Response to Comments on

National Pollutant Discharge Elimination System (NPDES) Permit

For Discharges from the

City of Pocatello, City of Chubbuck, Bannock County,

Idaho Transportation Department-District #5, and Idaho State University

Municipal Separate Storm Sewer Systems

(also referred to as the *Pocatello Urbanized Area MS4s*)

NPDES Permit No. IDS028053

June 2019

U.S. Environmental Protection Agency, Region 10

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Introduction

On November 2, 2018, 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 systems (MS4s) owned and/or operated by City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department-District #5, and Idaho State University in Bannock County, Idaho. These entities are referred to collectively in this document as "the Pocatello Urbanized Area (PUA) MS4s" and/or "the Permittees." The permit document #IDS028053 will be referred to as "the Permit" and/or the "PUA MS4 Permit."

On November 5, 2018, the EPA received a request to extend the comment period beyond the original 30-day period ending December 3, 2018. The EPA granted the request and extended the comment permit by an additional 15 days. The public comment period ended on December 18, 2018.

This document provides responses to comments received on the proposed Permit. Comments are broadly organized by topic, in the order the issue appears in the Permit. Where indicated, the EPA has made changes to the final Permit. The Administrative Record contains copies of each comment letter, as well as information considered by the EPA during the permit development process.

Several comments and/or responses refer to discussion from the EPA's Fact Sheet (FS) supporting the proposed Permit. It is the EPA Region 10 policy not to revise the FS discussion based on public comment; instead, upon Permit issuance the EPA considers this Response to Comments document as an appendix to the FS that clarifies issues as necessary.

Response to Comments

Comments were received from the parties listed below, and are credited to their author/organization using the abbreviations indicated:

- Association of Idaho Cities (AIC)
- City of Caldwell, Idaho (Caldwell)
- City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department-District #5, and Idaho State University (Permittees)

State Certification under Clean Water Act §401

On October 22, 2018, the Idaho Department of Environmental Quality (IDEQ) provided the EPA with a preliminary draft Clean Water Act Section 401 certification that included conditions that must be included in the Permit pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). IDEQ accepted public comment on the draft CWA Section 401 certification of the Permit concurrently with the EPA comment period through December 18, 2018. On May 20, 2019, IDEQ certified the final Permit pursuant to CWA Section 401; a copy of the final certification is provided in Appendix C of this document.

Edits to the Final Permit

The EPA has made minor editorial changes throughout the Permit text for clarity, grammatical correction, and/or as noted by individual commenters. Major editorial changes have been made to the Permit Parts identified in Table 1 below in response to public comments or IDEQ input:

Table 1. Edits to Final Permit

Edits to Final Permit Based on Conditions in the IDEQ Final CWA §401 Certification:	
Permit Part 2.5.9	New text added, pursuant to IDEQ's Final CWA §401 Certification. See Appendix C. Note that the EPA includes only the requirement that Permittees consider and utilize best management practices identified in the Idaho DEQ *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties,* because compliance with the Permit as a whole constitutes what the EPA determines necessary to protect, maintain, and improve water quality to the maximum extent practicable.
Part 4.3; Table 4.3	Edits made to correct references to Portneuf Subbasin water body assessment units, and associated pollutants causing water quality impairment.
Edits to Final Permit based on Public Comments Received:	
Cover Page – Permit Effective Date: October 1, 2019 Permit Parts 6.4, Table 6.4.2.1 Part 8.2	See Responses #3, 34
Schedule – page 2 Parts 2.5.5 and 2.6 Parts 3.1; 3.2; 3.3; 3.4; and 3.5 (multiple) Parts 4.1.1; 4.1.2	See Response #6
Part 2.5.2	See Response #17
Parts 3.3.4 and 3.3.5	See Response #26
Part 4.2; Table 4.2	See Responses #30, 31
Part 9	See Response #28
Edits Based on Relevant Public Comments Received on Other Proposed MS4 Permits in Idaho:	
Parts 3.2.2.7; 3.5.6; 3.5.8	Added "*heavy equipment storage areas*" to listed Permittee facilities to be mapped and maintained /operated in a manner that is protective of water quality.
Part 3.2.6	Added "*and eliminate*" to clarify the EPA's expected follow-up on identified illicit discharges – sentence now reads *The Permittees must take appropriate action to address and eliminate the source of an ongoing illicit discharge within sixty (60) days of its detection, to the extent allowable to the Permittee(s) under Idaho law*

General Topics

1. **(Permittees):** ***General Comment*** **-** The Permittees appreciate the opportunity to comment on the proposed MS4 permit and Idaho 401 certification for the Pocatello Urbanized Area. Protection of public health and safety is an important responsibility of the permittee organizations. We are heavily invested in improving water quality in our communities and support a permitting program within the elements and requirements of the federal Phase II permit regulations and one that takes into account the need to employ adaptive management strategies over the long-term.

   Response #1: Comment noted. No change has been made to the Permit.

2. **(AIC):** ***General Comment*** **-** AIC appreciates the opportunity to comment on the proposed individual Phase 2 MS4 permit and Idaho 401 Certification. AIC understands that the Permittees look forward to working with our state and federal partners in the development of final permit conditions that conform with federal EPA Phase 2 regulations, protects water quality in Idaho in areas where stormwater may be having the most potential effect, and thus achieves a cost-effective use of local funding and resources to manage stormwater. AIC seeks to support the Permittees in these efforts because many of the Idaho MS4 Permittees are AIC's members.

   The protection of public health and safety is an important responsibility of Idaho communities. AIC has observed how these stakeholders consistently seek to ensure compliance and wish to preserve their ability to comply over the long term with Clean Water Act regulations. Both financial and technical resources are required by Idaho communities in order to ensure these investments are made in a manner that will ensure long-term compliance under the Clean Water Act. Idaho communities' investments must be informed through a well-supported Clean Water Act MS4 permitting program that takes into account the need to employ adaptive management strategies over the long term.

   Response #2: Comment noted. No change has been made to the Permit.

3. **(Permittees):** ***General Comment Regarding Permit Effective Date*** **-** The Permittees respectfully request that the permit effective date be moved to October 1, 2019, in line with the fiscal years for City of Chubbuck, City of Pocatello, and Bannock County. This date is after the new fiscal year for the state agencies (ISU and ITD), and as such will enable the Permittees to effectively budget for the staff and other expenses required to implement the first year of the Permit.

   (AIC) ***General Comment Regarding Permit Effective Date*** - AIC supports the Permittees' request that the Permit become effective on October 1, 2019, the start of the Permittees' fiscal year(s). This start date was previously discussed during the development of the Idaho MS4 General Permit and would provide much needed opportunities for planning the funding for the new requirements in the Permit. The deadlines for agreements and the development and public review of Alternative Control Measures should also be revised based on an October 1, 2019 effective date. While the EPA may strive to have the effective date of December 31, 2018, AIC notes that this is not possible at this time given the current public review schedule and response to comments time provisions.

   Response #3: The EPA agrees and has changed the Permit such that the effective date for the Permit will align with the October 1 – September 30 local fiscal year. Associated revisions are also made to the Annual Report and permit renewal application due dates. See also Response #6 below.

4. **(AIC):** ***General Comment Regarding Stormwater Management Program Implementation Schedule*** - Given the financial burdens and affordability considerations, AIC supports the EPA's adoption of a time line that provides 4.5 years for implementation updates to the six (6) minimum control measures.

Response #4: Comment noted. No change has been made to the Permit.

5. **(Permittees & AIC):** ***General Comment Regarding Alternatives for Local Control*** - The Permittees and AIC support EPA Region 10's proposal to use the "Two-Step Approach" to address the Phase II Remand Rule requirements. The Permittees support EPA's provision, throughout the permit document, that the Permittees may request an Alternative Control Measure for a particular permit requirement.

   Response #5: Comment noted. No change has been made to the Permit. The EPA notes that terminology regarding the "Two Step Approach" is specific to NPDES general permits for MS4 discharges; see 40 CFR §122.28(d). For the individual NPDES Permit for the PUA MS4 discharges, federal regulations at 40 CFR §§ 122.62 and 122.63 provide authority to the EPA/NPDES Permitting Authority to consider modifying individual NPDES permits based on new information submitted after the permit issuance. As written, the Permit affords Permittees with the flexibility to submit new information in support of Alternative Control Measure requests, Monitoring/Assessment plans, and/or Pollutant Reduction Activities. If the EPA/NPDES Permitting Authority determines that it will grant such a request, it may do so through a permit modification. See 40 CFR §§122.62 and 122.63.

6. **(AIC, Permittees, Caldwell):** ***General Comment Regarding Deadlines to Submit Alternative Control Measures, Monitoring/Assessment Plans, and/or Pollutant Reduction Activities*** – AIC and Permittees urge the EPA to provide a generous implementation time line, including a reasonable amount of time to develop the Alternative Controls (i.e., based on the most complex alternative controls). Specifically, AIC suggests that submission of the Alternative Control Measures, Monitoring/Assessment Plan, and Pollutant Reduction Activities should be required to be submitted 2 years following the effective date of the Permit. This request would then provide for these alternative controls to be understood 2.5 years prior to when the 6 minimum control measures would be required to be in place (i.e., 4.5 years following the Permit's effective date).

