Response to Comments on

National Pollutant Discharge Elimination System (NPDES) Permit

For Discharges from the

City of Moscow (Idaho) Municipal Separate Storm Sewer System

NPDES Permit No. IDS028398

Final – July 2019

U.S. Environmental Protection Agency, Region 10

Table of Contents

Introduction

On November 26, 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 system (MS4) owned and/or operated by City of Moscow in Latah County, Idaho. The permit document #IDS028398 will be referred to as "the Permit." The 45-day comment period ended January 10, 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 which 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 Moscow, Idaho (City)
- Washington Department of Ecology (Ecology)

State Certification under Clean Water Act §401

On November 2, 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 January 10, 2018. On July 19, 2019, IDEQ certified the final Permit; a copy of the final certification is provided in Appendix A of this document.

The Permit was drafted using IDEQ's 2014 Integrated Report (IR). IDEQ's 2016 IR was approved by the EPA on June 25, 2019. In the 2016 IR, IDEQ changed the beneficial use status for contact recreation in the South Fork Palouse River[1] to "fully supporting." Consistent with the IDEQ's final CWA Section 401 certification, the EPA has revised relevant Permit text accordingly. See Table 1 below.

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:

[1] South Fork Palouse River Water Body Assessment Unit 17060108CL002_3 (*Gnat Creek to Idaho/Washington border*). See IDEQ's 2016 IR at http://www.deq.idaho.gov/media/60182296/idaho-integrated-report-2016.pdf

Table 1. Edits to Final Permit

Edits to Final Permit Based on Conditions in the IDEQ Final CWA §401 Certification:	
Part 4.2; Table 4.2	Deleted *E.Coli* as an impairment pollutant for South Fork Palouse River, per the 2016 *IR*.
Part 4.3; Table 4.3	Deleted Ammonia, Fecal Coliform as impairment pollutants for Paradise Creek; and delete *E.Coli* as impairment pollutant for South Fork Palouse River, per the 2016 *IR.* See also Response #28.
Edits to Final Permit Based on Public Comments Received:	
Cover Page – Permit Effective Date: October 1, 2019	See Response #7
Schedule – page 2 Permit Parts 2.5.2, 2.5.3, and 2.6; Parts 3.1, 3.2, 3.3, 3.4, and 3.5 (multiple) Parts 4.1, 4.3; Parts 6.2.2; 6.4, Table 6.4.2; Part 8.2	See Responses #7, 9, 13, 18
Part 3.2.6; Part 9	See Response #19
Part 3.4.2.2	See Response #21
Parts 3.2.2.7, 3.5.6, and 3.5.8	See Response #25
Part 4.2, Table 4.2 Part 4.3	See Responses #27, 28
Part 6.2.5.4	See Response #30
Part 6.2.6	See Response #31
Edits Based on Relevant Comments on Other Proposed MS4 Permits in Idaho or Other EPA Actions:	
Parts 3.3.4 (revised 3rd paragraph) and 3.3.5 (new 3rd paragraph)	Revised text associated with Preconstruction Site Plan Review procedures to better reflect the intent of the federal requirement in 40 CFR § 122.34(b)(4)(D) & (E), based on comments submitted by City of Pocatello, et al. on Permit #IDS028053.
Table 4.3, and Part 9	Replaced the phrase "Pollutants of Concern" with "Impairment Pollutants" in Table 4.3; deleted and replaced relevant definitions in Part 9, based on IDEQ comments dated 7/3/2019 on Permit #IDS028207.
Part 7.2	Updated the statutory civil monetary penalty amounts, pursuant to the EPA's *Civil Monetary Penalty Inflation Adjustment Rule,* 40 CFR Part 19. See: 84 *Federal Register* 2056-2060 (February 6, 2019).

General Topics

1. **(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.

   The protection of public health and safety is an important responsibility of Idaho communities. 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 #1: Comment noted. No change has been made to the Permit.

2. **(Ecology): *General Comment* -** Ecology appreciates the EPA's efforts to issue a first-time NPDES Permit to the City of Moscow, Idaho. We are strongly supportive of the EPA's efforts to improve stormwater management throughout the State of Idaho. We believe that the implementation of a comprehensive Stormwater Management Program (SWMP) will assist the City in reducing pollutants in their stormwater discharges, and improve the water quality of Paradise Creek, which is a tributary of the South Fork of the Palouse River in Whitman County, Washington. Some aspects of the Draft Permit could be improved to adequately address stormwater pollution from the Permittee's separate storm sewer system, and Ecology urges the EPA to strongly consider the changes recommended below.

   Response #2: Comment noted. See Responses #19, 23, 24, 25, 29, 30 below.

3. **(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 Section 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 #3: Comment noted. No change has been made to the Permit.

4. **(City): *General Comment, Regarding Terminology* -** Pursuant to 40 CFR §122.26(b) (13), the definition of stormwater is written as two words, "storm water". We recommend the use of "storm water," not "stormwater," throughout the draft Permit and Fact Sheet documents in order to be consistent with the Code of Federal Regulations (CFR).

   Response #4: The EPA declines to revise the Permit and Fact Sheet as requested. No change has been made to the Permit. The term has been spelled as either one word or two words, since the 1977 amendments to the Federal Water Pollution Control Act.[2] Its meaning, however, remains the same. Thus, a change throughout the Permit and Fact Sheet is unnecessary.

5. **(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 of time, the EPA received comments from AIC and other stakeholders on two versions of the draft general permit. As the FS supporting the Moscow 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.

---

[2] See, for example, *Federal Water Pollution Control Act*, [As Amended Through P.L. 107–303, November 27, 2002], at: https://www.epa.gov/sites/production/files/2017-08/documents/federal-water-pollution-control-act-508full.pdf; and/or *National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule* (Final Rule), 81 FR 89320-89352 (December 9, 2016) at https://www.govinfo.gov/content/pkg/FR-2016-12-09/pdf/2016-28426.pdf

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

If the EPA believes that issuing individual permits reduces the EPA's overall work load, AIC respectfully asserts that we intend to develop and submit detailed comments on each and every permit, individual or general; which will result in a possibly greater overall workload for the EPA staff.

Response #5: 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 Moscow, Idaho area and in all Urbanized Areas in Idaho. The EPA and IDEQ will ensure a smooth and efficient transfer of the MS4 permit program to IDEQ on July 1, 2021.

6. **(City):** ***General Comment, Regarding Permit Effective Date and Relationship with University of Idaho*** **-** The City requests that the Effective Date for the Permit align with the Effective Date for the University of Idaho (hereinafter "UI"), Individual Permit, but no earlier than October 1, 2019.

   City and UI have inter-connected MS4s. The EPA's prior general permit approach would have covered City and UI at the same time. The benefits of simultaneous coverage would foster the implementation of cooperative and well-coordinated programs, including the potential for significant cost savings to both City and UI through the sharing of compliance capabilities and resources. Simultaneous coverage would also make it easier for City to implement some permit requirements that will financially impact UI, such as requiring construction and post-construction BMPs and development reviews within City's jurisdiction. UI operates its development program independently of City. Joint MS4 Permit coverage will promote awareness by UI of why City's storm water standards and development review requirements changed and why City's compliance with those updated procedures is required. Not aligning City's and UI's MS4 Effective Dates will likely lead to unnecessary inter-agency confusion, compliance challenges, and costs.

   Response #6: The EPA agrees that the SWMP implementation schedules for the MS4 permits issued to the City of Moscow and University of Idaho should be coordinated. The EPA, however, disagrees that it is necessary to delay the issuance of the City's MS4 permit until a permit is issued to the University of Idaho.

   In correspondence dated June 19, 2019, the EPA has required that the University submit a MS4 permit application no later than December 20, 2019. If, in the future, the City and University submit a joint MS4 permit application as co-permittees, the EPA will at that time propose a joint permit to address both entities. Alternatively, if the University chooses to apply for its own individual MS4 permit in response to the EPA's request, the EPA will propose an individual permit for the University. The City may at that point request that the EPA modify its permit to align SWMP implementation schedules between the two permits.

