permit status for its storm water discharges.~~”

32. **Comment regarding Part II.B.4 - Control of Runoff from Construction Sites (C, N, CHD, NHD):** Commenters suggest that compliance date for each Subpart should be changed to at least 3 years from permit effective date, and Table III corrected accordingly. Minor punctuation corrections are identified as well.

Response: EPA agrees to make the changes as requested to each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

33. **Comment regarding Part II.B.4.a (N):** How will EPA notify the permittee of any such waivers granted?

Response: EPA posts such waiver information on its national Storm Water Notice of Intent website (www.epa.gov/npdes/stormwater/noisearch). Because this is an indirect means of communicating with the permittee, and EPA does not have any alternative means of providing the information, EPA has deleted the language related to the waivers from each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

34. **Comment regarding Part II.B.4.g (M, ACHD, N, NHD, CHD) :** The language of this section appears to require the inspection of all construction projects for appropriate erosion/sediment/waste control practices rather than projects meeting the threshold criteria for projects of one acre of land disturbance or greater. Commenters request that additional language be added to clarify this requirement

One commenter adds that the once-per- season inspection requirement for all construction sites may prove to be costly, burdensome, and resource intensive. The ACHD NPDES Phase I permit requires inspection of construction sites are prioritized to address and emphasize those that have the most potential for water quality impacts. Commenter recommends deleting the text requiring inspection of all construction sites.

Response: EPA acknowledges that inspection of all construction sites within the permittee's jurisdiction may present resource challenges; however, inspection and enforcement of the permittee's requirements is a primary means of ensuring that pollutants are not discharged to the MS4. EPA agrees to revise the permit text to identify that only large construction sites (>5 acres) must be inspected by the permittee, and that the permittee must develop a written prioritization policy for when it will inspect construction sites disturbing less than 5 acres. The permit text in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas has been revised in the following manner:

“Within three years from the effective date of this permit, the permittee must develop and implement procedures for site inspection and enforcement of control measures established as required in Parts II.B.4.c and d, including a written policy of enforcement escalation procedures for recalcitrant or repeat offenders. Within three years from the effective date

of this permit, the permittee must inspect all construction sites *in the permit area disturbing five (5) acres or more for appropriate erosion/sediment/waste control practices at least once per construction season. Within three years from the permit effective date, the permittee must also develop a written policy identifying how construction sites disturbing less than 5 acres will be prioritized for inspection.*"

35. **Comment regarding Part II.B.5.a & b, d, and e- Runoff Control from New Development/Redevelopment- deadlines (M, N):** The commenters request that the compliance date for these requirements be extended to at least four years from the permit effective date.

Response: EPA agrees and has corrected the dates in this Part and Table III for each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

36. **Comment regarding Part II.B.5.a (NHD, CHD):** To clarify the permit area, the Commenter requests the language be revised to read "...that result in discharge into the permittee's MS4 within the Permit Area." The Highway District's MS4, as defined in the draft permit, includes highways and drainage that are outside of Urbanized Area and not intended to be included in the coverage of this permit.

Response: EPA agrees and makes the change to this Part in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

37. **Comment regarding Part II.B.5.c & d (M, N):** Commenters request that the compliance date for this requirement be extended to the permit expiration date, and that the text be amended to clarify that private storm water management controls not connected to the MS4 are not covered by this requirement.

Response: EPA agrees to extend the compliance date for this Part, and has revised each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas accordingly. EPA clarifies that the permittee must ensure the proper operation and maintenance of only for those stormwater management controls which are connected to the permittee's MS4.

38. **Comment regarding Part II.B.5.c (CHD):** To clarify that the requirement applies only to newly constructed facilities within the permit area as previously noted, this requirement should have the language revised to read:

" ... all permanent storm water management controls for newly developed project areas greater than or equal to one acre in size located within the Permit Area."