   Caldwell requests that the EPA elaborate on the rationale/advantage of only allowing 180 days [from the Permit effective date] to submit Alternative Control Measure requests. Caldwell states that technology and circumstances change greatly throughout the life of the Permit. Alternative Control Measure requests should be available throughout the permit term, or at a minimum, for the first year of the Permit.

   Response #6: The EPA agrees to revise the deadlines for submitting Alternative Control Measure requests, Monitoring/Assessment plans, and/or Pollutant Reduction Activities to allow 2 years following the Permit Effective Date, as requested by commenters.

   As stated in the FS at Section 2.3.1, the EPA's schedule for submittals of these materials within 180 days of the Permit Effective Date was based on providing the EPA and IDEQ adequate review time, and to accommodate the permit modification process, such that Permittees would begin implementing Alternative Control Measure(s), Monitoring/Assessment plans, and/or Pollutant Reduction Activities within the first two years of the Permit term.

   However, in light of the comments received regarding Permittees' planning and budgeting activities, the EPA agrees to allow additional time for these submittals.

   As noted in Response #3, the EPA will issue the final Permit with an effective date of October 1, 2019.

   The EPA therefore revises deadlines in Part 2.6 and Part 4.1.1 for the subsequent submittals of any Alternative Control Measure requests, Monitoring/Assessment plan(s), and Pollutant Reduction Activities, to October 1, 2021 (i.e., two years after the Permit effective date).

The EPA revises linked deadlines cited in Permit Parts 2.5.5 and 4.1.2 for Permittees to update their SWMP document(s) with descriptions of incorporated Monitoring/Assessment plan(s) and Pollutant Reduction Activities, to December 1, 2022, (i.e., deadline of 3rd Annual Report Submittal). This date recognizes the revised timeframe for initial submittals, Permitting Authority review and subsequent permit modification.

7. **(Permittees): *General Comment Regarding Prioritization by Permittees* -** The Permittees support EPA's effort to allow the Permittees to develop and define our own prioritization system for inspections, enforcement and maintenance, based on local knowledge and conditions. We believe that this will enable us to use our time and resources most efficiently and effectively towards BMP implementation and improving water quality.

   Response #7: Comment noted. No change has been made to the Permit.

8. **(Permittees): *General Comment Regarding Limited Legal Authority of Permittees* -** The Permittees appreciate the EPA's efforts to acknowledge the limited legal authority of some Permittees and providing language that enables alternative compliance pathways such as developing an Escalating Response Plan that is "appropriate to its jurisdiction" (Permit Part 3.3.6) or uses "available regulatory mechanisms" (Permit Part 2.5.4).

   Response #8: Comment noted. No change has been made to the Permit.

9. **(AIC) *General Comment Regarding Individual Permit Versus General Permitting Approach*** - The EPA was previously working on a statewide General Permit that would cover all Phase 2 regulated MS4s in Idaho (i.e., during 2016 through the first half of 2018). During this period, the EPA received comments from AIC and other stakeholders on two versions of the draft general permit. As the Fact Sheet supporting the Pocatello Area MS4 Phase 2 Permit states the "*EPA has decided to issue individual permits instead of a general permit*" and that the "*information received, in conjunction with the permit renewal application and Annual Reports, has been used to inform the current draft Permit.*"

   Given this history, AIC wishes to go on record as strongly urging the EPA to carefully reconsider the decision to develop multiple individual permits rather than a statewide Phase 2 MS4 General Permit. There are many compelling reasons that support a statewide General Permit approach, including but not limited to the following:

   - Reduced regulatory agency workload (both federal and state)
   - Improved Permittee coordination of resources
   - Fairness and consistency across Idaho
   - Better supports a transition to Idaho primacy

   (Permittees): *General Comment Regarding Individual Permit Verses General Permitting Approach* - The Permittees would strongly prefer a statewide general permit (as opposed to an individual permit) to enable us to better collaborate with MS4 permittees across the state, who would be on the same time schedule and following the same permit requirements. Pooling of resources is critical in a rural state like Idaho where the Pocatello Urbanized Area (75,000 people) is considered a large metropolitan area – and the two nearest existing Idaho MS4s are Idaho Falls (50 miles away) and Boise (235 miles away).

   The Permittees appreciate the EPA's efforts to maintain consistency between the individually issued draft permits within Idaho (fall 2018) and respectfully request that the EPA continue to strive for consistency between the individual Idaho small MS4 permits, as appropriate, to improve coordination across the State.

Response #9: Comments noted. No change has been made to the Permit. The EPA continues to work closely with IDEQ to create fair and consistent MS4 permit requirements, in the PUA and in all Urbanized Areas in Idaho. The EPA and IDEQ will ensure a smooth and efficient transition of the MS4 permit program to IDEQ by July 2021.

10. **(Permittees):** ***General Comment Regarding the EPA discussion in Fact Sheet Section 2.6 pertaining to Excursions to Idaho Water Quality Standards (WQS)*** **-** Excursions to Idaho Water Quality Standards (WQS) that result from the cumulative watershed loading (not solely from the MS4) are addressed through the process of identifying impaired waters and developing Total Maximum Daily Loads (TMDL) for pollutants of concern. The EPA and IDEQ expect attaining WQS will only be achieved through reduction from point and nonpoint source contributors identified in the approved TMDL. Therefore, actions in preparation for, in support of, or contributing to the development of a TMDL and implementation plan for the pollutant of concern should be considered a suitable adaptive management response. Actions could include collecting additional monitoring data, participation in a Watershed Advisory Group (WAG) in developing a TMDL and Implementation plan or contributing to other watershed planning efforts aimed at achieving WQS. The specific actions can be included in the adaptive management report.

    Include the following paragraph or a similar paragraph in the Fact Sheet**:**

    > *"The pathway to achieving WQS for excursions resulting from multiple significant watershed contributions is through the TMDL process. The case that the pollutant of concern has multiple significant contributions in the watershed contributing to the excursion, actions in preparation for, in support of, or contributing to the development of a TMDL and implementation plan for the pollutant of concern can constitute a suitable adaptive management response. These actions should be described in the Adaptive Management Report (outlined in Section 5.2). "*

    The Permittees also request that a similar statement affirming 1) that the TMDL process is the pathway to achieving WQS for watershed-related WQS excursions and 2) that actions in preparation for, supporting or aligned with developing a TMDL can constitute an acceptable adaptive management response, should be provided in the EPA's response to this comment and request**.**

    Response #10: Comment noted. The EPA declines to revise the FS as requested by the commenters but agrees with the comment to the extent that the TMDL process is the primary pathway for dischargers in an impaired watershed to work together to ensure that Idaho WQS are achieved in the impaired waterbody. Further, a MS4 Permittee's actions in preparation for, supporting, and implementing an EPA-approved TMDL could constitute an acceptable adaptive management response, as provided in the Pocatello Urbanized Area MS4 Permit at Permit Part 5.

    The EPA also agrees that, while pollutants in urban stormwater runoff are often a leading cause of water quality impairment, in most instances receiving water impairments are caused by multiple types of sources. However, pollutant(s) causing the receiving water to be impaired are often pollutants that are frequently found in stormwater runoff; in urban environments these pollutants are discharged from one or more MS4s.

    The NPDES Permitting Authority must include permit terms and conditions that reduce the MS4's discharge of pollutants to the maximum extent practicable (MEP); this includes additional provisions where necessary to control pollutants that ensure compliance with state water quality standards. Consistent with the Ninth Circuit court decision, *Defenders of Wildlife, et al v. Browner*, 191 F.3d 1159 (9th Cir. 1999), the EPA has previously stated that, where the NPDES permitting authority determines that MS4 discharges may cause or contribute to a water quality standard exceedance,

the Permitting Authority should "exercise its discretion" to include the requirements necessary to meet water quality standards.

As cited in this comment, actions done in *preparation for, support of, or contributing to the development of a TMDL and implementation plan for the pollutant of concern*, may be part of an adaptive management response to the MS4's contribution to water quality impairment. However, Permit Part 5.2 outlines what must be included in an Adaptive Management Report, and requires a description of "*potential additional operational and/or structural BMPs that will or may be implemented in order to prevent or reduce any pollutants that are causing or contributing to the excursion above Idaho water quality standards.*"

11. **(AIC)**: ***General Comment*** **-** AIC supports several proposed requirements, in particular:

- Establishing placeholders in the proposal for the "Permit Effective Date," to invite input regarding feasible time line for the schedule of program development and compliance
- Providing the affirmative statement that "*If the Permittees comply with all the terms and conditions of this Permit, it is presumed that the Permittees are not causing or contributing to an excursion above the applicable Idaho Water Quality Standard*s." (Permit Part 2.1).
- Clarifying allowable non-stormwater discharges with a detailed list (Permit Part 2.4.5).
- Ensuring that valid receiving water impacts and the significance to public health are taken into consideration prior to determining whether a stormwater discharge is a source of pollution to Water of the United States (Permit Part 2.4.5.2).
- Acknowledging the limited legal authority of the Permittees provided by Idaho law and providing for progress reports as a compliance pathway where limited regulatory mechanisms are available (Permit Part 2.5.4).
- Recognizing that the Permittees are a type of entity that do not have legal authority over private property and revising permit requirements accordingly (Permit Part 3.1.4).
- Construction site plans for projects disturbing *one or more acres* for Permittees review (Permit Part 3.3, emphasis added).
- Recognizing that some of the Permittees are a type of entity with limited legal authorities and, therefore, may comply with the permit through the development of an enforcement response plan that is "appropriate to its organization" (Permit Part 3.3.6).
- Controls at new development and redevelopment project sites that result in land disturbance of *greater than or equal to one (1) acre* (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more) *and that discharge into the MS4* (Permit Part 3.4).
- Providing for "alternatives for local compliance" in situations where onsite retention is not technically feasible (Permit Part 3.4.2.2).
- The affirmative statement that "*A Permittee will be presumed to be in compliance with applicable Idaho Water Quality Standards if the Permittee is in compliance with the terms and conditions of this Permit*," (Permit Part 5).
- Ensuring the Permittees have adequate time to prepare annual reports by providing 61 days following the end of each reporting period (Permit Part 6.4).
- The affirmative statement that "*The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby*." (Permit Part 8.12).

