

**Response to Comments on**  
**National Pollutant Discharge Elimination System (NPDES) Permit**  
**For Discharges from the**  
**Idaho Transportation Department District 2**  
**Municipal Separate Storm Sewer System (MS4)**  
**NPDES Permit No. IDS028258**

September 2020

U.S. Environmental Protection Agency, Region 10

**Table of Contents**

Acronyms ..... 4

Introduction ..... 5

State Certification under Clean Water Act §401..... 5

Consultation with Other Agencies as Required by the Endangered Species Act ..... 5

Edits to the Final Permit..... 6

Response to Comments ..... 7

    General Topics ..... 7

    Environmental Justice ..... 8

    Water Quality Trading..... 9

    Integrated Planning..... 9

    Permit Effective Date, Implementation Schedule, and Submittal Deadlines ..... 10

    Limitations and Conditions (Permit Part 2)..... 11

        Part 2.1 – Compliance with WQS ..... 11

        Part 2.4.5 – Non-Stormwater Discharges ..... 11

        Part 2.5 – Permittee Responsibilities..... 12

        Part 2.6 - Alternative Control Measures ..... 12

    Stormwater Management Program Control Measures (Permit Part 3) ..... 12

        Part 3.1.4 – Stormwater Education Activities ..... 12

        Part 3.1.5 – Public Outreach and Education – Assessment ..... 13

        Part 3.2.4.2 – Illicit Discharge Detection and Elimination - Response to Complaints or Reports from the Public ..... 13

        Part 3.2.5.1 – Illicit Discharge Detection and Elimination - Outfall Identification and Screening Protocols ..... 13

        Part 3.2.5.3 – Illicit Discharge Detection and Elimination - Monitoring of Illicit Discharges ..... 14

        Part 3.2.6 – Illicit Discharge Detection and Elimination - Follow-up ..... 14

        Part 3.3.4 – Pre-Construction Site Plan Review ..... 15

        Part 3.5.2 - Inspection and Cleaning of Catch Basins and Inlets ..... 15

        Part 3.5.3 – Pollution Prevention/Good Housekeeping for MS4 Operations ..... 16

        Parts 3.5.6 & 3.5.8 – Operation & Maintenance (O&M) Procedures for Other Municipal Areas and Activities & Pollution Prevention Plans for Permittee Facilities ..... 16

        Part 3.5.7 – Pesticides Herbicides and Fertilizers ..... 16

    Requirements for Discharges to Impaired Waters & Monitoring, Recordkeeping, and Reporting Requirements (Permit Parts 4 & 6) ..... 17

Required Response to Excursions Above Idaho WQS (Permit Part 5) ..... 17

Compliance Responsibilities-Standard NPDES Permit Conditions (Permit Part 7) ..... 18

Definitions (Permit Part 9) ..... 20

Appendix A: Environmental Justice Analysis for Permit #IDS028258..... 22

Appendix B: Idaho Department of Environmental Quality’s Final Certification under CWA §401 ..... 33

**Acronyms**

ACOE	U.S. Army Corps of Engineers
BMPs	Best Management Practices
CFR	Code of Federal Regulations
CWA	Clean Water Act
EJ	Environmental Justice
EPA	Environmental Protection Agency
FS	Fact Sheet
ICL	Idaho Conservation League
ID	Idaho
IDAPA	Idaho Administrative Procedure Act
IDEQ	Idaho Department of Environmental Quality
ITD	Idaho Transportation Department District #2
LGDP	Lower Granite Dam Pool
LLPs	Lewiston Levees, Ponds and Pump Stations
MEP	Maximum Extent Practicable
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
SWMP	Stormwater Management Program
SW	Stormwater
UA	Urbanized Area
US	United States
USC	United States Code
WA	Washington
WDOE	Washington Department of Ecology
WQS	Water Quality Standards

## Introduction

On February 5, 2019, 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 Idaho Transportation Department-District 2 (ITD2) in Nez Perce County, Idaho. ITD is referred to as the “Permittee,” and the Permit document #IDS028258 is referred to as “the Permit.” The document describing the basis for the Permit’s terms and conditions is referred to as the Fact Sheet or FS.

The 45-day public comment period closed on March 22, 2019.

This document provides responses to comments received on the proposed Permit.

- Comments are broadly organized by topic. In general, EPA summarizes each comment, and where appropriate for clarity EPA has grouped similar comments into one statement. In some cases, EPA includes the comment verbatim. The Administrative Record contains all comment letters, and other information considered during the Permit development process.
- Where indicated, EPA made changes to the final Permit. See Summary Table below.
- Regarding Comments on the FS: Some comments refer to information cited in the FS. Where appropriate, EPA mentions that in the comment summary.

It is EPA Region 10 policy not to revise the FS based on public comment; instead, upon Permit issuance this Response to Comments document provides needed clarification or corrections.

## State Certification under Clean Water Act §401

On December 19, 2018, the Idaho Department of Environmental Quality (IDEQ) provided EPA with a preliminary draft Clean Water Act (CWA) 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 EPA comment period through March 22, 2019. On January 27, 2020, IDEQ provided final certification of EPA’s final Permit; See Appendix B.

## Consultation with Other Agencies as Required by the Endangered Species Act

On August 11, 2020, EPA submitted its *Biological Evaluation and Essential Fish Habitat Assessment For Endangered Species Act Section 7 Consultation On National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permits Located in the Lewiston, Idaho Urbanized Area: City of Lewiston & Lewis-Clark State College (NPDES Permit No. IDS028061) and Idaho Transportation Department District #2 (NPDES Permit No. IDS028258)*, to the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively referred to as the “Services”). EPA concluded that issuance of MS4 permits to the City of Lewiston, Lewis-Clark State College, and ITD2 is not likely to adversely affect the ESA listed species (Chinook salmon, Sockeye salmon, Steelhead, and Bull Trout) and designated critical habitat present within the Action Area. Further, the permits will have no effect on the endangered plant called Spalding’s catchfly and are not likely to adversely affect EFH for either Chinook salmon or Coho salmon. EPA continues to consult with the Services. See: EPA Region 10 Memorandum, *Subject: Endangered Species Act Section 7(d) Determination with Respect to Issuance of Two Municipal Separate Storm Sewer System Permits in Lewiston, ID.*

## Edits to the Final Permit

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 following Permit Parts in response to public comment:

<b>Edits Based on Public Comments Received:</b>	
Cover Page; 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 6.4, Table 6.4.2; and Part 8.2	See Responses #9 & 10
Permit Part 3.2.6, and Part 9	See Response #22
Parts 3.3.4 (revised 3 <sup>rd</sup> paragraph) and 3.3.5 (new 3 <sup>rd</sup> paragraph)	See Response #23
Permit Part 3.2.2.7, 3.5.6, and 3.5.8	See Response #26
<b>Edits Based on Relevant Public Comments Received on Other Proposed MS4 Permits in Idaho</b>	
Part 3.4.2.2: Added additional factor allowing Permittee to establish alternative Post-Construction onsite retention requirement as follows: “...site/engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff; ...	
<b>Edits Based on Recent EPA Actions:</b>	
Part 7.2: Updated the statutory civil monetary penalty amounts, pursuant to EPA’s Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19. See: 85 Fed. Register 1751 - 1757 (January 13, 2020).	
Part 9 Definition of <i>Green Infrastructure</i> : Revised consistent with the new definition in the Water Infrastructure Improvement Act. See Response #36.	
Part 9 Definition of <i>Waters of the U.S.</i> : Revised to better align with the definition in EPA’s final Navigable Waters Protection Rule defining “waters of the United States” effective June 22, 2020. See Response #37.	
Part 8.13; Part 9 Definitions for <i>Reasonable and Prudent Alternatives</i> and <i>Reasonable and Prudent Measures</i> : Clarified reasons under which EPA would modify the permit consistent with 40 CFR §§122.62, 122.64, and 40 CFR §124.5; added definitions for additional clarity. See Response #38.	
<b>Edits Based on IDEQ Input:</b>	
Part 2.5.7; Part 3.2.7.1; and Appendix A.2: Conditions of IDEQ’s <i>Final §401 Water Quality Certification for the Idaho Transportation Department District 2 Municipal Separate Storm Sewer System (MS4)</i> , NPDES Permit# IDS028258, dated January 27, 2020. See Appendix B.	

## Response to Comments

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

- ITD2
- Idaho Conservation League (ICL)
- Washington Department of Ecology (WDOE)

### General Topics

1. **(ICL):** The Permit is incomplete and lacks detailed information necessary for ICL and the public to effectively comment. The Permit is a placeholder that directs ITD to propose concrete pollution prevention, reduction, and monitoring requirements. As such, we can't evaluate if the Permit terms and conditions sufficiently satisfy all federal requirements and the standard of reducing the discharge of pollutants from the MS4 to the maximum extent practicable (MEP). We reserve our right to comment on the Permit and future iterations, as ITD submits proposals to establish and define the substantive Permit terms and conditions. The FS states that the ITD submission will result in a Permit modification, subject to public notice and comment. We look forward to EPA's notice to comment on these future proposals to modify the Permit. We request EPA keep ICL informed of all updates and modifications to the Draft Permit.

**Response:** Comment noted. The Permit contains appropriate specificity to clearly establish what actions and activities the Permittee must conduct to reduce the discharge of pollutants from the MS4 to the MEP, protect water quality, and comply with appropriate requirements of the CWA. EPA and/or IDEQ will broadly announce the public notification of any proposed modification to the Permit. No change has been made to the Permit.