Response: For clarity, EPA agrees to make this change to each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

39. **Comment regarding Part II.B.6.a. b. & c - Good Housekeeping for Municipal Operations (M):** Commenter requests that the compliance date for this requirement be extended to four years from the permit effective date. Such a compliance schedule was previously allowed by EPA for the City of Pocatello MS4 permit (#IDS028053)

Response: EPA agrees, and has revised the date in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

40. **Comment regarding Part II.B.6.a (CHD, NHD):** Commenters request that the term "jurisdiction" be replaced with "Permit Area" to clarify that the activity only needs to occur within the permit area.

Response: The commenters are correct that the activity only needs to occur within the Permit Area set forth in the NPDES Permit. As such, EPA agrees to make the revision as requested in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

41. **Comment regarding Part II.B.6 (NHD):** Commenter suggests that because a Highway District is not a municipality, the word "Municipal" should be replaced with either "roadway" or "agency" through this section and the entire permit.

Response: 40 CFR 122.2 defines a "municipality" as "a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of CWA." Therefore, under the federal CWA regulation, a highway district is a "municipality" because it is a public body created under State law with jurisdiction over the disposal (or discharge) of storm water into waters of the U.S. EPA declines to replace the term "municipal" with "Highway District."

42. **Comment regarding Part II.B.6.b (NHD):** Commenter suggests the term "*optimum maintenance practices*" is undefined, and should be replaced with "*best management practices*," which is defined in the permit.

Response: EPA agrees, and has made the revision in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

Comments Related to Part II.C – Discharges to Water Quality Impaired Receiving Waters

43. **Comment regarding Part II.C.2 (M, N, C, LBWC):** Commenters request clarification of this Part. It appears EPA is indirectly requiring testing of all discharges within the permittees' MS4s. Such testing is cost prohibitive, and is

inconsistent with the monitoring requirements in Part IV. The term “any parts of the MS4 and 303(d) listed water bodies” implies that continuous monitoring is required at all discharge points in all of the receiving waters. In addition, two commenters state that “pollutant(s) of concern” are too broadly defined; specific nutrient(s) of concern (i.e. total phosphorus as opposed to nitrogen) should be listed as well as specific bacteria (i.e., fecal coliform as opposed to enterococcus) as appearing in the Lower Boise River TMDL.

Response: This section does not require continuous monitoring at all discharge points. This section is intended to direct all permittees to tailor their storm water management activities to specifically address the pollutants of concern as listed in the Lower Boise River TMDL. At a minimum, the permittees should qualitatively determine the effectiveness of their storm water management program activities to reduce the discharge of the pollutants of concern from their MS4. Prioritizing and focusing the various activities (i.e., public education, construction runoff control, good housekeeping, etc) to target and eliminate possible inputs of sediment, nutrients, and bacteria to their MS4.

To clarify the pollutants of concern, EPA has revised this Part in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas to specify total phosphorus, and *E.coli* as the “pollutants of concern.”

Although the Lower Boise TMDL was developed for bacteria at a time when the Idaho water quality standard was identified for fecal coliform, in 2000 IDEQ revised its water quality standards for bacteria indicators from fecal coliform to *E.coli*. IDEQ now uses *E.coli* sampling to review progress toward meeting TMDL allocation for bacteria in water bodies where TMDLs were previously developed using fecal coliform data. The Idaho water quality standard for *E.coli* is a geometric mean of one hundred twenty-six (126) *E. coli* organisms per one hundred (100) ml, based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period.

44. **Comment regarding Part II.C.3 (M, N):** One commenter requests the compliance date be extended to 17 months from the permit effective date, with an update once per year thereafter to coincide with the Annual Report

Another commenter states that because many of the controls identified in Part II.B provide two or three year periods to develop, it is likely that the first Annual Report will summarize the status of getting all the measures addressed, funded, and in place if required for year one. Terms such as “ensure”, MEP and “violation” will be difficult to assess and confirm after only one year into the plan. Additionally, achieving MEP may take several years or more as suggested by Part II.B. The commenter therefore recommends adding specific revisions to this Part

Response: EPA agrees to revise the text in a manner suggested by the commenter, but retains the requirement to report annually on the manner in which the SWMP

activities are being targeted to control the pollutants of concern.