Response #11: Comment noted. No change has been made to the Permit.

Limitations and Conditions (Permit Part 2)

12. **(Permittees):** ***Regarding Permit Part 2.1- Compliance with Water Quality Standards #1*** - The Permittees affirm strong support for the first paragraph of this Part: "*If the Permittees comply with all the terms and conditions of this Permit, it is presumed that the Permittees are not causing or contributing to an excursion above the applicable Idaho Water Quality Standards.*"

    Response #12: Comment noted. No change has been made to the Permit.

13. **(Permittees):** ***Regarding Permit Part 2.1- Compliance with Water Quality Standards #2*** - Regarding the second paragraph, the Draft Permit language implies that the Permittee should determine if MS4 discharges are causing or contributing to an excursion of water quality standards (WQS). This determination can be complicated and should not be the responsibility of the MS4. The Permittees assert that their responsibility is not to determine individual causation of excursions, but to actively participate in monitoring and implementing BMPs designed to protect the receiving water quality. This Part should be modified to clarify the desired response from the Permittees in the event of an excursion to Idaho Water Quality Standards. A recommendation has also been made to similarly revise Permit Part 5.1. Permittees recommend the following text for Permit Part (2.1) (2nd paragraph):

    > *"*If ***credible and relevant information from*** monitoring ~~or other information shows that a pollutant in one or more Permittee's MS4 discharge is causing or contributing to an excursion above the~~ ***and/or other sources indicate that an applicable Idaho Water Quality Standard may be exceeded in the receiving waterbody,*** the Permittee(s) must comply…"

    Response #13: The EPA declines to revise the text as suggested. It is inherent in any such determination that relevant, credible, and site-specific information would be used to inform the determination. See also Response #34.

14. **(Permittees, AIC):** ***Regarding Permit Part 2.1- Compliance with Water Quality Standards*** **-** The commenters appreciate the EPA's commitment and intentions to construct the proposed Permit in a manner that preserves the "Maximum Extent Practicable" (MEP) standard under the Clean Water Act. Municipal stormwater dischargers must control the discharge of pollutants to the MEP by implementing best management practices that control runoff. (33 U.S.C. § 1342(p)(3)(B)). However, the commenters believe the final Permit requires an affirmative statement regarding how the MEP standard will be achieved. Therefore, the Permittees strongly urge the EPA to insert the following paragraph into Part 2.1, "Compliance with Water Quality Standards:" The commenters request that the EPA consider the following justifications and add the following text for Permit Part (2.1) (after 2nd paragraph):

    > *"To ensure that the Permittee's activities achieve timely compliance with applicable water quality standards, the Permittees shall implement the Storm Water Management Program, monitoring, reporting and other requirements of this permit in accordance with the time frames established in the permit. This timely implementation of the requirements of this permit shall constitute the authorized schedule of compliance."*

    AIC provides the following justifications for this edit:

    > • Congress did not mandate a "minimum standards" approach or specify that the EPA develop minimal performance requirements *(See 1992 Natural Resources Defense Council Inc. vs. US EPA; at https://openjurist.org/966/f2d/1292/natural-resources-defense-council-inc-v-united-states-environmental-protection-agency ;)*
    >
    > • Under 33 U.S.C. § 1342(p)(3)(B)(iii) the EPA's choice to include either management practices or numeric limitations in the permits is within its discretion; *(See: 1999 Defenders*

of Wildlife vs. Browners; at https://yosemite.epa.gov/oa/eab_web_docket.nsf/8362EA577FA6FBF3852570830051362A/$File/Ariz.%20Mun.%20SW%209th%20Cir.%20Dec..1.17.2018pdf.pdf)

• EPA understands that MS4s need the flexibility to determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. (*See 81 FR 237, pg. 89323, December 9, 2016; at https://www.gpo.gov/fdsys/pkg/FR-2016-12-09/pdf/2016-28426.pdf).*

With respect to how the recommended affirmative statement complies with the Idaho water quality standards and associated 401 Certification, AIC respectfully points out that additional and important justifications can be found in the EPA approved 2010 Portneuf River TMDL Addendum: *(See: http://www.deq.idaho.gov/media/464542-_water_data_reports_surface_water_tmdls_portneuf_river_portneuf_river_revision_addendum_final.pdf)*

• *"…implementation of the Pocatello Urbanized Area (PUA) Phase II Stormwater Permit is in its fourth year and is geared toward decreasing the impact of urban stormwater on the Portneuf River and select tributaries. It is anticipated that through implementation of the provisions in the Federal Phase II Stormwater permit that sediment, nutrients, bacteria and oil and grease will be reduced to the maximum extent practicable and* move **the river towards compliance** *with the pollutant reductions detailed in this TMDL revision. (DEQ, 2010; Portneuf River TMDL Revision and Addendum, Reasonable Assurance, pg. 152)*

- *"**No time frame is proposed** for the overarching goal of restoring beneficial uses throughout the Portneuf River subbasin..." (DEQ, 2010; Portneuf River TMDL Revision and Addendum, Implementation Strategies, pg. 154)*
- *• "…**DEQ is encouraged by the apparent decreasing phosphorus concentrations** and is hopeful this trend continues." (DEQ, 2010; Portneuf River TMDL Revision and Addendum, Response to Comments, pg. 342) (emphasis added)*

Response #14: The EPA agrees with the statements set forth by the commenter; however, the EPA does not believe that the suggested sentence adds anything to the Permit which contains the required deadlines and substantive conditions to ensure that the MEP standard is met. No change has been made to the Permit.

15. **(Permittees):** ***Regarding Permit Part 2.2 - Snow Disposal to Receiving Waters*** - The Permittees request a slight modification in wording to clarify that the first sentence of this permit requirement deals with the disposal of stockpiled or trucked snow, as opposed to fresh snow that is pushed off a bridge by a snowplow. Recommended text (2.2):

"The Permittees are not authorized to dispose of stockpiled snow plowed in …":

(Caldwell): ***Regarding Permit Part 2.2 - Snow Disposal to Receiving Waters*** -The regulatory message in this paragraph is not clear to us. Most cities do not have direct control over the snow melt water quality. Furthermore, formally designated and designed snow disposal sites are not common in Idaho. Snow is often plowed to the gutter or piled up at the corner of a parking lot. It is not feasible to collect snow from the roadway and truck it to a designated disposal location, similar to residential garbage service. Snow melt water passes through the same BMP's contained within the MS4 infrastructure as precipitation that falls as rain.

Response #15: The EPA declines to revise Permit Part 2.2 as requested by the commenters.

The definition of "stormwater" found at 40 CFR §122.26(b)(13) which is included in Permit Part 9, means "*stormwater runoff, snow melt runoff and surface runoff and drainage*." The Permit authorizes the discharge of stormwater, including snow melt, from MS4s named in the Permit. The purpose of this provision is to explicitly prohibit the practice of dumping excess snow collected from the urban areas directly to waters of the United States. In addition, through the implementation of appropriate BMPs, this Part also seeks to limit the discharge of pollutants in snow melt water from Permittee-owned snow disposal sites and from the Permittees' snow management practices. This provision does not prohibit fresh snow pushed off a bridge by a snowplow. See references listed in Appendix B of this document.

The EPA notes that this is not a new provision. In fact, comparable language to that in Permit Part 2.2 is included in all MS4 permits previously issued by EPA Region 10; in particular, the prior Pocatello Urbanized Area MS4 permit contained this provision at Part I.D.4; the City of Caldwell's MS4 permit contains this provision at Part I.C.4. See also: EPA's *Response to Comments for NPDES Permit #IDS028053*; 2006; Response to Comment #45, page 17, at https://www.epa.gov/sites/production/files/2017-10/documents/r10-npdes-pocatello-area-ms4s-ids028053-rtc-2006.pdf; and
EPA's *Response to Comments for NPDES Permit IDS028118, City of Caldwell MS4*; 2009; Response to Comment #19, pages 11-12, at https://www.epa.gov/sites/production/files/2017-12/documents/r10-npdes-caldwell-ms4-ids028118-rtc-200909-41pp.pdf.

16. **(Permittees):** ***Regarding Permit Part 2.4.5.2 - Sources of Pollution to Waters of the United States*** **-** The Permittees support permit language ensuring that valid receiving water impacts and the significance to public health are taken into consideration prior to determining whether a stormwater discharge is a source of pollution to Waters of the United States.

    Response #16: Comment noted. No change has been made to the Permit.