7. **(City, AIC):** ***General Comment, Regarding Permit Effective Date*** **-** Since the EPA has issued individual permits to small MS4s as opposed to issuing a statewide general permit, we urge you to implement a standard permit Effective Date statewide that coincides with MS4 fiscal years. The standardized process will simplify and facilitate budgeting and implementation schedules for municipalities, as

well as provide a uniform timeline for Idaho Department of Environmental Quality (IDEQ) to monitor compliance and renew permits in a timely manner.

AIC supports the Permittee's request that the Permit become effective no earlier than on October 1, 2019, the start of the Permittee's 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 the development and public review of Alternative Control Measures should also be revised based on a later effective date.

Response #7: The EPA agrees and has changed the Permit such that the effective date will align with the October 1 – September 30 local fiscal year. See also Responses #9, 13 and 18.

8. **(AIC)**: ***General Comment, Regarding Stormwater Management Program (SWMP) 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 #8: Comment noted. No change has been made to the Permit. The EPA provides the City, as a first term Permittee, up to 4.5 years from the Permit effective date to fully implement the SWMP control measures required by the Permit. See 40 CFR §122.34(a).

9. **(AIC):** ***General Comment, Regarding Document Submittal Deadlines*** **-** It is important that all dates throughout the Permit will be valid regardless of when the Permit becomes effective. Therefore, AIC supports how the final Permit will list one-time submission deadlines according to the number of days following the "effective date" of the final Permit. AIC also suggests the final Permit order the submittal schedule by submission deadline in a summary in order to help dischargers in reliably submitting all of the required reports.

   Response #9: Comment noted. The EPA identifies specific dates throughout the Permit based on an October 1 permit effective date to match a local fiscal budget year. See Response #7. The Schedule on Permit page 2 summarizes all dates by which the Permittee must implement SWMP requirements and/or submit documents to the Permitting Authority. See also Response #13.

Limitations and Conditions (Permit Part 2)

10. **(AIC):** ***Regarding Permit Part 2.1 - Compliance with Water Quality Standards*****-** Regulated small MS4 operators are required to obtain a NPDES Permit, implement a comprehensive stormwater management and monitoring program, and use Best Management Practices (BMPs) to reduce pollutants of concern in stormwater discharges to the maximum extent practicable. AIC appreciates the EPA's commitment 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, AIC believes the final Permit requires an affirmative statement regarding how the MEP standard will be achieved. Therefore, AIC strongly urges the EPA to insert the following paragraph into 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 offers the following justification 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;3 (See: 1999 Defenders of Wildlife vs. Browner; https://yosemite.epa.gov/oa/eab_web_docket.nsf/8362EA577FA6FBF3852570830051362A/$File/Ariz.%20Mun.%20SW%209th%20Cir.%20Dec..1.17.2018pdf.pdf)

• The 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; https://www.gpo.gov/fdsys/pkg/FR-2016-12-09/pdf/2016-28426.pdf).

Response #10: The EPA agrees with the statements set forth by the commenter; however, it is unnecessary to add the sentence suggested by the commenter because the Permit already contains the required deadlines and substantive conditions to ensure that the MEP standard is met. No change has been made to the Permit.

11. **(City):** ***Regarding Permit Part 2.5.3 - SWMP Document*** **-** Original language, first paragraph, states in part, "*[t]he Permittee must maintain a written SWMP document or documents that, at a minimum, describes in detail how the Permittee intends to comply with the requirements for each minimum control measure in this Permit. As necessary the SWMP Document must be updated and must describes [sic] the Permittee's interim schedule(s) for implementation of any SWMP control measure components to be developed during the term of this Permit.*"

Commenter recommends changing the paragraph to add the following sentence at the end of the Part above: *The contents of the SWMP document and the SWMP document itself are not enforceable as effluent limitations of the permit.*"

Response #11: It is not necessary to add this sentence; no change has been made to the Permit. The FS, at page 16, fully describes what a SWMP Document is and provides such context regarding its purpose. Also note that this statement is reflected in the suggested SWMP Document template in Permit Appendix B-1.

12. **(AIC):** ***Regarding Permit Part 2.6 – Alternative Control Measures (ACMs)*** **-** AIC supports the EPA Region 10's proposal to address the Phase 2 MS4 Remand Rule requirements by applying Option 2 – the "Two-Step Approach."

Response #12: 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 City of Moscow MS4, federal regulations at 40 CFR §§ 122.62 and 122.64 provide authority to the EPA/NPDES Permit 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 Permit Part 2.6; Permit Part 8.13; and 40 CFR §§122.62 and 122.64.

13. **(AIC):** ***Regarding Submittal Deadlines For ACMs, Monitoring/Assessment Plans, and/or Pollutant Reduction Activities*** – AIC urges 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 the EPA require Alternative Controls, Monitoring Assessment Plan, and Pollutant Reduction Activities 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).

    Response #13: The EPA agrees to allow additional time for the City to submit its alternative control measure (ACM) requests, monitoring/assessment plans, and/or pollutant reduction activities. The EPA agrees to allow up to 2 years following the Permit Effective Date as requested by the commenter.

    As noted in Response #7, the final Permit will have an effective date of October 1, 2019. The EPA therefore revises Permit Part 2.6 and Part 4.1.1 to establish deadlines for the subsequent submittals of any ACM requests, monitoring/assessment plan(s), and pollutant reduction activities, to October 1, 2021, (i.e., two years after the Permit effective date.)

    The EPA also revises associated deadlines cited in Permit Parts 2.5.5 and 4.1.2 for the City to update the SWMP document(s) with descriptions of monitoring/assessment plan(s) and pollutant reduction activities, to December 1, 2022, (i.e., the deadline of 3rd Annual Report), in recognition of the timeframes for initial submittals, Permitting Authority review, and subsequent permit modification.

    Finally, the EPA makes multiple necessary edits throughout the Permit to other related deadlines for actions specified in Part 3, Annual Reports in Part 6, and the NPDES Permit Renewal Application in Part 8.2.

14. **(City):** ***Regarding Part 2.6 - Submittal Deadline For ACMs -*** The City requests that the Permit provide for ACMs development throughout the term of Permit (i.e. up to 4.5 years from the Permit Effective Date), and that all references (to the ACM Requests) state the ability to provide such a request up to 4.5 years from the Permit Effective Date.

    Response #14: See Response #13 regarding additional time for ACM requests.

    In addition, after the deadline for submitting an ACM request, if the City has relevant new information that was not previously available, the EPA/NPDES Permit Authority can consider modifying the permit in response to a Permittee's request based on such new information. See Permit Part 8.13 (*Re-opener Clause);* See also 40 CFR §§ 122.62, 122.64, and 124.5.

15. **(AIC):** ***Regarding Integrated Planning and Permit Part 2.6.4 - Recognition of ACMs -*** AIC recommends that the permit affirmatively provide for Integrated Planning within this Part, after the 3rd paragraph. Recommended text for Part 2.6.4, after the 3rd paragraph: *"[The} 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 #15: The EPA declines to revise Permit Part 2.6.4 as suggested. See Response #17.

16. **(AIC): *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 EPA. AIC similarly recommends that the Permit affirmatively provide for the development and application of pollutant credit trading. AIC suggests referring to the 2016 State of Idaho Water Quality Trading Guidance.(See: http://www.deq.idaho.gov/media/60179211/water-quality-trading-guidance-1016.pdf.)

    AIC suggests this may require the addition of a new Part (i.e. 2.7). Recommended text for a 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 the 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 #16: The EPA declines to revise the Permit as suggested at this time. In the future, if the Permittee submits an appropriate trading plan under Idaho's watershed trading framework, the EPA would determine whether it is warranted to modify the Permit to accommodate water quality 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.

    However, at this time, the EPA is unaware of a trading plan, or a watershed trading framework, detailing how trades would be conducted for MS4 discharges in the Paradise Creek/South Fork Palouse River watershed. Therefore, while the Permit does not allow for pollutant trading as written, the Permittee is free to submit an appropriate trading plan under a watershed trading framework, and the Permit can be modified to incorporate such provisions.