“Maximum extent practicable” is the statutory standard that establishes the level of pollutant reductions that operators of regulated MS4s must achieve. EPA envisions application of the MEP standard as an iterative process; MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. See EPA discussion at 64 FR 68754, December 8, 1999. EPA has elected to include this provision, in combination with other provisions of the proposed MS4 permit(s), to identify and track the permittee’s incremental implementation of its SWMP.

The text of each of the eight Phase II MS4 permits in the Nampa and Boise Urbanized Areas will be revised to read as follows:

“The permittee’s Annual Report must include a description of how the activities in each of the minimum control measures in Part II.B will be targeted by the permittee to control the discharge of pollutants of concern..... This discussion must specifically identify how the permittee will evaluate and measure the effectiveness of the SWMP to control the discharge of the pollutants of concern. For those activities identified in Part II.B requiring multiple years to develop and implement, the permittee shall provide updates on progress to date. The permittee must submit this description of the SWMP implementation to EPA and IDEQ as part of the first Annual Report required in Part IV.C, and update it annually in subsequent Annual Reports.”

45. **Comment regarding Part II.C.3 (ACHD):** The permittee is required to “ensure to the maximum extent practicable that the MS4 discharges will not cause an in-stream violation of the applicable water quality standards.” Commenter requests that EPA acknowledge that implementation of an approved TMDL will satisfy this condition, and recommends the following text:

“The implementation of an EPA approved TMDL is considered as meeting the maximum extent practicable.”

Response: EPA has revised the sentence referenced by the commenter; see Response to Comment #14. EPA declines to add the text as requested by the commenter. The TMDL Implementation Plan states that “Plan implementation is based on a schedule related to the proposed timeframes associated with the Phase II stormwater requirements.” (See *Implementation Plan for the Lower Boise River Total Maximum Daily Load*, page 28, found online at http://www.deq.idaho.gov/water/data_reports/surface_water/tmdls/boise_river_lower/boise_river_lower_plan_noapps.pdf). IDEQ has concurred with EPA that implementation of a Storm Water Management Program as outlined in each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas is consistent with the TMDL Implementation Plan.

The SWMP actions and activities outlined in the permit provide the structure intended by the TMDL Implementation Plan. Adding the text requested by the commenter would inappropriately create a circular reference between the permit requirements and the TMDL Implementation Plan for urban and suburban runoff discharges to the Lower Boise River. The SWMP must be designed and implemented to reduce the discharge of pollutants from the MS4 to the maximum extent practicable. It is the SWMP itself that accomplishes the reduction of pollutants from the MS4 to the maximum extent practicable. Therefore, it is not implementation of the TMDL that meets the MEP standard. It is the permittees implementation of the SWMP through compliance with this permit that meets the MEP standard.

46. **Comment regarding Part II.C.3 (C):** Commenter suggests changing the word “violation” in this Part to “exceedances.”

Response: See Response to Comment #13.

Comment Related to Part II.F – SWMP Resources

47. **Comment regarding Part II.F (N):** Commenter points out that if EPA allows the permit effective date and associated compliance deadlines to be extended the permittees can obtain adequate and appropriate resources for the permit activities.

Response: Comment noted. EPA has extended many compliance dates as requested by the commenters. See Response to Comments #3 and 4.

Comments Related to Permit Part III – Schedule for Implementation & Compliance

48. **Comments regarding Table III (M, ACHD, C, N, CHD, NHD, ITD3):** Each commenter has identified various revisions and typographical errors in Table III based on the previous comments.

Response: EPA has made appropriate changes to Table III as requested by the commenters.

49. **Comment regarding Table III reflecting Part II.D & IV.C (CHD, NHD).** Commenters requests that compliance dates be revised to read "One year and four months from the effective date ..." This would allow adequate time to prepare the annual report after completion of each full permit year and, consistent with Comment 2, allows the District's funding cycle and permit goals to be coincident. Part II.D and IV.C should be revised so that the compliance date is the second Friday in February at least one year and four months from the effective date of the permit. This comment reinforces our third comment regarding setting the effective

date to coincide with NHD's fiscal year and allowing time to consolidate the report after meeting the submittal requirement of our other existing reporting requirements.