2. **(ICL):** Regarding the Lewiston Levee Ponds and Pumping Plants (LLPs), FS Section 1.3.2 discusses the stormwater (SW) retention ponds and pumping stations. The LLPs are designed to collect SW from the urbanized area and discharge it, via pumps, into the Lower Granite Dam Pool (LGDP). The FS details that the U.S. Army Corps of Engineers (ACOE) constructed and operates these levees. However, previously in the FS, EPA states that this MS4 permit will provide coverage solely to ITD. We seek clarification on whether the LLPs, operated by the COE, are receiving coverage under this permit or if they have coverage under a separate permit.

**Response:** The LLPs, in particular the pump stations, are not receiving coverage under this permit nor do they have coverage under a separate permit. EPA has not received a NPDES permit application from the ACOE nor has EPA received a petition to designate the pump stations as regulated MS4s. See 40 CFR § 122.26(f). Regardless of the status of the pump stations, ITD2's MS4 permit conditions would remain the same. No change has been made to the Permit.

3. **(ITD2):** ITD2 is committed to improving water quality and NPDES compliance. Financial resources for the state transportation department are very constrained. EPA's proposed draft NPDES MS4 Permit has significant schedule and fiscal impacts to our business operations, and it is critical that funds are used efficiently and with clear benefit to the resource. ITD2 as a state agency operates under preplanned budgets and timelines. As such, budgets are established for the ITD Districts seven (7) years in advance, which severely limits the amount of funding available for non-highway projects and improvements, (i.e. facility and building upgrades, maintenance yard improvements, etc.). As a

proposed new permittee under EPA'S NPDES MS4 Program, it will take ITD2 considerable time and effort to plan for and incorporate the requirements of the MS4 Permit into the ITD 2 budget. We appreciate EPA's understanding of these concerns and thank EPA for the opportunity to comment.

**Response:** Comment noted. See Responses #9 and 10. No change has been made to the Permit.

4. **(ITD2):** Regarding prioritization, ITD2 supports EPA's effort throughout the document to allow the Permittee to develop and define our own prioritization system for inspections, enforcement and maintenance, based on local knowledge and conditions. We believe that this will enable us to use our time and resources most efficiently and effectively towards [Best Management Practice [BMP] implementation and improving water quality.

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

5. **(ITD2):** Regarding limited legal authority, ITD2 appreciates EPA's efforts to acknowledge the limited legal authority of ITD2 and providing for language that enables alternative compliance pathways such as developing an Escalating Response Plan that is "appropriate to its jurisdiction" (Permit Part 3.3.6) or using "available regulatory mechanisms" (Permit Part 2.5.4).

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

### ***Environmental Justice***

6. **(ICL):** Provide the Environmental Justice (EJ) analysis of the Lewiston Urbanized Area. Without it, we are unable to provide comments that ensure the SW management activities that will ultimately be proposed by ITD2 do not unfairly burden or under protect overburdened communities.

**Response:** See EPA's original EJ screening summary in Appendix A of this document. As stated in the FS, EPA conducted a screening analysis using its nationally consistent geospatial tool called EJ Screen, available at <https://www.epa.gov/ejscreen>. See Fact Sheet at p. 33. EJ Screen contains demographic and environmental data for the U.S. at the Census block group level; EPA used this tool to determine whether the EPA Permit action could affect overburdened communities, and to identify whether enhanced outreach may be warranted. Based on this screening, the Lewiston Urbanized Area is identified as an area where potentially overburdened communities reside; as a result, EPA conducted outreach on the proposed Permit and the Permit includes several provisions that ensure members of the public can remain engaged in the Permittee's stormwater (SW) management activities.

EPA provided sufficient notice of the public comment period. See 40 CFR §124.10. Specifically, on February 5, 2019, EPA contacted stakeholders in the Lewiston area, and throughout Idaho, to notify them of the opportunity to review and comment on the draft Permit during a 45-day (rather than 30-day) public comment period. EPA announced the public comment period as widely as possible, via the EPA Region 10 social media Twitter account and via direct email to approximately 453 interested persons on the Region 10 MS4 Permit distribution list. The email list group included all contacts on EPA Region 10 Environmental Justice mailing list for the State of Idaho. The public notice was advertised on the EPA webpage. EPA also corresponded with the Nez Perce Tribe and IDEQ to invite comment and consultation on the draft materials.

The Permit includes provisions requiring the Permittee to actively engage with and inform the community about their SW management activities; See Permit Parts 2.5.5 (*SW Management Program [SWMP] Document*); 3.1 (*Public Education and Outreach on Stormwater Impacts*), especially Permit Part 3.1.8 (*Publicly Accessible Website*); Permit Part 3.2.4 (*Illicit Discharge Complaint Report and Response Program*); Part 3.2.8 (*Proper Disposal of Used Oil and Toxic*

*Materials*); and Parts 3.3.4 and 3.3.5 (*Pre-Construction Site Plan Review and Construction Site Inspection & Enforcement*, respectively).

## **Water Quality Trading**

7. **(ITD2):** Although opportunities for water quality trading have not been identified, ITD2 may desire to participate in water quality trading activities. ITD2 requests that EPA revise the Permit to identify this as a possibility, as long as EPA's trading guidance is followed. This may require the addition of a new section (i.e. Permit Part 2. 7), using the following recommended text: *"Any water quality trading used to meet the conditions of this permit shall be in compliance with EPA's Water Quality Trading Policy (dated January 13, 2003), any applicable EPA trading guidance, and the 2016 IDEQ Water Quality Pollutant Trading Guidance. If such provisions allow trading with pollution sources, water quality trading provisions may be included in a manner consistent with proposed Alternative Control Measures."*

**Response:** While EPA supports water quality trading, EPA declines to revise the Permit as suggested at this time. See EPA memo, 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>. See also EPA's request for comment on policy proposals regarding Water Quality Trading under the NPDES Program, at <https://www.epa.gov/npdes/nonpoint-source-baselines-water-quality-trading>. Under EPA and the IDEQ 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's terms and conditions. However, before conditions can be included in a NPDES permit, there must be an existing trading plan or watershed trading framework that details how trades will be conducted. No trading plan exists for the Lower Granite Dam Pool or Snake River watersheds. 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 to IDEQ, and the Permit can be modified by the Permitting Authority to incorporate such provisions.

## **Integrated Planning**

8. **(ITD2):** 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. ITD2 requests that a new Permit provision, along with EPA's guidance document referenced, be included in the final Permit to recognize integrated planning within the guidelines set forth by EPA. Recommended text for the new Permit Part 2.8: *"Any integrated stormwater planning activities used to meet the conditions of this permit shall be in compliance with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework (dated June 5, 2012) and any applicable EPA Integrated Planning guidance. If an integrated planning approach were to be implemented, it may be undertaken if information related to the integrated plan is submitted and approved by EPA and IDEQ."*

**Response:** EPA supports the Integrated Planning process but declines to include the specific provision as requested at this time. No change has been made to the Permit. 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...[and] ... 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 TMDLs.” [Emphasis added]*

The initial step in this 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 the initial step, it is premature to add language in the Permit. However, Permit terms and conditions resulting from an Integrated Plan can be requested pursuant to Permit Part 5 and/or Part 8.13. At that point, the Permitting Authority could modify the Permit to include such terms and conditions.

### ***Permit Effective Date, Implementation Schedule, and Submittal Deadlines***

9. **(ITD2):** ITD2 requests that the permit effective date be moved to October 1, 2019. This date is after the new fiscal year for ITD2, and as such will help us start the budget process for the staff and other expenses required to implement the first year of the permit.

**Response:** EPA agrees to align the permit effective date with the local government fiscal year of October 1 – September 30. Based on the Permit issuance date, the final Permit's effective date is November 1, 2020, and implementation compliance dates in the Permit are based on annual October 1- September 30 reporting periods.

10. **(ITD2):** ITD2 supports EPA Region 10's proposal to use the "Two-Step Approach" to address the Phase II Remand Rule requirements. In order to provide the permittee with time to properly assess the need for alternative control measures, while still allowing time for implementation, the permittee requests that the timeframe for the submission of Alternative Controls, Monitoring Assessment Plan, and Pollutant Reduction Activities be extended to 4.5 years following the effective date of the permit. This request would then provide for these alternative controls to be appropriately researched, understood, planned, and budgeted for.

**Response:** 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 this Permit, 40 CFR §§ 122.62 and 122.64 provide authority to the Permitting Authority to modify individual NPDES permits based on new information submitted after Permit issuance. As written, the Permit affords the Permittee the flexibility to submit new information in support of Alternative Control Measure (ACM) requests, Monitoring/Assessment plans, and/or Pollutant Reduction Activities. If the Permitting Authority agrees to grant such a request, it may do so through a permit modification. See Permit Part 2.6; Permit Part 8.13; 40 CFR §§ 122.62 and 122.64.