17. **(AIC): *Regarding a new Permit Part 2.8 - Integrated Planning* -** Commenter recommends that the Permit affirmatively provide for the EPA's 2012 *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (see: https://www3.epa.gov/npdes/pubs/integrated_planning_framework.pdf) Commenter recommends the addition of a new Part (i.e. 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 the 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 the EPA and IDEQ."*

    Response #17*:* The EPA declines to revise the Permit as suggested. 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 commenter 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 Permittee has 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)

18. **(City):** ***Regarding Permit Part 3.1.1 - Public Education and Outreach on Storm Water Impacts Compliance Date*** – Original language states: "*[n]o later than [One year from Effective Date], the Permittee must begin implementation of the required SWMP control measure components described in Parts 3.1.2 through 3.1.8 below.*" Given the financial burdens and affordability considerations that first-time MS4 Permittees face, City requests that the deadline for this programmatic measure be set for 4.5 years following the Effective Date of the Permit, which would be consistent with the deadline to comply with all other five programmatic measures and concurrent with the re-application deadline.

Response #18*:* The EPA declines to revise the Permit as suggested; however, the EPA has added a sentence to provide further clarification with regard to the Public Education and Outreach Program. The Permit text in Part 3.1.1 merely instructs the City to begin its public education and outreach activities within one year of the Permit effective date.

To clarify that the Public Education and Outreach activities in Permit Part 3.1 must be fully implemented no later than 4.5 years from the Permit effective date, the EPA added the following sentence to Part 3.1.1: ***No later than April 3, 2024, the Permittee must fully implement all required components described in Parts 3.1.2 through 3.1.8 below.***

Illicit Discharge Detection and Elimination (Permit Part 3.2)

19. **(Ecology):** ***Regarding Permit Part 3.2.6 - Follow-up –*** Original language states: "*The Permittee must take appropriate action to address the source of an ongoing illicit discharge within sixty (60) days of its detection, to the extent allowable to the Permittee under Idaho law.*" Ecology is concerned that, where the Permittee identifies a recurring illicit discharge stemming from an illicit connection to their MS4 (with the exception of discharges that originate from irrigation flows or groundwater seepage), the draft Permit does not outline a firm timeline and final date requiring elimination of said connection and/or discharge. We believe the wording in the Draft Permit that the Permittee " ... must take appropriate action to address the source of an ongoing illicit discharge ... " is insufficient to ensure that all such recurring illicit discharges to their MS4 will be eliminated. We request a clear definition or description of what "appropriate action" means.

    Response #19: The Permit contains definitions for "appropriate" and "appropriate action" in Permit Part 9 (Definitions). The EPA agrees with the comment and has revised the second sentence of Permit Part 3.2.6 to clarify the expectation to ***address and eliminate*** identified illicit discharges to the MS4 that are not associated with irrigation return flows or groundwater seepage. This edit is consistent with the EPA's intent elsewhere in Part 3.2, and the explanation in the FS at page 22 (quoted below with emphasis added).

    "*…Permit Part 3.2.6 requires mandatory follow-up actions for recurring illicit discharges (identified through complaint reports and/or Permittee screening activities). Response activities must begin within 30 days of identifying elevated concentrations of screening parameters, and action must be taken to eliminate problem discharges within 60 days. Specific timelines are included to direct timely initiation of actions to reduce or fully eliminate a known or newly identified problem….*"

    The EPA has also made an editorial correction to the definition for "appropriate action" in Permit Part 9.

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

20. **(City):** ***Regarding Permit Part 3.4.2 - Post-Construction Stormwater Management in New Development and Redevelopment-Ordinance*** - Original language in 2nd paragraph states*, "[r]equired permanent stormwater controls must be sufficient to retain onsite the runoff volume produced from a 24-hour, 95th percentile storm event; or sufficient to provide the level of pollutant removal greater than the pollutant removal expected by using onsite retention of runoff volume produced from a 24 hour, 95th percentile storm event.*" Commenter suggests editing this paragraph to be consistent with the current Eastern Washington Phase II MS4 General Permit by adding text in ***bold italic*** as follows:

    > …."[r]equired permanent storm water controls must be sufficient to retain on site the runoff volume produced from a 24-hour, 95th percentile storm event, ***or local jurisdiction equivalent standard***; or sufficient to provide the level of pollutant removal greater than the pollutant removal expected by using on site retention of runoff volume produced from a 24 hour, 95th percentile storm event, ***or local jurisdiction equivalent standard***. ***Permittees shall develop and implement criteria to determine when it is infeasible for a project to meet this requirement, including, but not limited to,***

Site/Engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff."

Response #20: The EPA declines to add the recommended text to Permit Part 3.4.2, 2nd paragraph, as requested. The subsequent Permit Parts 3.4.2.1 and 3.4.2.2 provide opportunity for a local jurisdiction's defined equivalent standard for stormwater management. Further, Permit Part 2.6 provides the Permittee with the opportunity to request the Permitting Authority's consideration of such an equivalent local standard as an ACM. The EPA recommends the City submit its "local equivalent standard," including its criteria for determining when it is infeasible for a project to meet the onsite retention requirement, as an ACM request pursuant to Permit Part 2.6.

21. **(City):** ***Regarding Permit Part 3.4.2.2 – Alternatives for Local Compliance*** - Commenter requests including the following language in Permit Part 3.4.2.2: ***Site/Engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff.***

Response #21: As drafted, the EPA notes that Permit Part 3.4.2.2 does not exclude the Permittee's consideration of "*Site/Engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff*" as technically infeasible, and/or as a site constraint. However, to further clarify that such considerations are reasonable illustrations of why it may be technically infeasible to retain the required runoff volume at an individual site, the EPA adds the requested phrase; this provision now reads as follows:

> ***3.4.2.2 Alternatives for Local Compliance****. The Permittee's ordinance and/or regulatory mechanism may allow alternatives for project operators to comply with the Permittee's onsite retention requirement at a particular site based on factors of technical infeasibility, and/or site constraints. Such feasibility or constraint factors may include, but are not limited to: shallow bedrock; high groundwater; groundwater contamination; soil instability as documented by a thorough geotechnical analysis;* ***site/engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff;*** *and/or a land use that is inconsistent with capture, reuse and/or infiltration of stormwater.*

22. **(City):** ***Regarding Permit Part 3.4.6 - Operation and Maintenance (O&M) of Permanent Storm Water Controls*** - The draft outlines an inventory tracking system that the Permittee must manage operational conditions of permanent storm water controls within the Permittee's jurisdiction. The level of detail required by the O&M inventory tracking system creates an insurmountable burden for small MS4s. We propose that small MS4s be excluded from the requirements noted above and be permitted to submit a plan of how they will track such information in a manner that will not create an undue financial burden. In the plan, only Permittee-owned permanent storm water controls need to be tracked.

Response #22: The EPA disagrees; no change has been made to the Permit. Tracking of permanent stormwater controls via some type of inventory or other means is a necessary and important program component. Part 3.4.6 is intended to ensure that the Permittee maintains its knowledge of structural practices throughout the MS4 service area to ensure their efficient operation for water quality protection over the long term. It is not the EPA's intent to cause an undue financial burden on the City or other Permittees in Idaho. See 40 CFR § 122.34(b)(5)(C). The commenter suggests broad changes for all MS4 permits in Idaho and does not identify a specific change for this Permit. If the City seeks a specific revision to accommodate their path

toward accomplishing this control measure component, the City may submit an ACM request as allowed by Permit Part 2.6.

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

23. **(Ecology)**: **Regarding Permit Part 3.5.2 - Inspection and Cleaning of Catch Basins and Inlets -** Original language states, "*The Permittee must inspect all Permittee-owned or operated catch basins and inlets in the MS4 at least once every five years and take all appropriate maintenance or cleaning action based on those inspections.*"

    Ecology has concerns that the proposed frequency of catch basin and inlet inspections is not sufficient to ensure that the facilities continue to function as designed. Eastern Washington Phase II Municipal Stormwater Permittees are required to inspect their catch basins every two (2) years and clean them if the inspections indicate cleaning is warranted. Ecology requests that the inspection frequency be comparable to or greater than that currently required for Washington State Permittees.