Response: See Response to Comment #51.

Comments Related to Part IV - Monitoring, Recordkeeping and Reporting

50. **General Comments regarding the Monitoring Requirements (LBWC):** “Pollutant(s) of concern” are too broadly defined in the draft permits; the Lower Boise River TMDLs and implementation plans describe the impairment of water bodies in the watershed by total suspended sediments (TSS), *E. coli*, and total phosphorus.

Response: See Response to Comment #43.

51. **Comment regarding Part IV.C - Deadline for the Annual Report (C, ITD, ACHD, M, N, NHD, CHD):** Commenters suggest that the deadline for the Annual Report should be linked to the end of the permittees’ fiscal years and the requested permit effective date of October 1 (see Response to Comment #4). Commenters suggested between 90 - 150 days after October 1 as the due date; two commenters request clarification that the first Annual Report covers the second full period (October 1 — September 30) after the permit effective date.

Response: This comment is relevant to all eight of the Phase II MS4 permits for the Nampa and Boise Urbanized Areas. EPA agrees revise Part IV.C.2 as indicated below to identify a specific date (January 15) by which the Annual Report must be submitted; the report will reflect work done in the previous 12 month reporting period ending October 15th.

“No later than January 15 of each year beginning in year 2011, the permittee must submit an Annual Report to EPA and IDEQ. The reporting period for the first Annual Report will be from the effective date of this permit through October 15, 2010. The reporting period for all subsequent annual reports will be the 12 month period ending October 15th of the previous calendar year. Copies of all Annual Reports must be made available to the public, at a minimum, through a permittee-maintained website.”

52. **Comment regarding Part IV.C – Annual Report Content (ACHD):** The permit does not make any meaningful distinction between “complaints” and “enforcement actions” received from other regulatory agencies. For clarity, delete text related to “informal” documents or similar actions, as follows:

“Such actions include, but are not limited to, formal ~~or informal~~ warning letters, notices of violation, field citations, or similar

formal actions.”

Response: EPA agrees to make this revision to each of the eight Phase II MS4 permits for the Nampa and Boise Urbanized Areas.

Comments Related to Permit Parts V, VI, and VII

53. **Comment regarding Part V.G (NHD, CHD, M):** The commenters request clarification of whether this section requires EPA and IDEQ approval for all MS4 system changes or extensions? Any system change or improvement could change the pollutants discharged, even if such improvements are incorporating best management practices. For example, the City of Nampa will be periodically annexing portions of NHD. Would these annexations then result in a physical alteration of the system requiring notification? If so, this provision would be unduly burdensome to the permittees. If necessary, notification may be accomplished annually within the required reporting process.

Response: Part V.G. of the Permit is considered a “standard permit condition” that is required to be included in all NPDES permits pursuant to the NPDES regulations at 40 CFR § 122.41(l)(1). EPA cannot revise the text of a standard permit condition. EPA clarifies that Part V.G. does not require approval from EPA or IDEQ for planned changes to the MS4. Annexations of existing MS4s by one operator from another operator are not considered “physical changes or additions to the permitted facility” as envisioned by this regulation. If the operator has any questions as to whether something needs to be reported as a planned change, the operator should contact EPA for clarification.

54. **Revisions to Part V.B:** On December 11, 2008, EPA finalized the Civil Monetary Penalty Inflation Adjustment Rule as mandated by the Debt Collection Improvement Act of 1996. (See 73 FR 75340, December 11, 2008.) This rule adjusts for inflation the statutory civil monetary penalties that may be assessed for violations of EPA administered statutes and implementing regulations.

EPA has revised Part V.B to reflect the adjusted penalties.

Comments Unique to Highway Districts: Nampa, Canyon, Notus Parma, and Ada County Highway Districts

55. **General Comment (CHD, NHD):** The permittees should be referenced as “Canyon Highway District No.4” and “Nampa Highway District No.1,” respectively.