17. **(Permittees):** ***Regarding Permit Part 2.5.2 - Joint Responsibility and Joint Agreements*** **-** The final sentence of this Part states *"The Permittees remain responsible for compliance with the permit obligations if the other entity fails to implement the stormwater management control measure (or component thereof)*." is duplicated at the end of 2.5.3. It is not clear in Part 2.5.2 what "the other entity" is referring to as Part 2.5.2 deals entirely with agreements between the Permittees. The Permittees recommend deleting the final sentence in this Part.

    Response #17: The EPA agrees and has deleted the final sentence proposed in Part 2.5.2 as suggested.

18. **(Caldwell):** ***Regarding Permit Part 2.6.2 Alternative Control Measures – Actions to Address Discharges to Impaired Waters*** - This Part needs to specify the magnitude of the scope. Please provide a non-exclusive list of suggested pollutant reduction activities. We are interested in better understanding the nature, scale, infrastructure, and outreach necessary to create an acceptable proposal. An appendix might be appropriate to explain or demonstrate what types of activities are acceptable.

    Response #18: The EPA disagrees that the Permit must describe the additional scope of such potential Permittee actions. No change has been made to the Permit. The Monitoring/Assessment plan and Pollutant Reduction Activities required by the Permit are directly related to the pollutant reduction goals for the pollutants of concern, and applicable Total Maximum Daily Load (TMDL) analyses, in this case for the Portneuf River. As participants in the Portneuf River WAG that developed the Portneuf River TMDL and subsequent TMDL Addendum, the Permittees themselves are well suited for articulating the type of monitoring/assessment and pollutant reduction activities

that will appropriately implement the pollutant reduction goals articulated by the Portneuf River TMDL.

The EPA suggests the Permittees consider activities and/or tasks that might resolve data gaps identified by the Portneuf River WAG during the development of the 2010 Portneuf TMDL Addendum; for example, in Section 2.5 of the 2010 Portneuf River TMDL Addendum at page 80, it is noted that: "*Targeted and continuous sampling of storm water discharges are needed to fully characterize the concentration of constituents introduced into the Portneuf River during storm events, but also to test the efficacy of storm water BMPs.*" Further, Section 3.2 of the 2010 Portneuf River TMDL Addendum, at page 87, noted that "*Targeted and continuous sampling of storm water discharges are needed to fully characterize the concentration of constituents introduced into the Portneuf River during precipitation or melting events. Sampling of multiple storm water outfalls is recommended to characterize the range of variation detected among outfalls. Sampling should also be used to evaluate the efficacy of storm water BMPs*."

Permittees should choose actions that focus on the Portneuf River's pollutants of concern, and that will result in conclusions regarding how well their SWMP actions are reducing pollutants of concern from the MS4s. As an example, Permittees could focus on improving their operation and maintenance activities. The Permittees might elect to enhance staff training and/or improve their standard operating procedures related to catch basin inspection and maintenance. A Pollutant Reduction Activity could be selected to interview staff conducting this work to identify on-the-ground problems and possible improvements or efficiencies. The Permittees could then revise their procedures accordingly, conduct any necessary staff training to target difficult situations, and/or otherwise resolve identified problems. Monitoring/assessment activity linked to such focused effort could assess the individual Permittee's costs and compare water quality benefits both "*Before enhanced training*" and "*After enhanced training*" to determine if conditions improved as a result.

19. **(AIC, Permittees): *Regarding Integrated Planning and Permit Part 2.6.4 Recognition of Alternative Control Measures*** - The commenters recommend that the Permit affirmatively provide for Integrated Planning in this Part. Recommended text to be added to Permit Part 2.6.4, after the 3rd paragraph: *"EPA recognizes integrated planning as a way that municipalities can realize efficiencies in improving receiving water quality by sequencing investments so that the highest priority projects come first. This approach can also lead to more sustainable and comprehensive solutions, such as green infrastructure, that improve water quality and provide multiple benefits that enhance community vitality. Terms identifying this as a possibility, along with EPA's guidance document referenced, should be included to recognize integrated planning within the guidelines set forth by EPA."*

    Response #19*:* The EPA declines to revise Permit Part 2.6.4 as suggested. See Response #21.

20. **(AIC, Permittees): *Regarding a new Permit Part 2.7 - Water Quality Trading* -** Although opportunities for water quality trading have not been identified, the Permittees may desire to participate in water quality trading activities. The Permittees request that terms identifying this as a possibility, as long as the EPA's trading guidance is followed, be included to allow for trading within the guidelines set forth by the EPA. AIC similarly recommends that the Permit affirmatively provide for the development and application of pollutant credit trading. AIC suggests referring to the 2010 Portneuf River TMDL Addendum and the 2016 State of Idaho Water Quality Trading Guidance.(See: http://www.deq.idaho.gov/media/60179211/water-quality-trading-guidance-1016.pdf)

    Commenters suggest this may require the addition of a new Part (i.e. Part 2.7). Recommended text for new Part entitled "Information Supporting Water Quality Trading:"

> *"Any water quality trading used to meet the conditions of this permit shall be in compliance with EPA's Water Quality Trading Policy (dated January 13, 2003), any applicable EPA trading guidance, and the 2016 IDEQ Water Quality Pollutant Trading Guidance. If such provisions allow trading with pollution sources, water quality trading provisions may be included in a manner consistent with proposed Alternative Control Measures."*

Response #20: The EPA declines to revise the Permit as suggested at this time. No change has been made to the Permit. If the Permittees submit an appropriate trading plan under Idaho's watershed trading framework, the EPA would, at that point, determine whether modification of the Permit is warranted to accommodate trading. Under the EPA and Idaho Water Quality Trading guidance documents, trading provisions must be incorporated into a NPDES permit prior to engaging in any trading activity to meet the NPDES permit terms and conditions.

The EPA supports the concept of water quality trading; see the recent EPA memorandum, dated February 2019, entitled *Updating the Environmental Protection Agency's (EPA) Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality*, at https://www.epa.gov/sites/production/files/2019-02/documents/trading-policy-memo-2019.pdf.

The EPA also recognizes that the Portneuf River TMDL Addendum states that pollutant trading may be a viable option and tool for implementation of the Portneuf River TMDL Revision and Addendum, and that "*….should DEQ and the Portneuf River WAG determine that trading is indeed a viable tool for implementing necessary load reductions to achieve the goals of the TMDL, the entities can move forward to develop the necessary pollutant trading framework.*" See the Portneuf River TMDL Revision and Addendum, Appendix D.

However, at this time, neither the Portneuf River WAG, or the Permittees, have provided a trading plan, nor is there a watershed trading framework detailing how trades would be conducted for MS4 discharges. Therefore, although the Permit as written does not currently allow for pollutant trading, the Permittees can submit an appropriate trading plan under a watershed trading framework in the future and the Permit can be modified to incorporate such provisions.

21. **(AIC, Permittees):** ***Regarding a new Permit Part 2.8 - Integrated Planning*** - EPA recognizes integrated planning as a way that municipalities can realize efficiencies in improving receiving water quality by sequencing investments so that the highest priority projects come first. This approach can also lead to more sustainable and comprehensive solutions, such as green infrastructure, that improve water quality and provide multiple benefits that enhance community vitality. Commenters recommend that the Permit affirmatively provide for EPA's 2012 *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* and request that terms identifying this as a possibility, along with EPA's guidance document referenced, be included to recognize integrated planning within the guidelines set forth by EPA. Commenters recommend the addition of a new Part (i.e. Part 2.8). Recommended text (2.8) for a new Part entitled "Information Supporting Integrated Planning:"

> *"Any integrated stormwater planning activities used to meet the conditions of this permit shall be in compliance with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework (dated June 5, 2012) and any applicable EPA Integrated Planning guidance. If an integrated planning approach were to be implemented, it may be undertaken if information related to the integrated plan is submitted and approved by EPA and IDEQ."*

Response #21: The EPA declines to revise the Permit as suggested. No change has been made to the Permit. The EPA's 2012 *Integrated Planning Framework* states:

> "*The framework identifies the operating principles and essential elements of an integrated plan. The integrated planning approach is voluntary. The responsibility to develop an*

> *integrated plan rests with the municipality that chooses to pursue this approach. If a municipality decides to take advantage of this approach, the integrated plan that it develops can provide information to inform the permit and enforcement processes and can support the development of conditions and requirements in permits and enforcement orders. The integrated plan should identify the municipality's relative priorities for projects and include a description of how the proposed priorities reflect the relative importance of adverse impacts on human health and water quality and the municipality's financial capability. The integrated plan will be the starting point for development of appropriate implementation actions, which may include requirements and schedules in enforceable documents…… Integrated plans should be consistent with, and designed to meet the objectives of, existing total maximum daily loads (TMDLs)."* [Emphasis added]

While the EPA strongly supports the Integrated Planning process, the EPA declines to include the specific provision in the Permit as requested by the commenters at this time. The initial step in the integrated planning process is to develop a plan that can then be used to inform the terms of a NPDES permit. Since the Permittees have not yet engaged in this initial step, it would be premature to add language in the Permit. However, the Permit terms and conditions resulting from an Integrated Plan can be requested pursuant to Permit Part 5 and/or Part 8.13 as written. At that point, the Permitting Authority could modify the Permit to include such terms and conditions.