    Response #23: The EPA declines to revise the Permit as suggested. Given the number of catch basins owned and operated by the Permittee within the Permit Area, the EPA believes the frequency identified in the Permit is sufficient**.**

24. **(Ecology)**: ***Regarding Permit Part 3.5.3 - Pollution Prevention/Good Housekeeping for MS4 Operations –*** *Original language* states: "*The Permittee must properly operate and maintain the MS4 and its facilities, using prudent pollution prevention and good housekeeping as required by this Part, to reduce the discharge of pollutants through the MS4."* And, the Permittee *"must ensure that those [operations and maintenance] procedures are conducted in a manner to protect water quality ...* " Ecology recognizes that a robust operations and maintenance program is essential to the goal of preventing and reducing runoff from municipal operations. Therefore, we request the Permittee implement a full Operations & Maintenance (O&M) Plan that formally outlines the specific procedures and control measure components that the Permittee will take to minimize impacts to water quality.

        The Permittee's O&M Plan should include/identify, at a minimum:

        a. An inventory of facilities and associated O&M activities;
        b. A schedule of O&M activities;
        c. Specific Best Management Practices (BMPs) that, when applied to the activities and facilities, will protect water quality and reduce the discharge of pollutants to the maximum extent practicable;
        d. Procedures for implementing said BMPs; and,
        e. Departments/employees responsible for BMP inspection and maintenance.

    Response #24: The EPA declines to revise the Permit as suggested. No change has been made to the Permit. The permit as written already inherently requires a full O&M Plan, the requirements of which are identified throughout the permit. The documentation of this is required in the City's SWMP. According to the City's MS4 permit application, the City currently has a stormwater infrastructure program that maintains and operates the MS4. The City also identified in the application that during the first permit term it intended to "*Develop and implement stormwater infrastructure maintenance and cleaning program which outlines the methodologies to be utilized, personnel needs, equipment needs, cleaning frequency, and other*

maintenance activities." The City's O&M responsibilities are documented in the City's Standard Operating Procedures or similar documents and must be summarized as part of the City's SWMP document.

25. **(Ecology): *Regarding Permit Parts 3.5.6 (O&M Procedures for Other Municipal Areas and Activities*) and 3.5.8 (*Stormwater Pollution Prevention Plans (SWPPPs) for Permittee Facilities) -*** The recommended O&M Plan referenced in Ecology's Comment #23 should also include appropriate pollution prevention and good housekeeping procedures for all of the following facilities and their associated activities: stormwater collection and conveyance system; roads, highways, and parking lots; vehicle fleets, refueling sites, and vehicle washing areas; snow disposal sites; buildings; construction projects; industrial activities; waste transfer sites; material storage areas; heavy equipment storage areas; and ***heavy equipment maintenance areas***.

    Response #25: The EPA agrees to add "including heavy equipment storage areas" to clarify the list of municipal activities for which O&M procedures must be reviewed and updated during the permit term, as this clarification is relevant to similar provisions in other MS4 permits issued in Idaho. For consistency, the EPA notes that similar edits have also been made to Permit Part 3.2.2.7.

Special Conditions for Discharges to Impaired Waters (Permit Part 4)

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

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

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

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

Response #26: The EPA declines to delete the references to the monitoring/assessment activity in Permit Parts 4 and 6, and further declines to revise the Fact Sheet Appendix 5 in response to this comment.

The Permit does not require outfall monitoring. As drafted, Permit Part 4.2 reads: "*The Permittee must submit a Monitoring/Assessment Plan that is designed to quantify, at a minimum, pollutant loadings from the MS4 into Paradise Creek ….The Monitoring/Assessment Plan must address all required plan elements outlined in Part 6.2 (General Requirements for Monitoring/Assessment Activities).*" Permit Part 6.2 then defines the expected framework for the monitoring/assessment activity, and conditionally defines how wet weather monitoring should be conducted; see Part 6.2.5: "*If the Permittee monitors wet weather discharges from MS4 outfalls:….*"

Consistent with the intent of the NPDES Phase II Storm Water Regulations, the monitoring/assessment of impairment pollutant(s) from the MS4 as required by the Permit serves to indicate overall improvement in discharge quality, and during a first term MS4 permit, can help to establish a baseline against which future improvement can be measured.

The EPA agrees that a Permittee should use available funds to fully implement structural and non-structural BMPs that improve MS4 discharge quality into receiving waters. The Permit sets minimum expectations for targeted pollutant reduction activities in areas draining to Paradise Creek and the South Fork Palouse River that address impairment pollutants, as well as minimum expectations for monitoring/assessment for the impairment pollutant *E.coli* into Paradise Creek. The Permit also provides the Permittee freedom to define those activities in consideration of available Permittee resources and the TMDL goals as defined by the relevant Watershed Advisory Group(s).

During the Permit development, the EPA determined that no additional stormwater management actions are needed to comply with applicable Idaho TMDLs for the portions of Paradise Creek and South Fork Palouse River in Idaho, but included such actions based on downstream impairments in Washington. However, in the CWA Section 401 certification, the IDEQ states that…. "*quantitative monitoring/assessment to determine BMP removal of pollutants of concern in all impaired [water body Assessment Units (AUs)]*" and "*required pollution reduction activities in all impaired AUs*" are components necessary to support IDEQ's determination that the Permit complies with the applicable Idaho TMDLs and the Tier I provisions of the Idaho WQS for Paradise Creek and South Fork Palouse River. See IDEQ CWA Section 401 certification in Appendix A of this document, pages 4 and 6. The EPA has therefore retained requirements for impairment pollutant reduction activities in each Idaho receiving water and revised the minimum expectation for monitoring/assessment of *E. coli* in Paradise Creek, consistent with the final Section 401 certification.

The EPA reiterates that the Permit does not require the Permittee to conduct analytical sampling of MS4 discharges. The EPA encourages the Permittee to identify the best way to quantify the effectiveness of their selected control measures to reduce the impairment pollutants and to more generally reduce pollutants from the MS4 to the MEP. The Permit terms and conditions in Part 4, as augmented by Part 6.2, represent a minimum expectation for the Permittee's selection of its monitoring/assessment activity.

27. **(City):** ***Regarding Permit Parts 4 and 6, FS Appendix 5*** **-** Please delete all references related to PCBs in the draft Permit and associated Fact Sheet since City does not discharge to waters listed as impaired for PCBs (see Table 4.3, Page 37 of 67). The inclusion of PCBs as "Pollutants of Concern" for the City's MS4 is not supported by scientific evidence in the draft Permit or Fact Sheet.

    The EPA Fact Sheet at pages 61 and 62 refers to "BMPs" or "SWMP activities" as purportedly recommended in the TMDL implementation plan, such as erosion and sediment control plans for land disturbance and illicit discharge investigations of the MS4 (also referenced on Page 61 of the Fact Sheet as an appropriate example), etc., are explicitly required by Part 3 of the draft Permit.

    Therefore, it is not necessary to impose costly and burdensome monitoring and assessment activities for small MS4s. We recommend removing the [statements on Pages 61-62 of the FS] as part of the EPA's justification for additional management requirements for PCBs for Idaho MS4 permittees. It should not be assumed the "PCB impairments" in the City of Pullman, Washington, are the result of upstream dischargers in Idaho and there is no evidence that upstream reductions in PCB loading are needed as stated.

    Response #27: In consideration of this and other public comments received, the EPA agrees to remove PCBs and fecal coliform from Permit Table 4.2 as an "Impairment Pollutant" parameter for the City's MS4 monitoring/assessment activity.[3] See also Response #31.