Response: Comment noted; corrections have been made to the respective Permit text as necessary.

56. **Comment (NHD):** All references to the “*permittee's jurisdiction*” should be replaced

with "*permit area*" since this permit only applies to those areas within the Commenter's jurisdiction that fall within the Nampa Urbanized Area. NHD only has jurisdiction for public rights-of-way within the district boundary and NHD does not have any police authority.

Response: Comment noted. Where appropriate, EPA has made the changes as necessary in the NHD, CHD, NPHD and ACHD Permits.

57. **General Comment (NHD):** Due to the rural nature of the NHD roadway system and the District's limited authority related to land use and policing powers, which are not typical of an MS4 system regulated under the NPDES program, there are significant challenges to both NHD and EPA in finalizing terms of this permit. Therefore, NHD believes it is essential for all parties involved to identify specific, measureable and attainable provisions in this permit, so that the expectations and goals of the permit are clear to the EPA, NHD, NHD's patrons and any interested third parties.

Response: EPA agrees. The final Permit text substantively identifies the expectations for the permittee's Storm Water Management Program.

58. **Comment regarding Part I.A – Permit Area (CHD, NHD):** Highway Districts are formed and exist pursuant to Chapter 13, Title 40 of the Idaho Code. A Highway District's authority is limited to the public rights-of-way under their control; they do not have any police authority. Commenters request that Part I.A of the Highway Districts' Permits be revised to state that the Permit covers "all areas within the ... Urbanized Area served by roads with drainage systems, highways of the Highway District including catch basins, curbs, gutters, ditches, etc." This revision would be consistent with how a "highway district system" is defined under the Idaho Code.

Response: A regulated MS4 has a specific definition under the CWA and its implementing regulations. EPA acknowledges the Highway Districts' limited jurisdiction and authority. EPA has determined that it would not be appropriate to change the Permit Area description to be consistent with the definition of highway district system set forth in the Idaho Code, insofar as this permit only requires SWMP implementation by the permittee in those areas located in the Urbanized Area where the permittee owns or operates the MS4.

59. **Comment regarding Parts II.B.4.a, 4.b and 4.h (NHD, CHD):** Highway Districts request that that term "overseen by" be replaced with "conducted by or under contract with," since overseen is not defined in the Permit. The terms "adequate oversight and direction" are unclear, and contracts have specific provisions that a contractor must comply with. In addition, requiring NHD to have "oversight and/or direction" of a contractor would force the District into a position of responsibility for the contractor's negligent acts which is not a generally accepted practice for government agencies. It seems to NHD that these matters would be better handled through contract performance conditions.

Commenters request that Part 4.b be revised to read:

“ Through the program set forth in Part II.B.4.a, the permittee must provide *Highway District construction contract performance conditions that ensure* require compliance with the NPDES General Permit for Storm Water Discharges for Construction Activity in Idaho, #IDR 10-0000 (Construction General Permit)”

Response: EPA agrees to make the text changes as requested to Permits for NHD, CHD, NPHD, and ACHD.

60. **Comment regarding the Districts’ ability to require construction site runoff controls and requirements for permanent storm water controls at new developments (NHD, CHD, ACHD):** Parts II.B.4.c & d are not appropriate for Highway Districts. Under Idaho state law, Highway Districts do not have land use or police authority and have no legal means (constitutionally or statutorily) to enforce requirements for the use of appropriate erosion, sediment and waste control outside their existing rights-of-way. One commenter suggests that, unless Districts are afforded discretion by EPA implementing these provisions, developers will elect to build subdivisions with private roadways outside the jurisdiction of the District which would reduce available District funding to implement this permit (due to the highway distribution account formula in Idaho). With regard to Part II.B.5.a, commenter states that at the time of road construction related to new development, the public road rights-of-ways generally have not been dedicated to the public, and therefore the Highway District has no jurisdiction over on-site activities that are outside existing public road right-of-way.