Public Education and Outreach on Stormwater Impacts (Permit Part 3.1)

22. **(Permittees):** ***Regarding Permit Part 3.1 Public Education and Outreach on Stormwater Impacts*** **-** The Permittees support text in this Part requiring selection of target audience(s) and messages based on Permittee priorities, local audience behavior(s), and local conditions.

Response #22: Comment noted. No change has been made to the Permit.

Illicit Discharge Detection and Elimination (Permit Part 3.2)

23. **(Permittees):** ***Regarding Permit Part 3.2.4.2 Response to Complaints or Reports from the Public*** **–** The Permittees recommend modifying the text to support the Permittees prioritizing response times to urgent and severe complaints, while still responding to other complaints in a timely manner. Inserting 'on average' provides the Permittees with some flexibility in response time to minor complaints. Recommended text (3.2.4.2):

> *"The Permittees must respond to and investigate all complaints or reports of illicit discharges as soon as possible, but no later than within two working days, on average. Immediately investigate (or refer) problems and violations determined to be emergencies, urgent or severe."*

Response #23: The EPA declines to revise the Permit as suggested. No change has been made to the Permit. Permittees are free to prioritize the appropriate response to reports from the public. Because of potential impacts to water quality, the EPA established a minimum expectation that Permittees should respond to complaints or reports of illicit discharges from the public within two working days.

Construction Site Stormwater Runoff Control (Permit Part 3.3)

24. **(Permittees):** ***Regarding Permit Part 3.3 Construction Site Stormwater Runoff Control*** **-** The Permittees support text requiring permittee review of construction site plans for projects disturbing one or more acres.

Response #24: Comment noted. No change has been made to the Permit.

25. **(Permittees):** ***Regarding Permit Part 3.3.3.1 Construction Site Runoff Control Specifications*** **-** the Permittees recommend removing the reference to the State of Idaho for management of the NPDES *General Permit for Stormwater Associated with Construction Activities in Idaho* (CGP) as this transition does not occur until 2021. Simply refer to the CGP. Recommended text: "*Requirements for use of erosion control, sediment control, and waste materials management/pollution prevention practices that complement, and do not conflict with, the current version of the CGP*"

    Response #25: The EPA declines to revise text as requested. The reference to "Idaho CGP" in the permit is not differentiating the NPDES permit authority that is issuing/administering the permit (Idaho DEQ versus the EPA). Instead the term "Idaho CGP" is referring to the current version of the Idaho CGP. No change has been made to the Permit.

26. **(Permittees):** ***Regarding Permit Parts 3.3.4 and 3.3.5- Preconstruction Site Plan Review (3rd paragraph)*** **and** ***Construction Site Inspection & Enforcement***- Original language reads:

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

    The requirement for providing an opportunity for the public to comment during preconstruction site plan review is not practical for the Permittees. For example, site plans for homes within a subdivision are reviewed by Permittee staff within one week. The time to post and track properties at the site plan review level will be extensive with little benefit. The actual implementation of a project is often different than what is initially on the plans. In line with the new WA MS4 general permit, it would be much more helpful to have public comment on whether a project under construction demonstrates compliance with the ordinance (as opposed to having the public review engineering plans for ordinance compliance), as has been recommended for Part 3.3.5. Recommended text to revise Part 3.3.4, 3rd paragraph:

    Site plan review procedures must include consideration of the site's potential water quality impacts and must ***demonstrate compliance with the ordinance or other*** *regulatory mechanism required by Part 3.3.2….*

    In line with the recommendation above, Permittees also suggest adding to the following sentence as the requirement for opportunities for the public to submit information. Recommended new text (after the 2nd paragraph of Part 3.3.5):

    All Permittees must implement procedures for receipt and consideration of information submitted by the public*.*

    Response #26: The EPA agrees and has edited Permit Part 3.3.4, 3rd paragraph, as follows, as suggested:

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

    The provision requiring procedures for receipt and consideration of information from the public was also included in the prior version of the Pocatello Urbanized Area MS4 permit at Part II.B.4.d. As the EPA explained in the preamble to the NPDES Phase II stormwater regulations, these types of provisions are included in permits to "*…require some formality in the process for addressing public inquiries regarding storm water runoff from construction activities. EPA does not intend that small MS4s develop a separate, burdensome process to respond to every public inquiry. A small MS4 could, for example, simply log public complaints on existing storm water runoff problems from construction sites and pass that information on to local inspectors. The inspectors could then investigate*

complaints based on the severity of the violation and/or priority area." See: 64 FR 68759 (December 8, 1999).

Based upon this discussion and the comment submitted, the EPA has also edited Permit Part 3.3.5 by adding the following sentence as the new 3rd paragraph*:*

> *The Permittees must implement procedures for receipt and consideration of information submitted by the public.*

Post-Construction Stormwater Management in New Development and Redevelopment (Permit Part 3.4)

27. **(Permittees)**: ***Regarding Permit Part 3.4 - Post-Construction Stormwater Management in New Development and Redevelopment*** - Permittees support installation of controls at sites for projects disturbing one or more acres that discharge into the MS4*.*

    Response #27: Comment noted. No change has been made to the Permit.

28. **(Caldwell): *Regarding Permit Part 3.4.2 Ordinance and/or other regulatory mechanism* -** Please demonstrate or cite how the 95th percentile rainfall volume must be calculated. We disagree with any methods which propose to truncate the data set to disregard Idaho precipitation events less than 0.1".

    Response #28: The EPA includes instruction for the calculation of the 95th percentile storm volume in Appendix A to this document. The EPA considers storm events that have a total volume less than 0.1" of rain to have a low probability of generating runoff due to surface wetting (absorption), loss to the atmosphere (evaporation), and depressional storage (interception). The EPA therefore considers "storm events" to exclude trace precipitation events, i.e. events with less than 0.1" or less. Since the performance standard is derived from a percentile of storm events, it is not appropriate to include data for trace precipitation in this calculation. Note that this approach is consistent with the EPA's definition of storm event at 40 CFR §122.21(g)(7)(ii); 40 CFR §122.26(d)(2)(iii)(A)(2); the narrative definition of "storm event" included in the Phase I MS4 Permit for the Boise/Garden City Area; and the Phase II MS4 permits for the regulated small MS4s in the Boise-Caldwell-Nampa areas. Furthermore, many states also use the term "measurable event" when describing the 0.1" storm threshold (e.g., UT, NY, GA, HI, IN, OH, WI, etc.). The EPA recommends that the determination of volume for the 95th percentile storm event use a minimum of a 30-year period of record. If available, a Permittee may choose to use a longer period of record.

    For clarity, the EPA has added the following definition of "storm event" to Permit Part 9, as previously cited in the MS4 permits previously issued for the Boise/Garden City, Caldwell, Nampa and other Idaho MS4s:

    Storm event, for the purposes of this Permit, means a precipitation event that results in an actual discharge from the outfall and which follows the preceding measurable storm event by at least 48 hours (2 days).

Pollution Prevention/Good Housekeeping for MS4 Operations (Permit Part 3.5)

29. **(Permittee*): Regarding Permit Part 3.5.9 - Litter Control*** – The Permittees recommend removing or rephrasing this requirement to clarify expectations and clearly indicate that the SWMP should describe the Permittee's litter reduction methods. Permittees have litter control programs in place. Recommended revisions to the text if this Part is not deleted in entirety (3.5.9):

> ~~*Throughout the Permit term, t*~~***T****he Permittees must* ***review, and update as necessary****,* ~~*implement*~~ ***existing*** *methods to reduce litter in their jurisdictions. The Permittees must work cooperatively among themselves and with others to control litter on a regular basis, and after major public events, in order to reduce the discharge of pollutants to the MS4.*

Response #29: The EPA declines to revise Part 3.5.9 as suggested; the recommended edits do not substantively add to the requirement. The EPA recognizes the Permittee's existing litter control programs as an important component of a comprehensive SWMP, and Permit Part 3.5.9 reinforces this recognition.

Permit Part 2.5 separately requires the Permittees' SWMP Document(s) to include a description of all stormwater control measures, and control measure components; litter control is a control measure component that must be described in the SWMP Document.

Special Conditions for Discharges to Impaired Waters (Part 4)

30. **(Permittee):** ***Regarding Permit Part 4.2, Table 4.2- #1*** - The location(s) are not sufficiently identified with the usage of "et al." Recommended text (Table 4.2 #1): *"Permittees MS4 outfalls into the Portneuf River within the Permit Area."*

    Response #30: The EPA has revised the Permit as requested.