Regarding the timelines for submitting ACMs, Monitoring/Assessment plans, and/or Pollutant Reduction Activities, EPA has not revised the text as suggested. However, EPA agrees to provide more time than initially proposed, and has revised these submittal deadline(s) consistent with other recently issued MS4 permits in Idaho. EPA has revised the Permit to establish a deadline that is approximately two years following the Permit Effective Date. As previously noted, the

final Permit's effective date is November 1, 2020. EPA therefore also revised corresponding deadlines in Permit Parts 2.6 (regarding submittals of ACM requests, and any future monitoring/assessment plan(s), or pollutant reduction activities); and made multiple necessary edits throughout the Permit to deadlines for specific actions in Permit Parts 3, 6, and 8.2

## **Limitations and Conditions (Permit Part 2)**

### **Part 2.1 – Compliance with WQS**

- 11. (ITD2):** ITD2 supports the first paragraph of this section: *"If the Permittee complies with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an excursion above the applicable Idaho Water Quality Standards."* However, the second paragraph in Part 2.1 implies that ITD2 should determine if MS4 discharges are causing or contributing to an excursion of water quality standards (WQS). This determination can be complicated and should not be the responsibility of the MS4 operator; it's not ITD2's responsibility to determine individual causation of excursions, but to participate in monitoring and implementing Best Management Practices (BMPs) designed to protect the receiving water quality. This section should be modified as identified below to clarify the desired response from the Permittee in the event of an excursion to Idaho Water Quality Standards. ITD2 also recommends that EPA similarly revise text in Permit Part 5.1. Recommended text (2.1) to replace 2nd paragraph: *"If credible and relevant information from monitoring and/or other sources indicate that an applicable Idaho Water Quality Standard may be exceeded in the receiving waterbody, the Permittee(s) must comply with the notification and other requirements outlined in Part 5 (Required Response to Excursions of Idaho Water Quality Standards), except where a pollutant of concern in the MS4 discharge is subject to the requirements of Part 4 (Special Conditions for Discharges to Impaired Waters) or is the result of an illicit discharge and subject to the Permittee(s) response as outlined in Part 3.2.6 (Follow-up)."*

**Response:** Comment noted. EPA has not revised the text as suggested. No change has been made to the Permit in Parts 2.1 or 5.1. It is inherent in any such determination that relevant, credible, and site-specific information will be used to inform the determination. Further, the recommended edits would substantively alter the phrasing "...causes or contributes to an excursion above the Idaho Water Quality Standards" in Permit Parts 2.1 and 5.

- 12. (ITD2):** In Permit Part 2.1, ITD2 appreciates EPA's commitment and intentions to construct the proposed Permit in a manner that preserves the MEP standard under the CWA. However, the final Permit should include an affirmative statement regarding how the MEP standard will be achieved. In addition to the suggestions above, EPA should insert the following paragraph into Part 2.1: *"To ensure that the Permittee's activities achieve timely compliance with applicable WQS, the Permittee 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."*

**Response:** EPA agrees; however, it is unnecessary to add the text suggested 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.

### **Part 2.4.5 – Non-Stormwater Discharges**

- 13. (ITD2):** In Permit Part 2.4.5.1 (*Categories of Allowable Non-Stormwater Discharges*), ITD2 requests that *"Irrigation water from agricultural sources that is commingled with urban stormwater"* be included in this section. Water from agricultural sources is not regulated under NPDES.

**Response:** EPA disagrees it is necessary to edit the Permit as requested; no change has been made to the Permit. Permit Part 2.5.5.1.10 cites irrigation water as a category of allowable non-stormwater discharge. EPA notes that such non-stormwater flows are conditionally allowed to discharge through the MS4 provided it is not a source of pollution to waters of the United States as defined in Permit Part 2.4.5.2.

## **Part 2.5 – Permittee Responsibilities**

- 14. (ITD2):** ITD2 supports the option to share implementation of one or more of the SW management control measures required by this Permit to another entity. ITD2 staff have been in communication with the City of Lewiston (another proposed MS4 permittee) and agree that a partnership to meet permit requirements may be in both entities' best interests, while operating under separate MS4 permits. ITD2 and City of Lewiston plan on discussing a formal agreement to meet permit requirements in the future.

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

## **Part 2.6 - Alternative Control Measures**

- 15. (ITD2):** ITD2 supports EPA's provision, throughout the permit document, that the permittee may request an alternative control measure for a particular permit requirement.

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

## ***Stormwater Management Program Control Measures (Permit Part 3)***

### **Part 3.1.4 – Stormwater Education Activities**

- 16. (ICL):** Permit Part 3.1.4 requires ITD2 to identify at least one “target audience” to focus SW educational efforts on as well as a list of potential topics to be discussed. The Permit should require that ITD2 select the target audience based upon which group has the largest impact on water quality. Further, the list of potential topics should discuss the enforcement actions EPA could take on those who inappropriately discharge or dump into an MS4 system.

**Response:** No change has been made to the Permit. ITD2 may choose the audience and emphasize relevant topics that support their local SWMP implementation. Allowing ITD2 flexibility to determine selected topics and audiences is appropriate for their SWMP educational efforts which may change throughout the permit cycle.

- 17. (ITD2):** Part 3.1.3 (*Stormwater Education Activities*) requires ITD2 to distribute and/or offer at least eight (8) educational messages or activities over the permit term to the selected audience(s) identified in Part 3.1.4. ITD2 suggests a reduction of eight messages or activities to four (4). As an ITD District office, providing eight different messages or activities will be difficult to achieve.

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. EPA is confident that ITD2 can identify at least eight opportunities to educate and inform its target audience(s) in a meaningful manner over the course of the five-year permit term. The Permit does not require eight different messages or information to be conveyed, merely that consistent and appropriate information be shared with ITD2's target audiences. In the FS, page 20, EPA recognized the unique nature of ITD2 as a state transportation department, stating: “ITD2 does not have a traditional “resident population” like cities and counties. ITD2's 2003 permit application states that it incorporates stormwater management education into its in-house employee certification and training courses, includes stormwater information on its website, and conducts public meetings on major construction projects...EPA encourages ITD2 to

*consider working cooperatively with the City, Lewis-Clark State College, and others in the Lewiston area, and throughout the State, to assist with stormwater education and public involvement activities that are both meaningful and relevant to their transportation mission and local needs.”*

### **Part 3.1.5 – Public Outreach and Education – Assessment**

- 18. (ITD2):** The Permit requires ITD2 to assess, or participate in one or more efforts to assess, the understanding of the relevant messages and adoption of appropriate behaviors by their target audience(s). This requirement puts an extra burden on a District ITD office to develop a social marketing program which includes surveys, focus groups and other tools that are used to measure audiences' understanding. We recommend this requirement be removed.

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. EPA states in its rationale for this provision at FS page 19 that “...A vital, yet challenging, component of successful education programs is the assessment of whether the Permittees’ efforts are achieving the goals of increasing public awareness and behavior change to improve water quality.....EPA recognizes and encourages the long-term nature of such assessment activities, and notes that there may be opportunities for Permittees to work together within the State, or with other organizations, on specific MS4 topics if they choose to do so.”

Such assessment does not necessarily need to be part of a broader social marketing campaign. The intent of this provision is to ensure that the Permittee builds-in a means of measuring the success or failure regarding their selected education activities. Such measurement/assessment may be scaled to the activity and need not be as extensive as envisioned by the commenter. EPA encourages ITD2 to consult with IDEQ and their partners in other areas of Idaho to find common goals and activities.

### **Part 3.2.4.2 – Illicit Discharge Detection and Elimination - Response to Complaints or Reports from the Public**

- 19. (ITD2):** EPA should modify Part 3.2.4.2 to support ITD2 prioritizing response times to urgent and severe complaints, while still responding to other complaints in a timely manner. Inserting 'on average' provides ITD with some flexibility in response time to minor complaints. Recommended text: "*The Permittee must respond to and investigate all complaints or reports of illicit discharges as soon as possible, but no later than within two working days, on average. Immediately investigate (or refer) problems and violations determined to be emergencies, urgent or severe.*"

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. ITD2 is free to prioritize the appropriate response to reports from the public. Because of potential impacts to water quality, EPA established a minimum expectation that the Permittee must respond to complaints or reports of illicit discharges from the public within two working days.

### **Part 3.2.5.1 – Illicit Discharge Detection and Elimination - Outfall Identification and Screening Protocols**

- 20. (ITD2):** Permit Part 3.2.5.1 describes what ITD2 must include in its written plan for dry weather outfall identification and screening, including how chemical and microbiological field screening analysis will be conducted on such flows identified during the reconnaissance and screening efforts. ITD2 requests EPA remove the requirement of mandatory chemical and microbiological screening analysis, and instead use visual screening analysis for outfall monitoring of any dry weather flows if

visual pollutants are present (odor, color, turbidity, floatables, paint, suds, etc) and if visual indicators warrant additional screening methodologies (chemical or microbiological), they can be pursued.

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. Visual observation of dry weather flows will not sufficiently characterize possible pollutant concentrations in the identified flows. While visual observation of dry weather flows is an important initial step in the identification process, the Permit requires the Permittee to actively seek to identify potential pollutants in and sources of dry weather flows. The Permit requires the Permittee to adequately plan for having at least minimal capacity to field screen or otherwise characterize whether the dry weather flows contain solid or dissolved constituents of concern within the Lewiston Urbanized Area and the LGDP/Snake River watershed. In particular, the potential presence of nutrients and metals are likely not identifiable to the naked eye.

### Part 3.2.5.3 – Illicit Discharge Detection and Elimination - Monitoring of Illicit Discharges

**21. (ITD2):** Permit Part 3.2.5.3 requires ITD2 to identify the source of dry weather flows and take appropriate action to eliminate such flows to the extent allowable pursuant to authority granted the Permittee under Idaho law; this provision requires ITD2 to sample dry weather flows via grab samples of the discharge for in-field analysis and identification. Similar to prior comment, ITD2 requests removal of mandatory sampling of dry weather flows via grab samples, and instead use visual screening analysis for illicit discharge monitoring if visual pollutants are present (odor, color, turbidity, floatables, paint, suds, etc) and if visual indicators warrant additional screening methodologies (chemical or microbiological), they can be pursued.