    The EPA acknowledges that IDEQ does not list Paradise Creek or the South Fork Palouse River in its 2014 or 2016 Integrated Report(s) as impaired for the same pollutants as Ecology does. IDEQ and Ecology each assess their waters differently for toxic pollutants.

    However, the EPA cannot issue a NPDES permit that does not ensure compliance with the applicable water quality requirements of all affected states. 40 CFR § 122.4(d). The City's MS4 discharges into both the South Fork Palouse River and into Paradise Creek (which is a tributary to the South Fork Palouse River); Washington is an affected state with applicable water quality requirements located downstream of the City's MS4 discharges. As such, the EPA correctly listed PCBs and other pollutants in Permit Table 4.3. as impairment pollutants for the portion of the South Fork Palouse River in Washington State. As stated in FS Appendix 5.2, at page 57, downstream water quality impairments require that the EPA include terms and conditions in the Permit to reflect appropriate water quality- based requirements for impairment parameters. See 40 CFR § 122.44 (d)(4) & (d)(5). See also *Arkansas v. Oklahoma*, 503 U.S. 91 (1992). It is therefore appropriate for the Permit to require the City to consider the downstream impairments when selecting its pollutant reduction activities as required by Permit Part 4.3.

    The Fact Sheet identifies that stormwater discharges may be source of the pollutants of concern listed for Paradise Creek and the South Fork Palouse River, based on IDEQ documentation as well as analyses and studies conducted by Ecology in the South Fork Palouse River watershed.

[3] IDEQ requested that the EPA substitute the term "Pollutants of Concern" with "Impairment Pollutants" in the Permit. The EPA uses this term in this document as well. See *Table 1, Edits to the Final Permit*.

Related to PCBs, in particular, see *Pullman Stormwater Pilot Study for Pesticides, PCBs, and Fecal Coliform Bacteria 2005-2006,* Publication No. 06-03-034 (October 2006) at https://fortress.wa.gov/ecy/publications/documents/0603034.pdf; this study indicates the City of Pullman's stormwater was a source of PCBs and suggests that BMPs and O&M practices must be conducted to ensure sediment, which may carry PCBs, does not enter local streams.

The EPA agrees that implementation of the SWMP control measures can address these impairment pollutants; Permit Part 4.3 requires that the Permittee select enhanced or specific activities that focus attention on one or more of the impairment pollutants listed in Permit Table 4.3. As previously noted, the monitoring/assessment requirement in Permit Part 4.2 has been revised to focus on the *E. coli* impairment in Paradise Creek. The monitoring/assessment activity should be used to indicate the success or failure of the implementation of pollutant reduction activities that provides necessary feedback that ensures the protection of water quality, consistent with the NPDES Phase II Storm Water Regulations at 40 § CFR 122.34(c) and (d).

28. **(City):** ***Regarding Pollutants of Concern cited in Permit Parts 4 and 6. And Appendix 5 of Fact Sheet***): The draft Permit lists the Pollutants of Concern in various tables as, "*Ammonia; E. coli; Fecal Coliform Bacteria; PCBs; Nutrients; sediment/siltation; and temperature*." Please delete all references to ammonia as a pollutant of concern in storm water discharges from City's MS4. The City of Moscow's Water Reclamation and Reuse Facility NPDES Wastewater Permit contains effluent limitation for ammonia that were identified in the Paradise Creek TMDL. Please delete all references to Fecal Coliform Bacteria as a pollutant of concern. As noted in Appendix 5 of the Fact Sheet, City's implementation of the comprehensive SWMP measures required in Part 3 will address *E. coli* bacteria from the MS4 and will maintain compliance with Idaho and Washington's TMDL targets. The Idaho Water Quality Standard's bacteria criterion is approved by the EPA for support of recreational beneficial uses. As such, the Idaho Water Quality Standard (*E. coli*) for recreational beneficial use support is comparable with Washington State's Water Quality Standard (Fecal Coliform) for support of recreational beneficial uses. Please delete all references to PCBs as described above. As such, please revise the pollutants of concern sections to include, "*E. coli*; Nutrients; Sediment / Siltation; and Temperature."

Response #28: The EPA agrees to revise Permit Part 4.3 and Table 4.3 to delete references to ammonia and fecal coliform as impairment pollutants in the Idaho portion of Paradise Creek, AU ID17060108CL005_02 - *Paradise Creek - Urban boundary to Idaho/Washington border*. Consistent with IDEQ's 2016 Integrated Report, E. coli is deleted as an impairment pollutant for the South Fork Palouse River, AU ID17060108CL002_03 - *Gnat Cr. to Idaho/Washington border.*[4] See also the IDEQ's Final CWA Section 401 certification in Appendix A of this document.

The EPA declines to delete fecal coliform and/or PCBs as impairment pollutants cited in Table 4.3 for water body segments in Washington State. See Response #27.

29. **(Ecology):** ***Regarding Permit Part 4.3 - Pollutant Reduction Activities*** – Original language states that the Permittee must define and implement "*at least one (1) pollutant reduction activity designed to reduce E. coli, nutrients, sediment, and heat loadings from the MS4 into Paradise Creek*" and "*at least one (1) pollutant reduction activity designed to reduce E. coli, nutrients, sediment, and heat*

[4] IDEQ requested that the EPA substitute the term "Pollutants of Concern" with "Impairment Pollutants" in the Permit. The EPA uses this term in this document as well. See *Table 1, Edits to the Final Permit*.

loadings from the MS4 into the South Fork of the Palouse River ... " and " *... quantify the estimated pollutant reduction accomplished resulting from such activities.*"

While the proposed requirements help to ensure that the Permittee does as much as it can to reduce any potential pollutants through its Storm Water Management Program (SWMP) activities, Ecology believes that the monitoring activities could go further to ensure that reductions in the selected target pollutants are achieved. Ecology requests that the EPA consider additional requirements for quantifying actual reduction of target pollutants by the expiration of the Permit.

Response #29: The EPA declines to revise Permit Part 4.3 in response to this comment. See also Responses #27 and 28. The Permit requires a base program of specific SWMP control measures that must be augmented by at least one Permittee-selected pollutant reduction activity in Paradise Creek and one such activity in South Fork Palouse River. The purpose of the pollutant reduction activities is to target and prevent impairment pollutants from discharging through the Permittee's MS4. The Permittee must then quantify the estimated pollutant reduction achieved by these targeted activities.

The EPA is confident that the City, either singly or as a part of a larger group in the greater Paradise Creek/South Fork Palouse River watershed, can work alongside other organizations to further the overall reduction of pollutant discharges from MS4s in the Permit Area into Paradise Creek and South Fork Palouse River. The EPA is similarly confident that these other organizations will look forward to working with the City on shared goals that improve water quality in the watershed.

The Permit as written provides broad opportunity for the City to select and implement reasonable actions that target the impairment pollutants. The EPA believes that reasonable actions for the City to consider include enhanced street sweeping or catch basin cleaning in areas that drain to the receiving waters; outfall disconnection; and/or installation of additional structural infiltration or treatment facilities that may eliminate or substantially reduce MS4 discharges to receiving waters. Monitoring/assessment of pollutant reduction from such activities could be quantified by, for example: estimating how much runoff is retained by infiltration after construction of the swale/practice; or the weight of solid material collected during sweeping or cleaning operations (and thereby prevented from entering the MS4).

Monitoring, Recordkeeping and Reporting Requirements (Permit Part 6)

30. **(Ecology):** ***Regarding Permit Part 6.2.5 - Wet Weather Discharge Monitoring –*** Original language lists several tasks that the Permittee must complete when they monitor wet weather discharges from MS4 outfalls. Ecology requests that an additional subtask be added that requires the Permittee's Monitoring/ Assessment Plan to target the capture of at least one of the wet weather discharge sample during a "first flush" storm event in the late summer/early fall. There is typically a buildup of pollutants in MS4 storm water conveyance systems in the first few storms of the season. This is due to the lack of rain over an extended period of time, where pollution concentrations can be expected to be higher than for the rest of the season. As such, we believe that this first flush sampling can help the Permittee assess the effectiveness of BMPs to control the discharge of pollutants; and may indicate where additional maintenance and/or stormwater controls are needed.