31. **(Permittee):** ***Regarding Permit Part 4.2, Table 4.2 -* #2** - Neither Part 4.2 nor the referenced Part 6.2 sufficiently identifies the method required for complying with the minimum monitoring/assessment expectations. Part 6.2.7 does not include an EPA approved method for the monitoring of sedimentation/siltation. Turbidity is a recognized monitoring method (See IDEQ 2003, *Guide to Selection of Sediment Targets for Use in Idaho TMDLs*) (Washington Department of Ecology 2007, *How To Do Stormwater Monitoring*) and is cited in the EPA's FS on Page 30. Recommended footnote text (Table 4.2 #2): *"Turbidity may be used for monitoring as an indicator of sedimentation/siltation."*

    Response #31: The EPA declines to revise the Permit as requested. No change has been made to the Permit. The Permit provides flexibility for Permittees to identify and undertake the type of monitoring/assessment activity that is suitable for their purposes and for attaining watershed goals. The Monitoring/Assessment Plan can identify the selected monitoring method. As the EPA explains in its FS at page 30, the Permit requires:

    > *…..Permittee(s) collect objective data that can be used to evaluate the relative success of SWMP control measures and can be used to assess whether MS4 discharges cause or contribute to violations of Idaho WQS. By including general guidelines for what constitutes monitoring/assessment activities, the EPA recognizes that the PUA MS4 Permit, and other MS4 permits in Idaho, should not impose a "one size fits all" monitoring and assessment approach. The guidelines at Permit Part 6.2. provide the Permittees the flexibility to develop and implement monitoring/assessment activities that are appropriate for their MS4 facility."*

32. **(Caldwell):** ***Regarding Permit Parts 4.3 and 6.2.2 -*** The requirement to "quantify pollutant loadings from the MS4's" into the receiving water body is, in most cases, simply not feasible. We cannot speak for the City of Pocatello, but Caldwell has over 300 outfalls, with some co-mingled with groundwater and/or irrigation water throughout the year. Imagine the resources necessary to collect the total pollutant load during one precipitation event. The idea of accurately quantifying the load from the MS4 is simply unattainable. It is understandable that EPA and DEQ would prize this type of information for regulatory purposes, especially the creation of TMDL's. Unfortunately, broad assumptions would have to be made

in order to quantify such a load; we fear that such assumptions could lead to poor quality inferences made by our regulators. A better regulatory effort would be to reduce the quantity and/or improve quality of discharge from urban areas. Everyone knows that stormwater discharge is pollutant-laden; it is a more valuable effort to clean than to quantify the load.

Response #32: The Permit text at Parts 4.3 and 6.2.2 states that the Pollutant Reduction Activities and the Monitoring/Assessment plan must be designed to reduce pollutant loadings from the MS4s into the Portneuf River.

The commenter suggests that it would be better for the MS4 operator to focus its efforts on reducing the quantity of the flows through the MS4 and/or to improve the quality of MS4 discharges. The EPA agrees with this statement and believes that the Permittees subject to the Portneuf Urbanized Area MS4 Permit, and Permittees subject to other MS4 permits in Idaho, can best identify reasonable ways in which they intend to accomplish one, or both, of these goals. See also Response #10. The Permit merely directs that such efforts focus on the impairment pollutants of concern and include actions that result in reducing those pollutants in the Permittees' MS4 discharges into the impaired receiving water segments.

The EPA disagrees that it is entirely infeasible to attempt an estimation and/or quantification of the change in pollutants, or pollutant loadings, before and after such activities. Permittees are free to choose to focus their efforts on the drainage associated from one specific MS4 outfall, or to look for improvements in discharges from a broader drainage area leading to multiple MS4 outfalls. Indeed, while such assessments are estimates, the broad latitude provided by the Permit offers MS4 Permittees opportunity to creatively focus on what they (and their respective WAG) deem to be important. Whether improving discharges from certain portions of their MS4 network by targeted Pollutant Reduction actions, or comprehensively improving the implementation of their SWMP actions overall, the Permittee should seek to demonstrate that their chosen improvements are linked to the applicable watershed goals and lead to reduction in impairment pollutants.

Required Response to Excursions Above Idaho Water Quality Standards (Part 5)

33. **(Permittees):** ***Regarding Permit Part 5 and 5.1*** **-** The opening paragraph of Part 5 should clarify that a determination that the MS4 is causing or contributing to an excursion above applicable WQS should be based on data that are credible, relevant, and site-specific. This reinforces that such a determination should be well established and data be reliable and vetted before the actions outlined in Part 5 are required. Replace the opening paragraph of Part 5 with the following. Recommended text in **bold** to replace 1st paragraph in Part 5):

> *"A Permittee will be presumed to be in compliance with applicable Idaho Water Quality Standards if the Permittee is in compliance with the terms and conditions of this Permit. If the Permittee, the EPA, and/or IDEQ determines that* ***, based on relevant credible and site-specific information,*** *the discharge from the MS4 causes or contributes to an excursion above the Idaho Water Quality Standards, then the Permittee remains in compliance with this Permit as long as the Permittee implements applicable control measures required by this Permit and undertakes the following actions:"*

Similarly, language in Permit Part 5.1 implies that the Permittee should determine if MS4 discharges are causing or contributing to an excursion of water quality standards (WQS). This determination, and more importantly the degree to which the MS4 may be contributing can be complicated and should not be the responsibility of the Permittees at the time of notification. Additionally, the Permittees would like the phrase "relevant, credible and site-specific information" to be used. This is consistent with the vocabulary suggested in the paragraph above. Recommended text (5.1) (replace 1st paragraph):

> *"The Permittee must notify the EPA and IDEQ in writing at the addresses listed in [Permit] Appendix A.1 within 30 days of becoming aware that,* ***based on relevant and*** *credible site-specific monitoring information, discharge from the Permittee's MS4* ~~is causing or contributing to a known or likely excursion above the Idaho Water Quality Standards~~ ***may have resulted in the receiving water not meeting an applicable Idaho Water Quality Standard****."*

Response #33: The EPA declines to add the text edits to Permit Part 5 as suggested. No change has been made to the Permit. It is inherent in any such determination that the Permitting Authority, and Permittees, would use relevant, credible, and site-specific information to inform any such a decision. See also Response #13.

The EPA also declines to edit Permit Part 5.1 the text as suggested. The recommended edits would substantively alter the phrasing "...*causes or contributes to an excursion above the Idaho Water Quality Standards"* in Permit Part 2.1 and Part 5, 1st paragraph.

Monitoring, Recordkeeping and Reporting (Part 6)

34. **(Permittees):** ***Regarding Permit Part 6.4- Annual Report Deadline*** **-** The Permittees support the EPA's decision to provide the Permittees with adequate time (61 days) to prepare their Annual Reports at the end of each reporting period.

Response #34: Comment noted. To facilitate appropriate deadlines based in the Permit Effective Date, the deadline for submittal of Annual Reports will be December 1 of each year beginning in Calendar Year 2020.

Compliance Responsibilities-Standard NPDES Permit Conditions in Permit Part 7

35. **(AIC, Permittees)**: ***Regarding Standard Conditions in Permit Part 7*** - The text in Draft Permit Part 7 includes language copied from wastewater permits that is not suitable or relevant to stormwater. Commenters urge the EPA simplify Parts 7 so that only the language directly applicable to stormwater permits be included in the final permit. The EPA FS Section 2.8 states that there are provisions in Part 7 that do not apply to MS4s. If the provisions do not apply to the discharge permit, they should be removed. There is precedence for not including these provisions in MS4 permits. These Parts are not included in Montana Phase 2 General permit, precisely because they do not apply to stormwater permits. The EPA's (2008) TMDLs to Stormwater Permits Handbook clearly states the differences between stormwater and wastewater and the need for unique and distinct permit language.

Response #35: The EPA declines to make the revisions as requested. NPDES regulations at 40 CFR §§ 122.41 through 122.43 require the provisions reflected in Permit Parts 7 and 8 to be included in each NPDES permit. Specifically, 40 CFR §122.41 states:

> *The following conditions apply to all NPDES permits. … All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations …must be given in the permit.*

Further, the EPA is required to include such provisions in all MS4 permits. See 40 CFR §122.33 (c)(2):

> *(c) As appropriate, the permit will include: … (2)… Other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§ 122.41 through 122.49.*

In prior Phase II MS4 permits previously issued in Idaho, the EPA erred by not including all mandatory provisions as required by 40 CFR §§122.41 through 122.43. The EPA notes that nothing in the 2008 Handbook referenced in the comment(s) above offer the NPDES permit writer opportunity to omit the mandatory permit provisions identified in 40 CFR §§122.41 through 122.43.

As explained in the Fact Sheet, "*if a particular provision in Permit Parts 7 or 8 does not apply to the Permittees MS4 discharges or facilities, the Permittees do not need to comply with that provision*." See FS at page 35.

36. **(AIC, Permittees): *Regarding Permit Parts 7.6 (Toxic Pollutants), 7.7 (Planned Changes), and 7.11 (Upset Conditions)*** – Based on rationale outlined above, commenters suggest the permit language can be simplified to address stormwater responsibilities, by removing Parts 7.6 (*Toxic Pollutants*), 7.7 (*Planned Changes*), and 7.11 (*Upset Conditions*) from the permit.

Response #36: See Response #35 above. The EPA declines to revise the Permit as requested.

The EPA clarifies that Part 7.6 (*Toxic Pollutants)* does not apply to MS4s as originally envisioned by the regulation, because EPA has not promulgated any effluent guidelines applicable to MS4 discharges under CWA Section 307(a). However, the EPA notes that as a condition of its certification under CWA Section 401, IDEQ requires the Permittees to immediately report to IDEQ and EPA all spills of hazardous material, deleterious material, and petroleum products which may impact ground and surface waters of the state. See Permit Part 3.2.7.1.