**Response:** See Response #20. EPA has not revised the text as suggested. No change has been made to the Permit.

### Part 3.2.6 – Illicit Discharge Detection and Elimination - Follow-up

**22. (WDOE):** Regarding Permit Part 3.2.6 (*Follow-up*), WDOE 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 Permit does not outline a firm timeline and final date requiring the elimination of said connection and/or discharge. We believe the wording in the 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:** The Permit contains definitions for “appropriate” and “appropriate action” in Permit Part 9 (*Definitions*). 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 EPA’s intent elsewhere in Part 3.2, and the explanation in the FS at page 24 (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...*” EPA has also made an editorial correction to the definition for “appropriate action” in Permit Part 9.

### Part 3.3.4 – Pre-Construction Site Plan Review

- 23. (ITD2):** ITD2 requests additional clarification to Permit Part 3.3.4, specifically the third paragraph: *“Site plan review procedures must include consideration of the site’s potential water quality impacts, and must provide an opportunity for the public to submit information about whether the site plan under consideration demonstrates compliance with the ordinance or other regulatory mechanism required by Part 3.3.2.”*

Does this require ITD2 to allow public comment on site plan review for projects? If so, this is not practical for ITD2. The time to post and track properties at the site plan review level will be extensive with little benefit. Preconstruction site plan review is most applicable to municipalities who review and issue building permits to individuals that wish to build within the city limits. During the development of transportation projects, these projects go through the National Environmental Policy Act process to evaluate project action effects on the natural and human environment. If there is a project that will have 1 acre or greater of disturbance, ITD2 uses contact specifications to ensure that the contractors hired comply with EPA Construction General Permit.

**Response:** Based on this comment, and comments received on the MS4 Permit for the Pocatello Urbanized Area MS4s (NPDES Permit #IDS028053) which is similar to this Permit, EPA has revised Permit Part 3.3.4, 3<sup>rd</sup> paragraph, as follows, to clarify the role of public input during a project’s preconstruction phase:

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

EPA explained in the preamble to the NPDES Phase II stormwater regulations that this type of provision to provide opportunity for public input are included in MS4 permits to “...require some formality in the process for addressing public inquiries regarding storm water runoff from construction activities. EPA does not intend that small MS4s develop a separate, burdensome process to respond to every public inquiry. A small MS4 could, for example, simply log public complaints on existing storm water runoff problems from construction sites and pass that information on to local inspectors. The inspectors could then investigate complaints based on the severity of the violation and/or priority area.” See: 64 FR 68759 (December 8, 1999). See also 40 CFR § 122.34(b)(4)(D) & (E).

Based upon this discussion, and comments submitted here and elsewhere, EPA has also revised Permit Part 3.3.5 by adding the following sentence as a new 3<sup>rd</sup> paragraph: *The Permittee must implement procedures for receipt and consideration of information submitted by the public.*

### Part 3.5.2 - Inspection and Cleaning of Catch Basins and Inlets

- 24. (WDOE):** As drafted, Permit Part 3.5.2 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.”* WDOE 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. WDOE requests that the inspection frequency be comparable to or greater than that currently required for Washington State Permittees.

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. Given the number of catch basins owned and operated by the Permittee within the Permit Area, EPA believes the frequency identified in the Permit is sufficient.

### Part 3.5.3 – Pollution Prevention/Good Housekeeping for MS4 Operations

25. (WDOE): As drafted, Permit Part 3.5.3 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 ... " A robust operations and maintenance program is essential to the goal of preventing and reducing runoff from municipal operations, and therefore request the Permittee implement a full Operations & Maintenance (O&M) Plan that formally outlines specific procedures and control measure components they will use 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 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:** EPA has not revised the text as suggested. No change has been made to the Permit. As written, the Permit inherently requires a full O&M Plan, the requirements of which are identified throughout the document. The documentation of these activities must be included in the ITD2 SWMP document.

### Parts 3.5.6 & 3.5.8 – Operation & Maintenance (O&M) Procedures for Other Municipal Areas and Activities & Pollution Prevention Plans for Permittee Facilities

26. (WDOE): The O&M Plan referenced in WDOE's prior comment should also include appropriate pollution prevention and good housekeeping procedures for all of the facilities and their associated activities as listed in the Permit; EPA should add heavy equipment maintenance areas to these lists

**Response:** EPA agrees and has added "including heavy equipment storage areas" to Parts 3.5.6 and 3.5.8 to the list of municipal activities for which O&M procedures must be reviewed and updated during the permit term. For consistency, EPA notes that a similar edit is also made to Part 3.2.2.7.

### Part 3.5.7 – Pesticides Herbicides and Fertilizers

27. (ICL): As written, Permit Part 3.5.7 is necessary to protect water quality; however, it falls short of providing sufficient protection as there are no reporting requirements for said employees. Part 3.5.7 should be expanded to require employees to log the types, volumes, and application methods of all pesticides, herbicides, and fertilizers used in the permit area. This information should be included in any germane annual reports submitted by the Permittees.

**Response:** This type of information would be redundant. Other state and federal requirements govern the employee use and recordkeeping of pesticides, etc., such as: the Idaho State Department of Agriculture's rules for professional applicators at IDAPA 02.03.03.150, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the NPDES *General Permit for Discharges from the Application of Pesticides, for the State of Idaho*, NPDES Permit No. IDG870000. No change has been made to the Permit.

### ***Requirements for Discharges to Impaired Waters & Monitoring. Recordkeeping, and Reporting Requirements (Permit Parts 4 & 6)***

**28. (WDOE):** The FS at page 53 states that no additional requirements for monitoring, reporting, and sampling are included in the Permit, as the IDEQ does not consider the Clearwater River Arm of the LGDP to be water-quality impaired at this time. EPA noted, however, that monitoring and other SWMP actions may be added to the Permit at a future date; further, in the event additional actions are required, EPA will follow permit modification requirements of 40 CFR § 122.62. At such time that Parts 4 and 6 of the Idaho Transportation Department-District #2 NPDES Permit are modified to require submittal of a Monitoring/Assessment Plan to control pollutants of concern in the Permittee's M54 discharges to the Clearwater River Arm of the LGDP, WDOE requests the opportunity to comment via public review under the procedures set forth in 40 CFR § 122.62 Modification or Revocation and Reissuance of Permits and 40 CFR § 123.25 — Requirements for Permitting.

**Response:** Comment noted. The permitting authority will broadly announce the public notification of any proposed modification to the Permit. No change has been made to the Permit.

### ***Required Response to Excursions Above Idaho WQS (Permit Part 5)***

**29. (ICL):** We encourage EPA to modify this section with text in bold underline as follows: "*A Permittee will be presumed to be in compliance with applicable Idaho WQS, **and by extension the CWA (see section 7)**, if the Permittee is in compliance with the terms and conditions of this Permit.*" Idaho's WQS are promulgated under the CWA; a WQS violation is a violation of the CWA, which carries potential fines or other enforcement actions. Linking Permit Part 5 to potential CWA fines and enforcement actions in Permit Part 7 highlights the significance of the CWA responsibilities.

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. The Permit is issued in accordance with the CWA. NPDES implementing regulations require that the Permitting Authority include provisions that ensure that State WQS are met. See 40 CFR § 122.44(d)(2). Permit Part 5 requires compliance with water quality standards, and, if a water quality standard is not met, requires specific corrective action steps. Permit Part 7 explains the penalties associated with permit noncompliance.

**30. (ITD2):** Permit Part 5, first paragraph, should clarify that determination that the MS4 is causing or contributing to an excursion should be based on data that are credible, relevant, and site-specific. This reinforces the idea that a determination should be well - established and all data be reliable and vetted before actions outlined in Part 5 are required. Replace Part 5, first paragraph, with the following:

*"A Permittee will be presumed to be in compliance with applicable Idaho Water Quality Standards if the Permittee is in compliance with the terms and conditions of this Permit. If the Permittee, EPA, and/or IDEQ determines that, based on relevant credible and site-specific information, the discharge from the MS4 causes or contributes to an excursion*

*above the Idaho Water Quality Standards, then the Permittee remains in compliance with this Permit as long as the Permittee implements applicable control measures required by this Permit and undertakes the following actions:"*

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. See Responses #11 and #12.

- 31. (ITD2):** Regarding Permit Part 5 .1 (*Notification*), the draft language implies that the permittee should determine if MS4 discharges are causing or contributing to an excursion of water quality standards (WQS). This determination, and more importantly the degree to which the MS4 may be contributing can be complicated and should not be the responsibility of the Permittee at the time of notification. Additionally, the Permittee would like the phrase "relevant, credible and site-specific information" to be used, consistent with the vocabulary suggested in ITD2's related comment above. Replace text in Part 5.1 with the following:

*"The Permittee must notify EPA and IDEQ in writing at the addresses listed in Appendix A.1. within 30 days of becoming aware that, based on relevant and credible site-specific monitoring information, discharge from the Permittee's MS4 may have resulted in the receiving water not meeting an applicable Idaho Water Quality Standard."*

**Response:** EPA has not revised the text as suggested. No change has been made to the Permit. See Responses #11 and #12.