Response #30: If the Permittee decides to conduct outfall monitoring as their monitoring/assessment activity, the EPA agrees to specify that at least one sample be collected in the late summer/early fall, and has revised Permit Part 6.2.5.4 to add the following **text**:

Frequency. The samples must be collected at a frequency identified in the Monitoring/Assessment Plan required by Part 4 (Special Conditions for Discharges to Impaired Waters). ***At least one sample each calendar year must be collected in the September - October period.***

31. **(City):** ***Regarding Permit Part 6.2.6 – Use of EPA Method 1668C*** **-** The Permit proposes to require City to monitor/assess MS4 discharges, if City elects, for PCBs in water using EPA Method 1668C. Method 1668C is not an approved test method under 40CFR Part 136. When the EPA proposed adoption of Method 1668C, numerous parties filed comments raising serious scientific concerns with the method, which ultimately led to the EPA deferring approval of Method 1668C. It is not consistent with the EPA' s Federal Rule to require monitoring using methods not approved under Part 136, which requires the use of EPA approved monitoring methods to be included in NPDES Permits. Additionally, there is no scientific correlation between Method 1668C and Method 608.3. It is improper to require the use of methods which have not been promulgated or approved for use under the Clean Water Act in 40 CFR Part 136. It is also improper to require the use of methods in which the EPA has declined to include in the approved list of methods.

    (AIC): ***Regarding Permit Part 6.2.6 – Use of EPA Method 1668C*** - AIC asserts that PCB Test Method 1668C or Method 8082 should not be required in any Idaho NPDES Permit:

    - The list of Pollutants of Concern includes PCBs for the SF Palouse River (Washington portion) (See Table 4.3) based on a Washington State 2007 TMDL for PCBs. These monitoring requirements have been included to ensure discharges from the Moscow Area MS4 are in compliance with law.
    - Method 608 is the only EPA-approved method for PCBs under the Clean Water Act. Method 1668C has never been approved by the EPA, for very sound scientific and technical reasons as described below. AIC understands that, because of the compliance implications, monitoring requirements for PCBs must use only EPA-approved test methods included in 40 CFR 136:
        - The legal basis for using only approved methods in the context of a regulatory process such as an NPDES Permit was recently affirmed by Washington State Supreme Court, specific to PCB methods 608 and 1668C. On August 30, 2018, the court affirmed the following: “Ecology's use of Method 608 in the SIM Permit is consistent with the plain meaning of the statutory language in question, RCW 90.48.520. Nothing in the language of the statute requires Ecology to use unreliable and unapproved testing methods to ensure compliance with the law.” (See Puget Sound Keeper v. State of Washington, Department of Ecology, and State of Washington Pollution Control Hearings Board).
    - AIC has identified a number of other complications regarding the use of the non-approved method 1668C for Idaho Permittee. Specifically, there are substantial scientific problems with the 1668C method, and with the EPA’s assessment of the method, that must be resolved before this method can be defensibly imposed as a binding requirement on the Permittee:

o David Blye, an expert on analytical testing methods with Environmental Standards, Inc. ("ESI"), prepared a report in 20108 (incorporated here by reference) to assess the scientific validity of Method 1668C, and to review the EPA materials that document the technical basis for the method. This review raises substantial issues concerning the Method and the adequacy of EPA's technical support for approval of the Method.

o The EPA has not adequately addressed the ubiquitous nature of background contamination that plagues Method 1668C. Further, as evident from the historical blank data from the EPA's Interlaboratory Validation Study, several laboratories reported method blank levels on the order of 25-100 ppq which further reduces the reliability and confidence of the method to detect "real" analyte response in environmental samples at the 50-100 ppq level. This is of primary concern in the context of the implied regulatory compliance requirements in the proposed Permit. AIC suggests that one way to address the blank contamination problem is to set any results with this issue to PCB concentration of "zero."

• The use of the 1668C method will increase dischargers' testing costs considerably:

o Dischargers that are currently subject to PCB testing requirements generally use the method that the EPA has approved for that purpose, Method 608. That test can be conducted by many accredited laboratories around the country. Many dischargers are able to conduct these tests reliably in their own labs. Therefore, the costs for testing using 608 are reasonable, and even in those situations where frequent testing is required, the overall testing costs are manageable for most dischargers. Method 1668C, though, is another matter. There are only a few labs that are accredited to run this test – and, as documented in the ESI Report, there are questions about whether all of those labs are capable of running the test in a manner that will be acceptable for regulatory compliance purposes. Dischargers will have to send their samples to a small number of labs; costs to have this testing done are already high and would be expected to rise as more dischargers are forced to use these services.

o Costs to small municipalities would be particularly difficult to bear. Dischargers are generally finding that new Permits require more frequent monitoring, of more parameters, and the EPA needs to consider those costs in combination with the testing costs that would result from approval of Method 1668C. Requiring use of that method would likely result in these dischargers, particularly smaller ones, having to expend on PCB testing more than what they spend on testing for all other parameters in their Permits.

Based on these issues and considerations, AIC urges that the EPA remove PCB monitoring and pollutant load reduction requirements, especially the use of Method 1668C testing requirements, from the final Permit.

Response #31: In light of the comments identified here, the EPA agrees to revise the Permit Part 6.2.6 to delete all option(s) associated with using Method 1668C to monitor PCBs in MS4 discharges. The EPA will retain the discussion of sampling for PCBs in catch basin solids using Method 8082 in Permit Part 6.2.6, in the event that the City chooses to comply with one of the pollutant reduction activity requirements in Part 4.3 by cleaning their MS4 catch basins.

The City of Great Falls, Montana, is an example of a Phase II MS4 permittee that has chosen to address the PCB impairment issue in the Missouri River in the absence of an applicable TMDL by conducting limited PCB sampling using Method 8082. In its MS4 Wet Weather Sampling and

Analysis Plan, the City states: "*The MS4 is not anticipating to be a contributor of PCBs; however, two PCB samples may be collected during this permit cycle to evaluate this assumption*."

The EPA has revised text in Part 6.2.6 as follows:

6.2.6 **Polychlorinated Biphenyls (PCB) Monitoring**

~~6.2.6.1 **Options:**~~ ***If the Permittee chooses to comply with the required pollutant reduction activity outlined in Part 4.3 by cleaning MS4 catch basins and assessing for the potential presence of PCBs in catch basin solids, the Permittee must collect and analyze samples from at least two locations using EPA Method 8082 and a quantitation level for total PCBs no greater than 10 µg/kg dry weight.***

~~To monitor/assess the potential for PCB pollutant loading from the MS4 discharges to South Fork Palouse River and comply with the required activity outlined in Part 4.2, City of Moscow must monitor/assess by selecting at least one of the following three options:~~

~~6.2.6.2 Option 1. The Permittee must sample the MS4 discharge from at least one outfall location at least once per calendar year for PCB congeners using EPA Method 1668C as described in Parts 6.2.6.3 and 6.2.6.4 below; or~~

~~6.2.6.3 Option 2. The Permittee must analyze MS4 catch basin sediment solids from at least one location at least once per calendar year for PCB congeners using EPA Method 8082 as directed in Part 6.2.6.5 below; or~~

~~6.2.6.4 Option 3. The Permittee must submit an alternative frequency and method in the Monitoring/Assessment Plan that describes in detail how the Permittee intends to monitor/assess the potential for PCB pollutant loading (in the form of PCB congeners) from their MS4 discharge.~~

~~6.2.6.5. **Reporting:** The Permittee must report the toxic equivalency of "dioxin-like" PCB congeners listed in Table 6.2.6 below as calculated using the World Health Organization 2005 convention, and submit a complete congener analysis as part of the required monitoring data report. See: https://academic.oup.com/toxsci/article/93/2/223/1707690/The-2005-World-Health-Organization-Reevaluation-of#63170191~~