Regarding Part 7.7 (*Planned Changes*), the EPA previously clarified for other Idaho MS4 permits in the Treasure Valley that this provision does not require approval from the 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 the EPA for clarification. See: *EPA Response to Comment on the Ada County Highway District MS4 Permit No. IDS-028185*, August 2009, page 30 at https://www.epa.gov/sites/production/files/2017-10/documents/r10-npdes-ada-county-ms4-ids028185-rtc-2009.pdf

37. **(AIC, Permittees): *Regarding Permit Part 7.9* (*Twenty-Four Hour Notice of Non-compliance Reporting)** - Commenters propose removing the last two bullets in Part 7.9 for this Part to be applicable to stormwater noncompliance reporting.

Response #37: See Response #35 above. The EPA declines to revise Permit as requested.

38. **(Caldwell): *Regarding Permit Part 7.9 (Twenty-Four Hour Notice of Non-compliance Reporting)*** - By nature, stormwater is not necessarily clean. It picks up pollutants from the roadway. Does this Part strictly refer to treatment facility bypass and the addition of harmful pollutants from sources other than automobile traffic (i.e., leaks, spills, failing construction BMP's)? Does this include the discharge of stormwater which may randomly achieve an *E. coli* hit from a neighbor not cleaning up after his dog? Furthermore, lab results may be released weeks after the storm event. In addition, the term "upset" as used in a stormwater context is unclear. Should we presume this refers to a failing or surcharged stormwater treatment mechanism?

Response #38: See Response #35 above. This provision requires the Permittee to report within 24 hours any discharges into or from the MS4 that may endanger human health or the environment. The EPA notes that IDEQ included, as a condition of its certification under CWA Section 401, a requirement that Permittees to immediately report to IDEQ and the EPA all spills of hazardous material, deleterious material, and petroleum products which may impact ground and surface waters of the State. See Appendix C of this document; Permit Part 3.2.7.1, and the reference therein to Permit Part 7.10 and Permit Appendix A.

Further, it is indeed reasonable to anticipate that notification to the EPA and IDEQ within 24 hours may be necessary for a pollutant discharge through the MS4 where such events may be deemed a

danger to human health or to the environment, and where the Permittee cannot, or will not, readily address through the implementation of its Illicit Discharge Detection and Elimination (IDDE) program required by Permit Part 3.2. For example, the Permittee's public education activities and IDDE activities will likely be adequate to address pet waste issues; the EPA clarifies that this provision does not include stormwater discharges through the MS4 that may carry incidental pet waste, or pollutants caused by normal traffic from road surfaces, as these pollutant sources are expected to be addressed through the comprehensive implementation of the Permittee's SWMP.

39. **(Permittees)**: ***Regarding Permit Parts 7.10* (*Bypass of Treatment Facilities*) -** Based on rationale outlined above, commenter requests that EPA remove Part 7.10 in its entirety.

    Response #39: See Response #35. The EPA declines to revise Permit as requested.

40. **(AIC, Permittees): *Regarding Permit Part 7.10* (*Bypass of Treatment Facilities*) –** If Permit Part 7.10 is not deleted, the commenters propose alternative language for Part 7.10 that could be interpreted in light of a stormwater treatment system could be replaced with text that applies to an MS4 and clarifies the actions required by the Permittee. The following text, adapted from the Eastern Washington Phase 2 general MS4 permit, is directly applicable to stormwater and would be more suitable for this Permit. Commenters recommend the EPA use the following as a replacement for the language in the proposed Permit, as 7.10.3:

    > *The Permittees are prohibited from intentionally bypassing stormwater from all or any portion of a stormwater treatment BMP as long as the design capacity of the BMP is not exceeded unless the following conditions are met.*
    >
    > *Bypass is:*
    >
    > *(1) unavoidable to prevent the loss of, personal injury, or severe property damage or*
    >
    > *(2) necessary to perform construction or maintenance-related activities essential to meet the requirements of the Clean Water Act (CWA); and there are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated stormwater, or maintenance during normal dry periods.*"

    Response #40: The EPA appreciates the interpretation of this provision relative to MS4 discharges and agrees that this provision can be interpreted in light of the overall maintenance and operation of the MS4. However, the EPA cannot revise the text of a standard permit condition and declines to revise Permit as suggested. No change has been made to the Permit.

    The EPA believes the first sentence of Part 7.10.1, addresses most if not all situations likely to be encountered by a Permittee during the appropriate operation and maintenance of a MS4: "*The Permittees may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation.*" In this case, the Permit's "effluent limitations" are the Permit's narrative terms and conditions requiring the Permittee's implementation of the stormwater management control measures through the SWMP. See preamble to EPA's *NPDES Municipal Separate Storm Sewer System General Permit Remand Rule*, December 9, 2016, at 89 FR 89337. The EPA anticipates it unlikely there will be situations unrelated to essential maintenance or severe weather-related emergency where stormwater must be forced to bypass a treatment BMP. See also Response #35.

41. **(Permittees): *Regarding FS discussion of Permit Part 7*** - If the EPA does not modify Permit Part 7 as permittees' request, Fact Sheet Section 2.8 should be modified to identify the provisions that are not applicable to MS4 permits. This modification would eliminate the need for Permittees to interpret which provisions may apply and which provisions do not. However, the Permittees would rather have this

clarification made in the permit document and not in the fact sheet. Recommend adding the following sentences to the end of FS Section 2.8:

> *"Provisions 7.6, 7.7, 7.9, 7.10, and 7.11 in the permit do not apply to the Permittees' MS4 discharges or facilities. The Permittees need not comply with these provisions."*

Additionally, the Permittees request that the provision that are not applicable to MS4 permits be confirmed in EPA's response to this comment and request.

Response #41: The EPA declines to revise the FS as requested by the commenters. As discussed in the introduction to this document, it is the EPA Region 10's policy to not revise the Fact Sheet; instead, upon issuance of the Permit, this document serves as an appendix to the Fact Sheet to clarify issues as necessary. The EPA cannot revise the text of a standard permit condition and declines to revise Permit as suggested. No change has been made to the Permit in response to this comment. See Response #35.

Appendix A: Calculation of the 95th Percentile Rainfall Event

Permittees must use an ordinance or other regulatory mechanism require the design, construction and maintenance of permanent storm water practices at new development and redevelopment sites that manage rainfall on-site and prevent the off-site discharge of the precipitation from all rainfall events less than or equal to the 95th percentile rainfall event.[1]

The 95th percentile rainfall event is a rainfall event that is greater than 95% of all rainfall events over a period of record (typically > 30 years, unless such data do not exist), excluding small rainfall events that are 0.1 of an inch or less. Small rainfall events less than 0.1 of an inch should be excluded from this analysis because, in general, this volume does not result in any measurable runoff due to absorption, interception and evaporation by permeable, impermeable and vegetated surfaces.

Steps for Calculation of 90th Percentile Rainfall Depth

1. Obtain long-term daily rainfall data for the location of interest (i.e, from the National Climate Data Center website or other source).
2. Import the data into a spreadsheet *In MS Excel* [Data / Import External Data / Import Data] and sort data low to high.
3. Remove all flagged data points (i.e., erroneous data points) and edit out snowfall and small events (<0.1 inch).
4. Use the Excel PERCENTILE function to calculate the 95th percentile rainfall depth. The PERCENTILE function returns the nth percentile value in the specified precipitation data range. In MS Excel [PERCENTILE(precipitation data range,95%)]

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[1] EPA used the following references to create this Appendix:

Hirschman and Kosco, 2008. *Managing Storm water in Your Community: A Guide for Building an Effective Post-Construction Program*. Pages 4-11 though 4-13. Center for Watershed Protection, available at http://www.cwp.org/Resource_Library/Center_Docs/SW/pcguidance/Manual/PostConstructionManual.pdf;

EPA 2009. *Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act*. Pages 22 through 24. Available at: https://www.epa.gov/sites/production/files/2015-08/documents/epa_swm_guidance.pdf

EPA Region 10, 2011. Appendix C of the EPA's *Fact Sheet for IDS-027561 - Ada County Highway District, Boise State University, City of Boise, City of Garden City, Ada County Drainage District #3,and the Idaho Transportation Department District #3 MS4 Permit,* October 2011. Available at https://www.epa.gov/sites/production/files/2017-10/documents/r10-npdes-boise-area-ms4s-ids027561-fact-sheet-2012.pdf; and

Utah Department of Environmental Quality, 2016. Division of Water Quality (DWQ) *DWQ Guidance for Calculation of 90th Percentile Storm Even*t, April 2016. Available at: https://deq.utah.gov/legacy/topics/fact-sheet/docs/handouts/2016/05may/calculation-90-percentile-storm-event.pdf

Appendix B: Snow Management References

Alaska Department of Environmental Conservation. *Snow Disposal Area Siting Guidance*.
At: https://dec.alaska.gov/water/wnpspc/pdfs/dec_snowdisposal_siting_guidance.pdf

Fay, et al. 2015. *Snow and Ice Control Environmental BMP Manual.* Western Transportation Institute, Montana State University. Prepared for the Minnesota Department of Transportation and the Clear Roads Program, June 2015.
At: http://clearroads.org/wp-content/uploads/dlm_uploads/Manual_ClearRoads_13-01_FINAL.pdf

Massachusetts Department of Environmental Protection's *Snow Disposal Guidance*:
At: https://www.mass.gov/guides/snow-disposal-guidance

Michigan Department of Environmental Quality *Snow Disposal Guidance*
At: https://www.michigan.gov/documents/deq/wrd-waterwords-20140208_446950_7.pdf

Municipality of Anchorage. *Snow Disposal Site Design Criteria*
At: http://anchoragestormwater.com/Documents/drft_sno_disp_dc_.pdf

National Academies of Sciences, Engineering, and Medicine 2007. *Guidelines for the Selection of Snow and Ice Control Materials to Mitigate Environmental Impacts*. Washington, DC: The National Academies Press.
At: https://doi.org/10.17226/23178.