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

- 32. (ITD2):** The text in Permit Part 7 includes language copied from wastewater permits that is not suitable or relevant to stormwater. ITD2 urges EPA to simplify Part 7 so that only the language directly applicable to stormwater permits be included in the final permit. 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 the Montana Phase 2 General Permit, precisely because they do not apply to stormwater permits. 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:** EPA declines to make the revisions as requested. 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, 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, EPA erred by not including all mandatory provisions as required by 40 CFR §§122.41 through 122.43. As explained in the FS, "if

*a particular provision in Permit Parts 7 or 8 does not apply to the Permittee’s MS4 discharges or facilities, the Permittee does not need to comply with that provision.” See FS at pages 32-33.*

- 33. (ITD2):** Based on the rationale above, ITD2 suggests the permit language can be simplified to address stormwater responsibilities, by removing Permit Parts 7.6 (*Toxic Pollutants*), 7.7 (*Planned Changes*), and 7.11 (*Upset Conditions*).

**Response:** See Response #32. EPA has not revised the text as suggested; no change has been made to the Permit. 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, EPA notes that as a condition of its certification under CWA Section 401, IDEQ requires the Permittee 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*), EPA previously clarified for other Idaho MS4 permits in the Treasure Valley that this provision does not require approval from EPA or IDEQ for planned changes to the MS4. Annexations of existing MS4s by one operator from another operator are not considered “physical changes or additions to the permitted facility” as envisioned by this regulation. If the operator has any questions as to whether something needs to be reported as a planned change, the operator should contact EPA for clarification. 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. (ITD2):** Regarding Permit Part 7.9 (*Twenty-Four Hour Notice of Noncompliance Reporting*)- ITD2 proposes removing the last two bullets in section 7.9 in order for this section to be applicable to stormwater noncompliance reporting.

**Response:** No change has been made to the Permit. See Response #32.

- 35. (ITD2): Regarding Permit Part 7.10 (*Bypass of Treatment Facilities*) –** ITD2 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. ITD2 recommends EPA replace the language in the Permit, as 7.10.3):

*The Permittee is 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:** As EPA has responded to similar comments on recently issued Idaho MS4 permits,<sup>1</sup> EPA appreciates the interpretation and agrees that this provision can be interpreted in light of the overall maintenance and operation of the MS4. However, EPA cannot revise the text of a standard permit condition as suggested. See Response #32. No change has been made to the Permit. 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. 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.

### **Definitions (Permit Part 9)**

**36. Definitions (Part 9) Green infrastructure:** The Water Infrastructure Improvement Act (WIIA) was signed into law on January 14, 2019. WIIA amends Sections 309, 402, and 502 of the CWA, and includes a definition of green infrastructure. See: CWA Section 502(27), 33 U.S.C. 1362(27), at: <https://www.epa.gov/sites/production/files/2019-10/documents/waterinfrastructureimprovementact.pdf>. The definition of green infrastructure as proposed in the Draft Permit has been revised to read as follows:

*Green infrastructure is defined in Section 502 of the Clean Water Act and means the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters.*

**37. Definitions (Part 9) Waters of the United States:** EPA and the Department of the Army published the final Navigable Waters Protection Rule (NPWR) defining “waters of the United States” in the Federal Register on April 21, 2020; the NPWR became effective on June 22, 2020. The definition of waters of the United States as proposed in the Draft Permit has been revised to read as follows:

*Waters of the United States or waters of the U.S. means those waters defined in 40 CFR §120.2.*

**38. Definitions (Part 9) Reasonable and prudent alternatives (RPAs) and Reasonable and Prudent Measures (RPMs):** EPA has included the definitions of both RPAs and RPMs from the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., at 50 CFR §402.02. These definitions have been added to the Permit as follows:

*Reasonable and prudent alternatives is defined in the Species Act of 1973, as amended, (16 U.S.C. §1531 et seq.), at 50 CFR §402.02.50 CFR §402.02, and refers to alternative actions identified during formal Endangered Species Act consultation that can be implemented in a*

---

<sup>1</sup> See, for example: EPA’s *Response to Comments on National Pollutant Discharge Elimination System (NPDES) Permit for Discharges from the City of Idaho Falls and Idaho Transportation Department District #6 Municipal Separate Storm Sewer Systems (MS4s) NPDES Permit No. IDS028070* (February 2020).

manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director of U.S. Fish and Wildlife Service and/or National Marine Fisheries Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

Reasonable and prudent measures is defined in the Endangered Species Act of 1973, as amended, (16 U.S.C. §1531 et seq.), at 50 CFR §402.02, and refers to those actions the Director of U.S. Fish and Wildlife Service and/or National Marine Fisheries Service believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take..

±

# Appendix A: Environmental Justice Analysis for Permit #IDS028258

*MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area*

p. 1 of 11

## Contents

1. City of Boise, City Garden City, et al. MS4:.....	2
2. City of Pocatello, et al. MS4:.....	3
3. City of Idaho Falls et al. MS4: .....	4
4. City of Middleton MS4.....	5
5. City of Caldwell MS4:.....	6
6. City of Nampa MS4:.....	7
7. City of Post Falls MS4.....	8
8. City of Coeur d’Alene MS4.....	9
9. City of Lewiston MS4 .....	10
10. City of Moscow MS4 .....	11

This document contains general summary information about the geographic areas to be covered by Region 10’s draft *Idaho Municipal Separate Storm Sewer System (MS4) General Permit* in support of Region 10’s Environmental Justice Screening Analysis.

Latitude/Longitude information obtained from: <http://www.latlong.net/>

Zip code information obtained from: [https://tools.usps.com/go/ZipLookupAction\\_input](https://tools.usps.com/go/ZipLookupAction_input)

Initial screenshots using *R10 EJ Screen Map Tool* produced by John Abbotts, NPDES Permits Unit.

Contact: Misha Vakoc, NPDES Permits Unit  
206-553-6650; [Vakoc.misha@epa.gov](mailto:Vakoc.misha@epa.gov)

MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

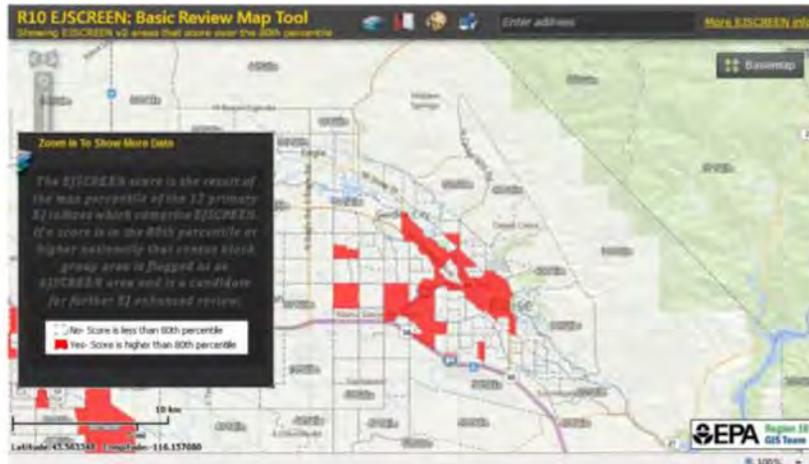
p. 2 of 11

**1. City of Boise, City Garden City, et al. MS4:**

Current Permit #IDS027561 includes Boise, Garden City Boise State University; Ada County Highway District, Drainage District #3, and Idaho Transportation Department District #3

2010 Census Urbanized Area Map	Boise, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua08785_boise_city_id/DC10UA08785.pdf">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua08785_boise_city_id/DC10UA08785.pdf</a>				Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Area	Zip Code(s)				Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Garden City	83714				43.622111	-116.238174
Boise	83701	83702	83703	83704	43.618710	-116.214607
	83705	83706	83707	83708		
	83709	83711	83712	83713		
	83714	83715	83716	83717		
	83719	83720	83722	83724		
	83725	83726	83728	83729		
	83731	83732	83735	83756		
	83799					

Receiving Waters	Citation from IDAPA	Designated Beneficial Uses
Boise River and its tributaries (Five Mile, Ten Mile, Fifteen Mile Creeks, etc)	58.01.02.140.12	<p><i>Boise River, from the Diversion Dam to River Mile 50:</i> Cold water aquatic life, salmonid spawning, domestic water supply, and primary contact recreation and special resource water.</p> <p><i>Boise River, from River Mile 50 to Indian Creek:</i> Cold water aquatic life, salmonid spawning and primary contact recreation.</p> <p><i>Boise River, Indian Creek to mouth:</i> Cold water aquatic life, and primary contact recreation</p>