Response: EPA acknowledges the Highway Districts’ stated limitations of enforcement and police powers. However, EPA expects Highway Districts to fully utilize all existing powers afforded them under state law to control or restrict construction related pollutants from entering their MS4. To the extent that Districts can control activities occurring within their right of way, EPA expects Districts to do so.

61. **Comment (NHD, CHD):** Part II.B.4 h should be revised to replace the term “ensure” with “require” since the term “ensure” implies a guarantee that Highway Districts cannot make on behalf of a contractor. EPA’s desired outcome will be better accomplished through performance conditions in the contract documents when services are provided by private contractors.

Response: EPA agrees to make the text changes as requested to Permits for NHD, CHD, NPHD, and ACHD.

62. **Comment regarding Part II.B.5.c (NHD, CHD):** Part II.B.5.c should be revised by replacing the term “ensure” with “maintain” since Highway Districts maintain

permanent facilities within its rights-of-way and, as described previously, has no land use of police authority to enforce provisions of this permit outside of NHD rights-of way.

Response: EPA agrees to make the text changes as requested to Permits for NHD, CHD, NPHD, and ACHD.

63. **Comment regarding Part II.B.5.d (NHD, CHD):** considering the District's limitations of authority within the district boundary and lack of police powers, Part II.B.5.d should be revised so the last sentence reads as follows,

"The permittee must implement an inspection program to require proper installation and monitor compliance of long term operation and maintenance requirements of such controls."

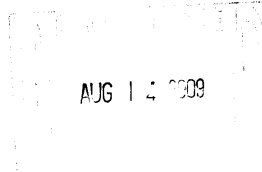
NHD believes this is a reasonable request when considering the District's limitations of authority within the district boundary and lack of police powers.

Response: EPA agrees to make the text changes as requested to Permits for NHD, CHD, NPHD, and ACHD.

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



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY



1445 North Orchard • Boise, Idaho 83706 • (208) 373-0550

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

August 11, 2009

Michael J. Lidgard
Office of Water, Region 10
U.S. Environmental Protection Agency
NPDES Permits Unit Manager
1200 Sixth Avenue, OW 130
Seattle, Washington 98101

Re: Final §401 Water Quality Certifications for NPDES Permit Nos.
IDS-028100, City of Middleton
IDS-028126, City of Nampa
IDS-028134, Canyon Highway District
IDS-028142, Nampa Highway District
IDS-028151, Notus Parma Highway District
IDS-028177, Idaho Transportation Department District #3

Dear Mr. Lidgard:

The Idaho Department of Environmental Quality (DEQ) has reviewed the proposed final NPDES permits for the referenced Municipal Separate Storm Sewer Systems within the Boise and Nampa urbanized areas. Attached is the State of Idaho's final water quality certification issued pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC Section 1341 (a)(1) and Idaho Code Sections 39-101 et. seq., and 39-3601 et. seq.

If you have any questions or need further information please contact Craig Shepard or me at 373-0550.

Sincerely,

Pete Wagner
Regional Administrator

Attachment

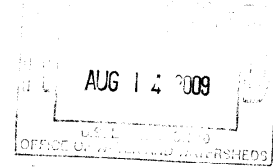
c: Doug Conde, Deputy Attorney General
Barry Burnell, Water Quality Division Administrator
Craig Shepard, DEQ – Boise Regional Office



Idaho Department of Environmental Quality
FINAL §401 Water Quality Certification

August 11, 2009

NPDES Permit Numbers: **IDS-028100**, City of Middleton
IDS-028126, City of Nampa
IDS-028134, Canyon Highway District
IDS-028142, Nampa Highway District
IDS-028151, Notus Parma Highway District
IDS-028177, Idaho Transportation Department District #3



Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC Section 1341 (a)(1), the Idaho Department of Environmental Quality (DEQ) has authority to review National Pollution Discharge Elimination System (NPDES) permits and issue a water quality certification decision.