National Academies of Sciences, Engineering, and Medicine 2004. *Snow and Ice Control: Guidelines for Materials and Methods*. Washington, DC: The National Academies Press.
At: https://doi.org/10.17226/13776.

New Hampshire Department of Environmental Services *Snow Disposal Guidelines*:

At: https://www.des.nh.gov/organization/commissioner/pip/factsheets/wmb/documents/wmb-3.pdf

Appendix C: Idaho Department of Environmental Quality's Final Certification under Clean Water Act §401

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

444 Hospital Way #300 • Pocatello, ID 83201 • (208) 236-6160
www.deq.idaho.gov

Governor Brad Little
Director John H. Tippets

May 20, 2019
Susan Poulsom
NPDES Permits Acting Section Chief
EPA Region 10
1200 Sixth Avenue, Suite 155
Seattle WA 98101-3123

RE: Final 401 Certification for the City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department – District 5, and Idaho State University Municipal Separate Storm Sewer Systems (MS4s), NPDES Permit No. IDS028053.

Dear Ms. Poulsom:

The Pocatello Regional Office of the Idaho Department of Environmental Quality has reviewed the proposed final draft NPDES permit for the City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department – District 5, and Idaho State University Municipal Separate Storm Sewer Systems (MS4s), NPDES Permit No. IDS028053. Section 401 of the Federal Clean Water Act requires that states issue certifications for activities which are authorized by a Federal permit and that may result in a discharge to surface waters. In Idaho, the Department of Environmental Quality (DEQ) is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal permit cannot be issued until DEQ has provided a certification or waived certification either expressly or by taking no action.

Attached under this cover please find the Final 401 Certification for NPDES Permit No. IDS028053. Please contact me at 208-236-6160 to discuss any concerns or questions regarding this final document.

Sincerely,

Lynn Van Every
Regional Water Quality Manager

Cc: Bruce Olenick, Regional Administrator, Pocatello
Loren Moore, 401 Program Coordinator, Boise

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

May 20, 2019

NPDES Permit Number: City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department District #5 and Idaho State University, (Pocatello Urbanized Area) Permit # IDS-028053

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review National Pollutant Discharge Elimination System (NPDES) permits and issue water quality certification decisions.

Based upon its review of the above-referenced Permit and associated Fact Sheet, received from EPA on August 29, 2018, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, 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.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).

- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary (common) pollutants of concern associated with stormwater or urban runoff from the Pocatello Urbanized Area (PUA) are sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum hydrocarbons, microbial pollution, and organic chemicals (pesticides, herbicides, and industrial). Terms and conditions of the municipal separate storm sewer system (MS4) permit and this certification require permittees to reduce pollutant loading to the maximum extent practicable.

Receiving Water Body Level of Protection

The Pocatello Urbanized Area discharges to the Portneuf River and Pocatello Creek within the Portneuf Subbasin assessment units (AU) ID17040208SK001_05 (Portneuf River - Marsh Creek to American Falls Reservoir); ID17040208SK024_03 (lower Pocatello Creek); ID17040208SK024_03a (middle Pocatello Creek – Fks to Outback Driving Range); and ID17040208SK025_02 (South Fork Pocatello Creek – source to mouth). The Portneuf River AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning and secondary contact recreation. The Pocatello Creek AUs have the following presumed beneficial uses: cold water aquatic life and contact recreation. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

Based on IDEQ's 2014 Integrated Report, the Portneuf River is not fully supporting its assessed aquatic life use. Causes of impairment include sediment, nitrogen, phosphorus, oil and grease, dissolved oxygen, temperature and physical substrate habitat alterations. The contact recreation beneficial use for the Portneuf River is also impaired for *E. coli*. DEQ will provide Tier I protection for the aquatic life and contact recreation beneficial uses of the Portneuf River (IDAPA 58.01.02.051.01). The Pocatello Creek assessment units identified above are also impaired for sediment and so do not fully support their presumed aquatic life use. The contact recreation beneficial use for Pocatello creek is not assessed; however, DEQ has sufficient data to show contact recreation impairment to the Pocatello Creek AU's and intends to recommend listing of these AU's in the 2020 Integrated Report. DEQ must provide an appropriate level of protection for the contact recreation use using information available at this time (IDAPA 58.01.02.052.05.c). DEQ will also provide Tier I protection for the aquatic life and contact recreation beneficial uses of Pocatello Creek.

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires a demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. In order to protect and maintain designated and existing beneficial uses, a permitted discharge must reduce the discharge of pollutants to the maximum extent practicable (MEP). The terms and conditions contained in the Pocatello UA permit and this certification will reasonably assure that permittees reduce pollutants to the MEP.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a TMDL must be prepared for those pollutants causing impairment. A central purpose of TMDLs is to establish wasteload allocations for point source discharges, which are set at levels to restore the water body to a condition that meets applicable water quality criteria. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL. A permit with terms and conditions consistent with TMDL wasteload allocations will provide the level of water quality necessary to support existing and designated uses and therefore satisfies Tier I antidegradation requirements.

The EPA-approved *Portneuf River TMDL: Water Body Assessment and Total Maximum Daily Load* (1999) and the *Portneuf River TMDL Revision and Addendum* (2010) established wasteload allocations for sediment, phosphorus, oil and grease and bacteria in the Portneuf River and Pocatello Creek. The wasteload allocations are designed to ensure these waters will achieve the water quality necessary to support existing and designated beneficial uses and comply with the applicable numeric and narrative criteria. The terms and conditions contained in the Pocatello Urbanized Area permit reasonably assure compliance with these wasteload allocations. In addition, the execution of a comprehensive stormwater management program which includes targeted pollution reduction activities and pollutant assessment and monitoring in assessment units within the Pocatello Urbanized Area is consistent with the TMDLs.

In general, the permit contains clear, specific and measureable provisions for the continued implementation of specific controls, management practices, control techniques, and system design and engineering methods to achieve the requirements of the permit. The provisions in this MS4 permit are at least as stringent as those established in the previous individual MS4 permit issued in 2006 for the City of Pocatello, Chubbuck, Bannock County and Idaho Transportation District #5, thus addressing anti-backsliding. Idaho State University has joined this permit as a co-permittee for the first time. The permittees will continue to implement their existing storm water management program within their jurisdiction. In addition, specific terms and conditions of the permit (Part 2-5) aimed at providing a Tier I level of protection and compliance with the existing Portneuf River TMDLs include:

- a prohibition on snow disposal directly to surface water;
- specific prohibited non-stormwater discharges;
- a requirement to develop/revise the stormwater management plan that includes five control measures:
    - public education and outreach,
    - illicit discharge detection and elimination,

- construction site stormwater runoff control,
- post-construction stormwater management for new development and redevelopment,
- pollution prevention/good housekeeping for MS4 operations;

- quantitative monitoring/assessment of pollutants removed by BMPs (in part, two constructed wetlands since 1996) in conjunction with their required maintenance in assessment units within the PUA;
- a Monitoring/Assessment Plan and at least two (2) Pollutant Reduction Activities addressing expectations in the Portneuf River TMDL; and
- the stipulation that if either EPA or DEQ determine that this MS4 causes or contributes to an excursion above the water quality standards, the permittee must take a series of actions to remedy the situation.

The terms and conditions, monitoring and assessment practices, BMP requirements, and associated requirements contained in this MS4 permit, coupled with the conditions in this certification provide reasonable assurance that the permittee will protect and maintain beneficial uses to the maximum extent practicable, which is consistent with applicable wasteload allocations in the Portneuf River TMDLs. Therefore, DEQ has determined this MS4 permit will protect and maintain existing and designated beneficial uses in the Portneuf River and Pocatello Creek and is in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

Best Management Practices

Best management practices (BMPs) must be designed, implemented, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the United States and to improve water quality to the maximum extent practicable.

When selecting BMPs, the permittee must consider and, if practicable, utilize practices identified in the Idaho DEQ Catalog of Stormwater Best Management Practices for Idaho Cities and Counties (http://www.deq.idaho.gov/media/622263-Stormwater.pdf).

Pollutant Reduction Activities in the Portneuf River and Pocatello Creek

In carrying out the requirements of Part 4.3 of the permit, the Pocatello Urbanized Area must define and implement:

- Two (2) pollutant reduction activities designed to reduce sediment, nitrogen, phosphorus, oil and grease, dissolved oxygen, bacteria and/or and temperature from the MS4 into the Portneuf River.

Reporting of Discharges Containing Hazardous Materials or Deleterious Material

All spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the Pocatello DEQ regional office during normal working hours (239) 236-6160, or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS 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 or comments regarding the actions taken in this certification should be directed to Lynn Van Every, Pocatello Regional Office, at (208) 236-6160 or via email at lynn.vanevery@deq.idaho.gov.

Bruce Olenick

Regional Administrator

Pocatello Regional Office