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 3 of 11

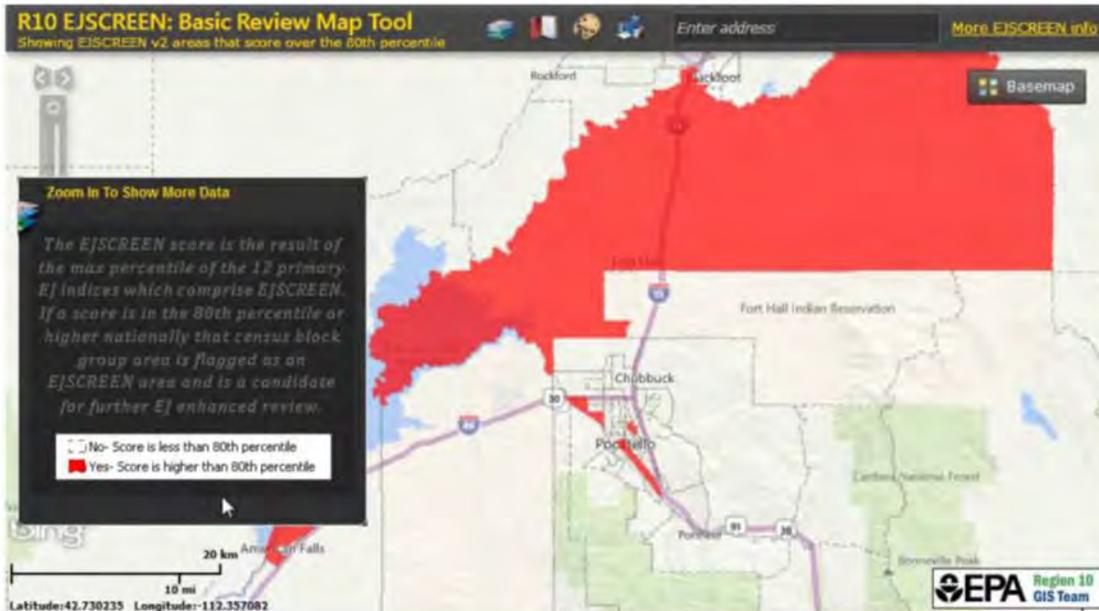
**2. City of Pocatello, et al. MS4:**

Current Permit #IDS028053, includes City of Pocatello, City of Chubbuck, Idaho Transportation Department District 5, Bannock County

<b>2010 Census Urbanized Area Map</b>	Pocatello, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua70426_pocatello_id/DC10UA70426.pdf">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua70426_pocatello_id/DC10UA70426.pdf</a>
---------------------------------------	---

Area	Zip Code(s)				Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Chubbuck	83202				42.920748	-112.466091
Pocatello	83201	83202	83203	83204	42.871303	-112.445534
	83205	83206	83209			

Receiving Waters	Citation from IDAPA	Designated Beneficial Uses
Portneuf River	58.01.02.150.10	Cold water aquatic life, salmonid spawning, and , secondary contact recreation.
Pocatello Creek	58.01.02.150.10	Undesignated; presumed to be cold water aquatic life and primary contact recreation



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 4 of 11

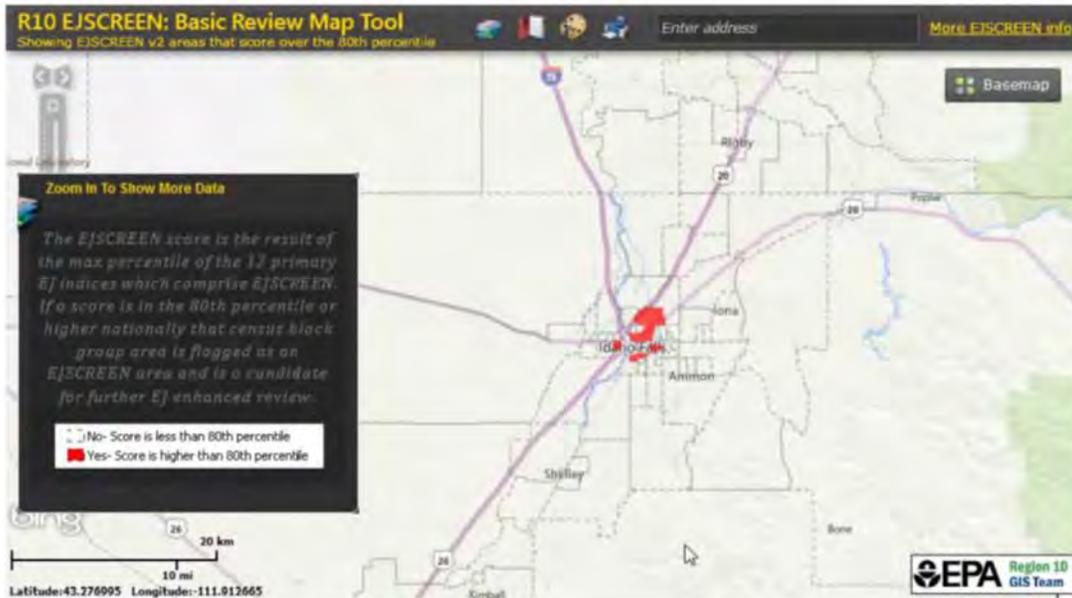
**3. City of Idaho Falls et al. MS4:**

Current Permit #IDS028070, includes City of Idaho Falls, and Idaho Transportation Department District 6

<b>2010 Census Urbanized Area Map</b>	Idaho Falls, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua40996_idaho_falls_id/DC10UA40996.pdf">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua40996_idaho_falls_id/DC10UA40996.pdf</a>
---------------------------------------	---

Area	Estimated (Jurisdiction) Zip Code(s)				Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
	Idaho Falls	83401	83402	83403	83404	43.491651
	83405	83406	83415			

Receiving Waters	Citation from IDAPA	Designated Beneficial Uses
Snake River	58.01.02.150.03	Cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 5 of 11

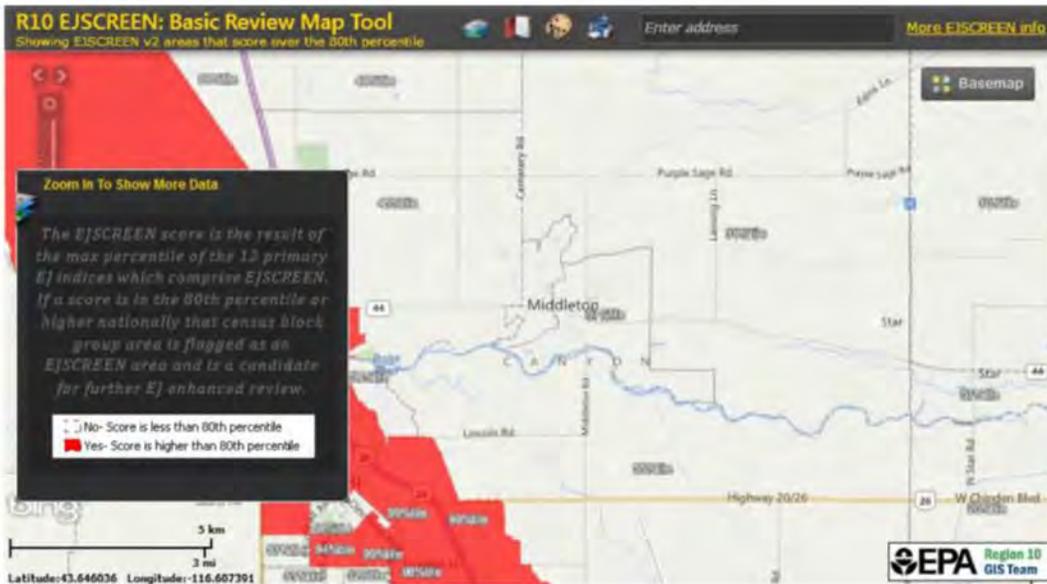
**4. City of Middleton MS4**

Current Permit #IDS028100, (no red zone; EJ Indices all <80th percentile):

<b>2010 Census Urbanized Area Map</b>	Nampa, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf</a>
---	---

Area	Estimated (Jurisdiction) Zip Code(s)	Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Middleton	83644	43.706828	-116.620136

Receiving Waters	Citation from IDAPA	Designated Beneficial Uses
Boise River	58.01.02.140.12	<i>Boise River, from River Mile 50 to Indian Creek:</i> Cold water aquatic life, salmonid spawning and primary contact recreation <i>Boise River, Indian Creek to mouth:</i> Cold water aquatic life, and primary contact recreation
Willow Creek	58.01.02.140.12	Undesignated; presumed to be cold water aquatic life and primary contact recreation



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 6 of 11

**5. City of Caldwell MS4:**  
Current Permit #IDS028118

<b>2010 Census Urbanized Area Map</b>	Nampa, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf</a>
---------------------------------------	---

Area	Estimated (Jurisdiction) Zip Code(s)			Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Caldwell	83605	83606	83607	43.662938	-116.687360

Receiving Waters	Citation from IDAPA	Designated Beneficial Uses
Boise River	58.01.02.140.12	<i>Boise River, from River Mile 50 to Indian Creek:</i> Cold water aquatic life, salmonid spawning and primary contact recreation  <i>Boise River, Indian Creek to mouth:</i> Cold water aquatic life, and primary contact recreation
Indian Creek	58.01.02.140.12	Cold water aquatic life, and secondary contact recreation
Mason Creek	58.01.02.140.12	Secondary contact recreation