~~6.2.6.6. **Analysis using EPA Method 1668C**: For any analysis of PCB congeners using EPA Method 1668C, the Permittee must target method detection limits (MDLs) no greater than the MDLs listed in Table 2 of EPA Method 1668 Revision C, and must analyze for each of the 209 individual congeners. See EPA Method 1668 Revision C (EPA-820-R-10-005) at https://www.epa.gov/sites/production/files/2015-09/documents/method_1668c_2010.pdf~~

~~6.2.6.7 **Quality Assurance**: For the purposes of monitoring PCB in MS4 discharges, the Permittee should follow the provisions for data validation and blank censoring in Section 4.2.2 of the Spokane River Regional Toxics Task Force Quality Assurance Project Plan (Task Force QAPP). See Task Force QAPPP at *http://srrttf.org/wp-content/uploads/2013/05/QAPP_FINAL_081114.pdf*. Analytes found in samples at concentrations less than 3 times the associated blank concentration must be flagged with a "B" qualifier. The Task Force QAPP states that "all qualified data will be reported with validation qualifiers, however B flagged data will not be used in congener summations for total PCB" (see page 41 of the Task Force QAPP).~~

~~6.2.6.8 **Analysis using EPA Method 8082:** If the Permittee chooses to monitor and assess PCBs in sediment solids from one or more MS4 catch basins, the Permittee may use EPA Method 8082 and use a quantitation level for total PCBs no greater than 10 µg/kg dry weight.~~

~~**Table 6.2.6 PCB Congeners**~~

~~**Dioxin-Like PCBs Congener #**~~	~~**Homolog Group**~~	~~**Substitution Group**~~	~~**Chlorinated Biphenyl (CB) Congener Name**~~
~~**non-*ortho* substituted PCBs**~~			

~~77~~	~~tetra-CB~~	~~non-ortho~~	~~3,3',4,4'-tetra-CB~~
~~81~~	~~tetra-CB~~	~~non-ortho~~	~~3,4,4',5-tetra-CB~~
~~126~~	~~penta-CB~~	~~non-ortho~~	~~3,3',4,4',5-penta-CB~~
~~169~~	~~hexa-CB~~	~~non-ortho~~	~~3,3',4,4',5,5'-hexa-CB~~
~~**mono-*ortho* substituted PCBs**~~			
~~105~~	~~penta-CB~~	~~mono-ortho~~	~~2,3,3',4,4'-penta-CB~~
~~114~~	~~penta-CB~~	~~mono-ortho~~	~~2,3,4,4',5-penta-CB~~
~~118~~	~~penta-CB~~	~~mono-ortho~~	~~2,3',4,4',5-penta-CB~~
~~123~~	~~penta-CB~~	~~mono-ortho~~	~~2,3',4,4',5-penta-CB~~
~~156~~	~~hexa-CB~~	~~mono-ortho~~	~~2,3,3',4,4',5-hexa-CB~~
~~157~~	~~hexa-CB~~	~~mono-ortho~~	~~2,3,3',4,4',5'-hexa-CB~~
~~167~~	~~hexa-CB~~	~~mono-ortho~~	~~2,3',4,4',5,5'-hexa-CB~~
~~189~~	~~hepta-CB~~	~~mono-ortho~~	~~2,3,3',4,4',5,5'-hepta-~~

Compliance Responsibilities-Standard NPDES Permit Conditions (Permit Part 7)

32. **(AIC)**: ***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. Commenter urges the EPA simplify Part 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 sections 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 #32: 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.

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

    Response #33: See Response #32 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

34. **(AIC): *Regarding Permit Part 7.9 (Twenty-Four Hour Notice of Noncompliance Reporting)*-** Commenter proposes removing the last two bullets in section 7.9 in order for this section to be applicable to stormwater noncompliance reporting.

    Response #34: See Response #32 above. The EPA declines to revise Permit as requested.

35. **(AIC): *Regarding Permit Part 7.10 (Bypass of Treatment Facilities)* –** AIC also proposes 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. Commenter recommends 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 #35: 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. See Response #32.

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 where stormwater must be forced to bypass a treatment BMP that is unrelated to essential maintenance or severe weather-related emergency.

Appendix A: Idaho Department of Environmental Quality's Final Certification under CWA §401

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1118 F Street • Lewiston, Idaho 83501 • (208) 799-4370
www.deq.idaho.gov

Governor Brad Little
Director John H. Tippets

July 19, 2019

Mr. Michael J. Lidgard
NPDES Permits Unit Manager
EPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Subject: FINAL 401 Water Quality Certification for the City of Moscow Municipal Separate Sewer System (MS4), NPDES Permit #IDS028398

Dear Mr. Lidgard:

The Lewiston Regional Office of the Department of Environmental Quality (DEQ) has reviewed the above-referenced permit for the City of Moscow MS4. Section 401 of the Clean Water Act requires that states issue certifications for activities which are authorized by a federal permit and which may result in the discharge to surface waters. In Idaho, the DEQ is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho's Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal discharge permit cannot be issued until DEQ has provided certification or waived certification either expressly, or by taking no action.

The permit was written using Idaho's 2014 Integrated Report. Idaho's 2016 Integrated Report was approved by EPA on June 25, 2019. This resulted in a change to fully supporting the beneficial use status of the contact recreation use in the South Fork Palouse River assessment unit referenced in this permit. DEQ has noted the change in the certification. This letter is to inform you that DEQ is issuing the attached Final 401 certification subject to the terms and conditions contained therein.

Please contact me directly at 208-799-4370 to discuss any questions or concerns regarding the content of this certification.

Sincerely,

John Cardwell
Regional Administrator
Lewiston Regional Office

c: Misha Vakoc, EPA Region 10
Loren Moore, DEQ State Office

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

July 19, 2019

NPDES Permit Number(s): City of Moscow Municipal Separate Storm Sewer Systems Permit, #IDS028398

Receiving Water Body: Paradise Creek & South Fork Palouse River

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 our review of the above-referenced permit and associated fact sheet, 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.

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 City of Moscow municipal separate storm sewer system (MS4) discharges the following pollutants of concern pertinent to Idaho WQS and applicable TMDLs: nutrients (nitrogen and phosphorus), sediment, heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) and organic chemicals (pesticides and industrial chemicals). Terms and conditions of the permit and this certification require permittees to reduce pollutant loading to the maximum extent practicable.

Receiving Water Body Level of Protection

The City of Moscow discharges to two assessment units within the Palouse Subbasin including Paradise Creek, assessment unit (AU) 17060108CL005_02 (Paradise Creek – Urban boundary to Idaho/Washington border) and the South Fork Palouse River, assessment unit (AU) 17060108CL002_03 (South Fork Palouse River – Gnat Cr. to Idaho/Washington border). These AUs have designated cold water aquatic life and secondary contact recreation beneficial uses. The South Fork Palouse River AU is also designated for salmonid spawning beneficial uses. 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).

According to DEQ's 2016 Integrated Report, these AUs are not fully supporting their designated uses. The aquatic life uses in the receiving water body AUs are not fully supported. Causes of impairment include temperature, sediment, nutrients, physical substrate habitat alterations, and other flow regime alterations.

The contact recreation beneficial use for Paradise Creek is not fully supported. The cause of impairment is *Escherichia coli* (*E. coli*). The contact recreation beneficial use is fully supported in the South Fork Palouse River. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.052.05.c) for the aquatic life and contact recreation uses in Paradise Creek and Tier I protection for the aquatic life uses in the South Fork Palouse River. DEQ will provide Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I for the contact recreation use in the South Fork Palouse River.

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing and designated uses and the level of water quality necessary to protect existing and designated uses shall be maintained and protected. In order to protect and maintain existing and designated beneficial uses, a permitted MS4 discharge must reduce the discharge of pollutants to the

maximum extent practicable. The terms and conditions contained in the City of Moscow permit and this certification will reasonably assure that the permittee reduces pollutants to the maximum extent practicable.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (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 designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with allocations in the approved TMDL.

Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation of provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

The EPA-approved *Paradise Creek TMDL: Water Body Assessment and Total Maximum Daily Load* (DEQ 1997), *South Fork Palouse River Watershed Assessment and TMDLs* (DEQ 2007), *Paradise Creek TMDL: 2015 Bacteria Addendum* (DEQ 2015), and *Palouse River Subbasin 2017 Temperature TMDL* (DEQ 2017) included urban stormwater system runoff inputs in nonpoint sources of pollution and the calculation of load allocations for these AUs. The TMDLs require small MS4 operators to obtain a NPDES permit, implement a comprehensive stormwater management and monitoring program, and use BMPs to reduce pollutants of concern in stormwater discharges to the maximum extent practicable. These load allocations were designed to restore the water quality of these AUs to the level necessary to support designated aquatic life and contact recreation beneficial uses and comply with the applicable water quality criteria. The implementation of a comprehensive stormwater management program which includes targeted pollutant reduction activities through BMP implementation and pollutant assessment and monitoring in each impaired AU by the City of Moscow is consistent with the Paradise Creek and South Fork Palouse River TMDLs.

The *Paradise Creek TMDL: Water Body Assessment and Total Maximum Daily Load* (DEQ 1997) contained targets for fecal coliform. In 1986, EPA updated its criteria to protect recreational use of water by recommending an *E. coli* criterion as a better indicator than fecal coliform of bacteria levels that may cause gastrointestinal distress in swimmers[1]. Using *E. coli* as an indicator for the bacteria criterion is as, or more, protective of water quality than using fecal coliform. In 2000, DEQ changed its bacteria criterion from fecal coliform to *E. coli* (IDAPA 58.01.02.251.01). The *Paradise Creek TMDL: 2015 Bacteria Addendum* (DEQ 2015) addressed this change in the contact recreation use criterion. Accordingly, fecal coliform is not considered a pollutant of concern in this AU.

The MS4 NPDES permit contains clear, specific, and measurable provisions for the continued implementation of specific controls, management practices, control techniques, and system design and engineering methods to achieve the effluent limitation requirements in the permit. The permittee is discharging to impaired waterbodies and will be required to conduct additional targeted pollutant reduction and assessment activities in accordance with Part 4 of the permit in order to protect water quality and reduce pollutants to the maximum extent practicable. Upon the effective date of the permit, the permittee must begin to develop and implement the Stormwater

[1] U.S. EPA 1986. EPA's Ambient Water Quality Criteria for Bacteria 1986. U.S. Environmental Protection Agency: Washington, DC. EPA440/5-84-00

Management Program (SWMP) controls measures outlined in Part 3 of the permit. The SWMP control measure components must be fully implemented no later than the specified compliance dates. Compliance with these conditions of the permit provides DEQ reasonable assurance that the permittee will protect and maintain beneficial uses to the maximum extent practicable.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection and compliance with the Paradise Creek and South Fork Palouse River TMDLs include:

- A prohibition on snow disposal directly to surface waters;
- Specific prohibitions for non-stormwater discharges;
- Requirements to develop/revise a stormwater management plan with the following control measures:
    - Public education and outreach,
    - Illicit discharge detection and elimination,
    - Construction site stormwater runoff controls,
    - Post-construction stormwater management for new and redevelopment,
    - Pollution prevention/good housekeeping for MS4 operations;
- Quantitative monitoring/assessment of pollutants of concern removed by BMPs in conjunction with required maintenance in all impaired AUs;
- Required pollution reduction activities in all impaired AUs;
- The stipulation that if either EPA or DEQ determines that a MS4 causes or contributes to an excursion above the WQS, the permittee must take a series of actions to remedy the situation.

If the MS4 discharge causes or contributes to an excursion above the applicable Idaho WQS, Part 5 of the permit outlines corrective action and adaptive management as needed to address the source of pollutants. This response plan outline will likely improve the response time to an exceedance and require the permittee to evaluate and determine the effectiveness of their BMPs.

In sum, the limitations and associated requirements contained in the City of Moscow MS4 NPDES permit are set at levels that reasonably assure reduction in the discharge of pollutants and support of beneficial uses to the maximum extent practicable, and are consistent with the load allocations established in the applicable TMDLs. Therefore, DEQ has reasonable assurance the permit will protect and maintain existing and designated beneficial uses in Paradise Creek and the South Fork Palouse River in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

High-Quality Waters (Tier II Protection)

The South Fork Palouse River is considered high quality for secondary contact recreation. As such, the water quality relevant to these uses must be maintained and protected, unless a

lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to secondary contact recreation uses of the South Fork Palouse River (IDAPA 58.01.02.052.06). Pollutants relevant to recreational uses include the following: microbial pollution (*E. coli*), nutrients, metals, petroleum hydrocarbons, and organic chemicals (pesticides and industrial chemicals).

For a new permit or license, the effect on water quality is determined by reviewing the difference between the existing receiving water quality and the water quality that would result from the activity or discharge as proposed in the new permit or license (IDAPA 58.01.02.052.06.a). NPDES permits for regulated small municipal separate storm sewer systems (MS4s) must include terms and conditions to reduce the discharge of pollutants to the statutory standard of "maximum extent practicable." The proposed MS4 permit relies on practices to identify and reduce discharge of pollutants to the maximum extent practicable (Permit Part 2 and 3). Further, the permittees' implementation of these practices must be documented in annual reports to EPA and DEQ and is subject to review and on-site inspections. To ensure discharged stormwater will not degrade receiving waters, the permittees are required to manage the effectiveness of these stormwater management practices, monitor discharge and receiving water quality and, if necessary, adapt its management practices. The City of Moscow must map their MS4 and all associated outfalls (Permit Part 3.2.2).

Pollutant reductions should be realized as each element of the stormwater management plan is developed and implemented during the permit cycle. Stormwater control measures, when designed, constructed, and maintained correctly have demonstrated the ability to reduce runoff, erosive flows, and pollutant loadings[2]. Due to the nature of MS4 permits, implementation requires investigating and resolving complaints; continual discovery of pollutant sources, including illicit discharge detection and elimination; use, monitoring, and refinement of BMPs; and additional knowledge through training opportunities. Water quality is expected to improve in the South Fork Palouse River as a result of conducting pollutant reduction activities (Permit Part 4.3).

This level of scrutiny and effort combined with requirements to address pollution sources should lead to improved water quality the longer the permit is in effect and should result in minimal to no adverse change in existing water quality significant to recreational uses. Therefore, DEQ has reasonable assurance that insignificant or no degradation will result from the discharge of pollutants from the City of Moscow MS4.

In summary, DEQ concludes that this discharge permit complies with the Tier II provisions of Idaho's WQS (IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06).

[2] Urban Stormwater Management in the United States, National Research Council, 2008

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

Best Management Practices

Best management practices must be designed, implemented, and maintained by the permittee to protect and maintain the beneficial uses of waters of the United States and to reduce the discharge of pollutants to the maximum extent practicable.

When selecting best management practices, the permittees must consider and, if practicable, utilize practices identified in the Idaho Department of Environmental Quality Catalog of Stormwater Best Management Practices for Idaho Cities and Counties (http://www.deq.idaho.gov/water-quality/wastewater/stormwater/).

Pollutant Reduction Activities in Paradise Creek and the South Fork Palouse River

In carrying out the requirements of Part 4.3 of the permit, the permittees must define and implement at least one (1) pollutant reduction activity designed to reduce *E. coli*, nutrients, sediment, and heat loadings from the MS4 into Paradise Creek.

In carrying out the requirements of Part 4.3 of the permit, the permittees must define and implement at least one (1) pollutant reduction activity designed to reduce nutrients, sediment, and heat loadings from the MS4 into the South Fork Palouse 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 Lewiston Region DEQ office during normal working hours at 208-799-4370 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 significant changes to the permit, any modifications of the permit to reflect new or modified TMDLs, load allocations, amended NOI, 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 Sujata Connell, Lewiston Regional Office, 208-799-4370 or Sujata.Connell@deq.idaho.gov.

John Cardwell
Regional Administrator
Lewiston Regional Office