DEQ has reviewed the proposed NPDES permits and associated fact sheets for the above-referenced facilities. Based upon its review and consideration of this information, DEQ certifies that if the permittees comply with the terms and conditions imposed by the above-referenced permits along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge(s) will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, including the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02) and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations or permits, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.

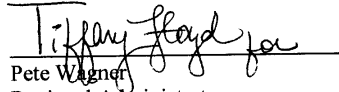
OTHER CONDITIONS

The certification is conditioned upon the requirement that any material modification of this permit or the permitted activities including without limitation, any modifications of the permit to reflect new or modified TMDL waste load allocations or other new information, shall first be provided to DEQ for review to determine compliance with state Water Quality Standards and to provide additional certification pursuant to section 401.

RIGHT TO APPEAL FINAL CERTIFICATION

The final Section 401 Water Quality Certification may be appealed by submitting 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 the final certification.

Questions regarding the actions taken in this certification should be directed to Craig Shepard, DEQ (Boise Regional Office) at (208) 373-0550.


Pete Wagner
Regional Administrator
DEQ Boise Regional Office

Appendix B: Snow Dumping and Disposal Practices

Alaska Department of Environmental Conservation. Evaluation of Snow Disposal into Near Marine Environments, Final Report, Prepared by CH2MHill. June 2006.
http://www.dec.state.ak.us/water/wnpspc/stormwater/adec_snow_disposal_evaluation.htm.pdf

Alaska Department of Environmental Conservation.. Snow Disposal Area Siting Guidance.
http://www.dec.state.ak.us/water/wnpspc/pdfs/dec_snowdisposal_siting_guidance_2007.pdf

Carlson, Robert F., David L. Barns, Nathanael Vaughan, Anna Forsstrom. 2003. Synthesis of Best Management Practices for Snow Storage Areas. University of Alaska, Fairbanks. Department of Civil and Environmental Engineering. Alaska Department of Transportation and Public Facilities Research & Technology Transfer. FHWA-AK-RD-03-04. September.

Oberts, Gary L. "Influence of Snowmelt Dynamics on Storm Water Runoff Quality", Article 3, Feature article from Watershed Protection Techniques, 1(2): 55-61.

South Dakota Department of Water and Natural Resources, Minimizing the Environmental Impact from Snow Disposal, South Dakota Nonpoint Source Program, 1990, www.state.sd.us/denr/dfta/watershedprotection/snow.htm.

U.S. EPA. National Management Measures to Control Nonpoint Source Pollution from Urban Areas, November 2005. EPA-841-B-05-004, pp. 7/1-19,
http://www.epa.gov/owow/nps/urbanmm/pdf/urban_guidance.pdf

EPA Memo: Draft Snow Dumping Policy, EPA and EPA Region 1, 1996

Wheaton, S. Private Snow Disposal Sites (On-Site Snow Storage Only) Operations Guidance (draft), Municipality of Anchorage, 2003.

Wheaton, S.R. and W.J. Rice, 2003. Siting, design and operational controls for snow disposal sites. In *Proceedings - Urban Drainage and Highway Runoff in Cold Climate*, March 25-27, 2003, Riksgränsen, Sweden, pp.85-95.

Steinkraus, D.. "Heading for the Lake- More than melting snow runs into the water," March 7, 2005. *The Journal Times Online*, Racine County, Wisconsin.

Emmons and Olivier Resources & Center for Watershed Protection. 2005. Issue Paper "G" - Cold Climate Considerations for Surface Water Management. Prepared for Minnesota Stormwater Manual Sub-Committee.

Massachusetts Department of Environmental Protection. 2001. Bureau of Resource Protection - Snow Disposal Guidance. Guideline No. BRPG01-01
<http://www.mass.gov/dep/water/laws/snowdisp.htm>

Minnesota Stormwater Steering Committee. 2005. The Minnesota Stormwater Manual Version 1.0 November <http://www.pca.state.mn.us/water/stormwater/stormwater-manual.html>

Municipality of Anchorage. 2005. Design Criteria Manual. Chapter 2 Drainage. June.