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 7 of 11

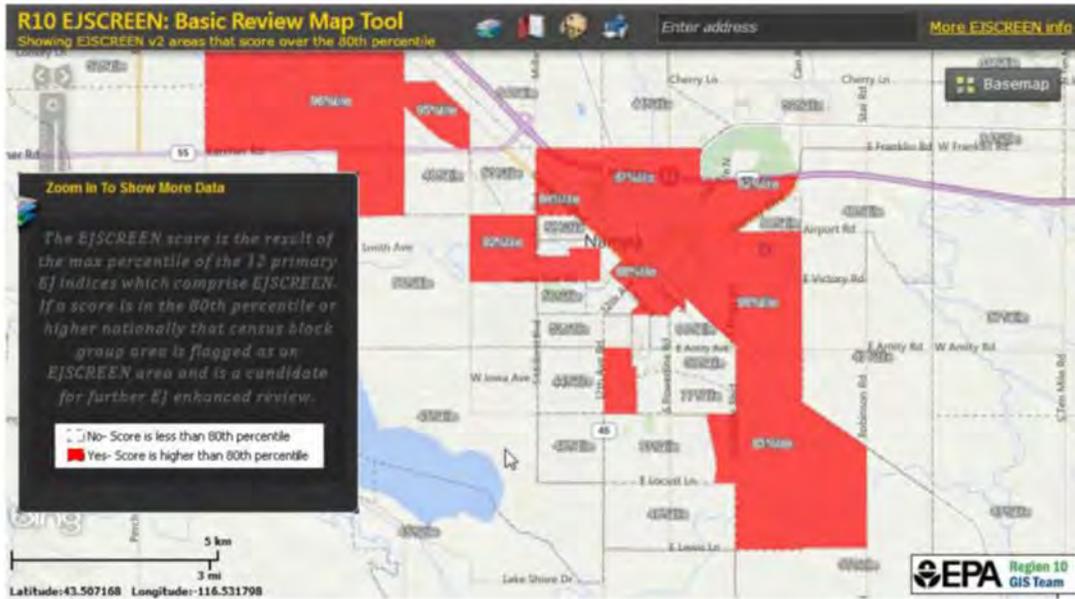
**6. City of Nampa MS4:**

Current Permit #IDS028126

<b>2010 Census Urbanized Area Map</b>	Nampa, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf</a>
---	---

Area	Estimated (Jurisdiction) Zip Code(s)			Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Nampa	83651	83652	83653	43.540717	-116.563462
	83686	83687			

Receiving Waters	Citation from IDAPA	Designated Beneficial Uses
Boise River	58.01.02.140.12	<i>Boise River, from River Mile 50 to Indian Creek:</i> Cold water aquatic life, salmonid spawning and primary contact recreation <i>Boise River, Indian Creek to mouth:</i> Cold water aquatic life, and primary contact recreation
Indian Creek	58.01.02.140.12	Cold water aquatic life, and secondary contact recreation
Mason Creek	58.01.02.140.12	Secondary contact recreation
Wilson Creek	58.01.02.140.12	Undesignated; presumed to be cold water aquatic life and primary contact recreation



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 8 of 11

**7. City of Post Falls MS4**

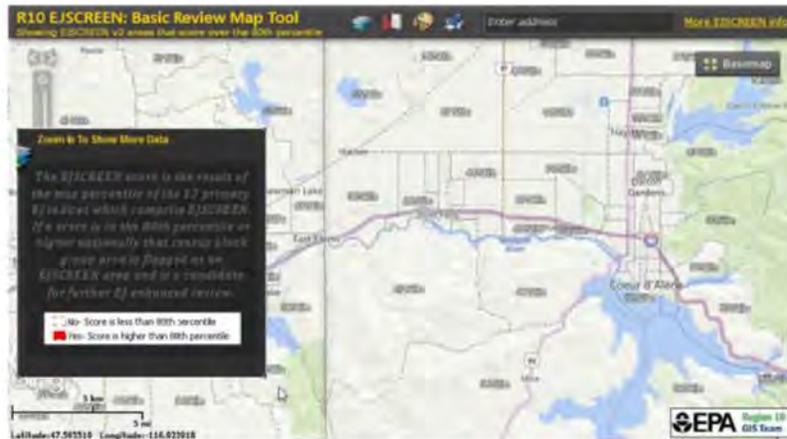
Current Permit #IDS028231, (no red zone; EJ Indices all <80th percentile). Neighboring jurisdiction covered by MS4 Permit includes Post Falls Highway District.

<b>2010 Census Urbanized Area Map</b>	Coeur d’Alene, Idaho Urbanized Area:  <a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua18451_coeur_dalene_id/DC10UA18451.pdf">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua18451_coeur_dalene_id/DC10UA18451.pdf</a>
---	---

Area	Estimated (Jurisdiction) Zip Code(s)			Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Post Falls	83854	83877		47.717958	-116.951586

Receiving Waters	Citation from IDAPA & WAC	Designated Beneficial Uses
Spokane River*	58.01.02.110.12	Cold water aquatic life, salmonid spawning, primary contact recreation and domestic water supply.
	WAC 173-201A-130*	Spokane River (Washington portion, between River Mile 58.0 and RM 96.0): “Class A” waterbody, site-specific temperature criterion of 20°C. (See); designated uses: domestic, industrial and agricultural water supply; stock watering; migration, rearing, spawning and harvesting of salmonids and other fish; wildlife habitat; recreation including primary contact recreation, sport fishing, boating, and aesthetic enjoyment; and commerce and navigation.  Lake Spokane (reservoir formed by the Long Lake Dam on the Spokane River): Class A and Lake Class water body; designated uses: domestic, industrial and agricultural water supply; stock watering; migration, rearing, spawning and harvesting of salmonids and other fish; wildlife habitat; recreation including primary contact recreation, sport fishing, boating, and aesthetic enjoyment; and commerce and navigation

\*Note: Regulated MS4s in the Coeur d’Alene and Lewiston UAs, and within the City of Moscow, ID, discharge to receiving waters upstream from the Idaho/Washington state border; therefore, applicable water quality standards imposed by the Washington Department of Ecology are included in the designated use summary provided in these tables.



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 9 of 11

**8. City of Coeur d’Alene MS4**

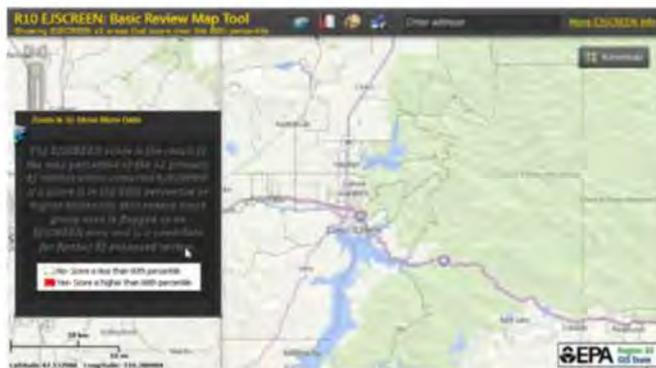
Current Permit #IDS028215; (no red zone; EJ Indices all <80th percentile). Neighboring jurisdictions with MS4 Permit includes ITD District #1; Lakes Highway District; and Eastside Highway District (application only).

<b>2010 Census Urbanized Area Map</b>	Coeur d’Alene, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/Uauc_RefMap/ua/ua18451_coeur_dalene_id/DC10UA18451.pdf">http://www2.census.gov/geo/maps/dc10map/Uauc_RefMap/ua/ua18451_coeur_dalene_id/DC10UA18451.pdf</a>
---------------------------------------	---

Area	Estimated (Jurisdiction) Zip Code(s)			Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Coeur d’Alene	83814	83815	83816	47.677683	-116.780466

Receiving Waters	Citation from IDAPA & WAC	Designated Beneficial Uses
Fernan Lake	58.01.02.110.10	Cold water aquatic life, salmonid spawning, primary contact recreation, domestic water supply and special resource water
Coeur d’Alene Lake	58.01.02.110.10	Cold water aquatic life, salmonid spawning, primary contact recreation, domestic water supply and special resource water
Spokane River*	58.01.02.110.12	Cold water aquatic life, salmonid spawning, primary contact recreation and domestic water supply.
	WAC 173-201A-130*	<b>Spokane River (Washington portion, between River Mile 58.0 and RM 96.0):</b> “Class A” waterbody, site-specific temperature criterion of 20°C. (See); designated uses: domestic, industrial and agricultural water supply; stock watering; migration, rearing, spawning and harvesting of salmonids and other fish; wildlife habitat; recreation including primary contact recreation, sport fishing, boating, and aesthetic enjoyment; and commerce and navigation. <b>Lake Spokane (reservoir formed by the Long Lake Dam on the Spokane River):</b> Class A and Lake Class water body; designated uses: domestic, industrial and agricultural water supply; stock watering; migration, rearing, spawning and harvesting of salmonids and other fish; wildlife habitat; recreation including primary contact recreation, sport fishing, boating, and aesthetic enjoyment; and commerce and navigation

\*Note: Regulated MS4s in the Coeur d’Alene and Lewiston UAs, and within the City of Moscow, ID, discharge to receiving waters upstream from the Idaho/Washington state border; therefore, applicable water quality standards imposed by the Washington Department of Ecology are included in the designated use summary provided in these tables.



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 10 of 11

**9. City of Lewiston MS4**

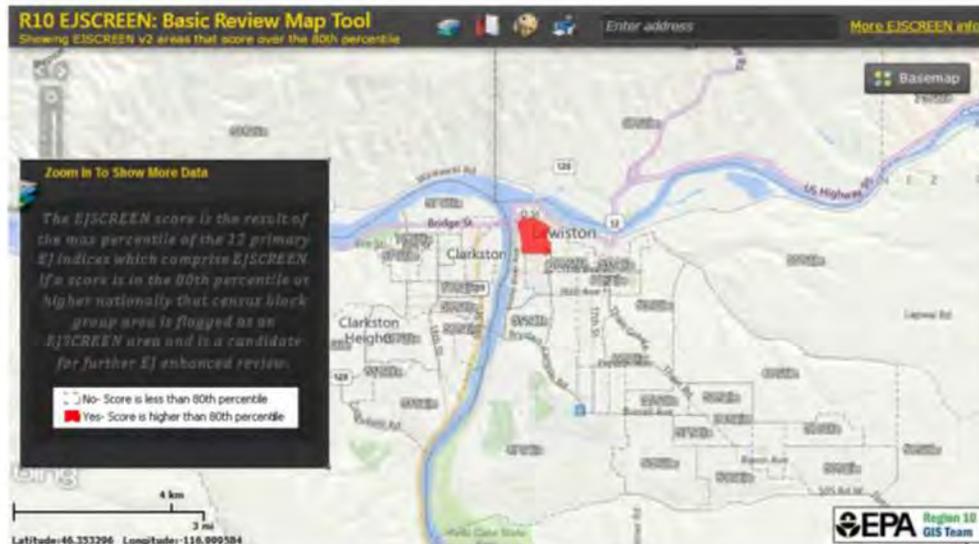
Proposed Permit #IDS028061 – no final permit issued. Neighboring jurisdictions needing MS4 permit includes ITD District 2 and Lewis Clark College

<b>2010 Census Urbanized Area Map</b>	Lewiston, Idaho Urbanized Area: <a href="http://www2.census.gov/geo/maps/dc10map/Uauc_RefMap/ua/ua49312_lewiston_id-wa/DC10UA49312.pdf">http://www2.census.gov/geo/maps/dc10map/Uauc_RefMap/ua/ua49312_lewiston_id-wa/DC10UA49312.pdf</a>
---------------------------------------	--

Area	Estimated (Jurisdiction) Zip Code(s)	Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Lewiston	83501	46.400409	-117.001189

Receiving Waters	Citation from IDAPA & WAC	Designated Beneficial Uses
Lower Granite Dam Pool	58.01.02.120.08	Cold water aquatic life, primary contact recreation, domestic water supply
Lindsay Creek	58.01.02.120.08	Cold water aquatic life and secondary contact recreation
Tammany Creek	58.01.02.130.02	Cold water aquatic life and secondary contact recreation
Snake River*	WAC 173-201A-600*	Salmonid spawning, rearing, & migration; primary contact recreation; domestic, industrial, & agricultural water supply; stock watering; wildlife habitat; harvesting; commerce and navigation; boating; and aesthetic values

\*Note: Regulated MS4s in the Coeur d'Alene and Lewiston UAs, and within the City of Moscow, ID, discharge to receiving waters upstream from the Idaho/Washington state border; therefore, applicable water quality standards imposed by the Washington Department of Ecology are included in the designated use summary provided in these tables.



MS4 General Permit EJ Screening Information Compiled by NPU staff, July & October, 2015  
EJ Screenshots of Representative Idaho Urbanized Areas, by existing NPDES Permit #/Area

p. 11 of 11

**10. City of Moscow MS4**

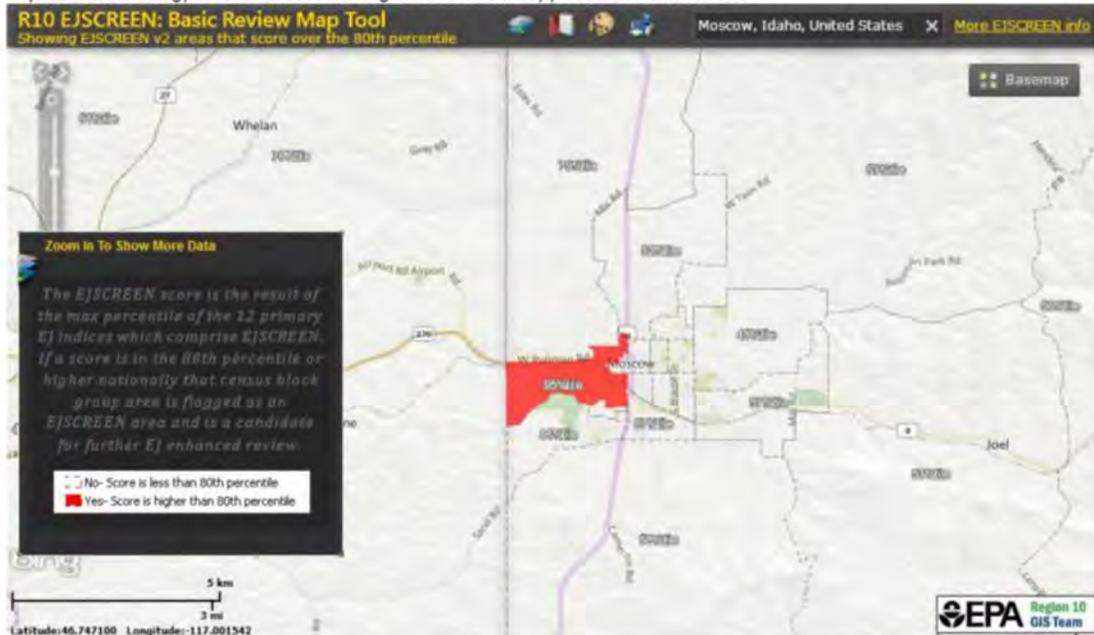
Proposed to be designated as Regulated MS4- Application only. Other likely jurisdiction needing MS4 Permit includes University of Idaho.

The City of Moscow is not located within a Census defined Urbanized Area.

Area	Estimated (Jurisdiction) Zip Code(s)			Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Moscow	83843	83844		46.732387	-117.000165

Receiving Waters	Citation from IDAPA/WAC	Designated Beneficial Uses
Paradise Creek*	58.01.02.120.01	Coldwater aquatic life salmonid spawning and secondary contact recreation
	WAC 173-201A-600*	Salmonid spawning, rearing, & migration; primary contact recreation; domestic, industrial, & agricultural water supply; stock watering; wildlife habitat; harvesting; commerce and navigation; boating; and aesthetic values
South Fork Palouse River*	58.01.02.120.01	Coldwater aquatic life salmonid spawning secondary contact recreation
	WAC 173-201A-600*	Salmonid spawning, rearing, & migration; primary contact recreation; domestic, industrial, & agricultural water supply; stock watering; wildlife habitat; harvesting; commerce and navigation; boating; and aesthetic values

\*Note: Regulated MS4s in the Coeur d'Alene and Lewiston UAs, and within the City of Moscow, ID, discharge to receiving waters upstream from the Idaho/Washington state border; therefore, applicable water quality standards imposed by the Washington Department of Ecology are included in the designated use summary provided in these tables.



## Appendix B: 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. Tippels

January 27, 2020

Susan Poulosom, Section Manager  
NPDES Permitting Section  
U.S. EPA Region 10  
1200 6th Avenue, Suite 155  
Mail Code WD-19-C04  
Seattle WA 98101-3188

Subject: FINAL §401 Water Quality Certification for the Idaho Transportation Department District 2 Municipal Separate Sewer System (MS4), NPDES Permit #IDS028258

Dear Ms. Poulosom:

On January 6, 2020, the Lewiston Regional Office of the Idaho Department of Environmental Quality (DEQ) received the proposed final draft of the above-referenced permit for the Idaho Transportation Department District 2 Municipal Separate Sewer System (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.

This letter is to inform you that DEQ is issuing the attached §401 Water Quality 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,

A handwritten signature in black ink that reads "John Cardwell".

John Cardwell  
Regional Administrator  
Lewiston Regional Office

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



## Idaho Department of Environmental Quality Final §401 Water Quality Certification

January 27, 2020

**NPDES Permit Number(s):** Idaho Transportation Department – District #2  
Municipal Separate Storm Sewer System, IDS028258

**Receiving Water Body:** Clearwater River – Lower Granite Dam Pool

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

Based upon its review of the above-referenced permit and associated fact sheet, 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 Idaho Transportation Department – District #2 discharges the following pollutants of concern: sediment, nutrients, heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) and organic chemicals (pesticides and industrial chemicals).

---

### **Receiving Water Body Level of Protection**

The Idaho Transportation Department – District #2 discharges to the Clearwater River – Lower Granite Dam Pool within the Clearwater Subbasin assessment unit (AU) ID17060306CL001\_07 (Lower Granite Dam Pool). This AU is designated for cold water aquatic life, primary contact recreation, and domestic water supply 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, this receiving water body AU is fully supporting its assessed uses (IDAPA 58.01.02.052.05.a). As such, DEQ will provide Tier II protection in addition to Tier I for this water body (IDAPA 58.01.02.051.02; 58.01.02.051.01).

### **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 Idaho Transportation Department – District #2 permit and this certification require the permittee to reduce the discharge of pollutants to the maximum extent practicable.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection include (Permit part 2 & 3):

- A prohibition on snow disposal directly to surface waters;
- Specific prohibitions for non-stormwater discharges;
- Requirements to develop a stormwater management plan with the following control measures:
  - Public education and outreach,

- Illicit discharge detection and elimination,
- Construction site stormwater runoff controls,
- Dry weather outfall screening program,
- Post-construction stormwater management for new development and redevelopment,
- Pollution prevention/good housekeeping for MS4 operations;
- The stipulation that if either EPA or DEQ determine that an MS4 causes or contributes to an excursion above the water quality standards, 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 requires corrective action and adaptive management as needed to address the source of pollutants. This response plan will improve the response time to an exceedance and require the permittee to evaluate and determine the effectiveness of their best management practices.

In summary, the terms and conditions contained in the Idaho Transportation Department – District #2 permit will reduce the discharge of pollutants to the maximum extent practicable. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Clearwater River – Lower Granite Dam Pool 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 Clearwater River – Lower Granite Dam Pool is considered high quality for cold water aquatic life and primary contact recreation. As such, the water quality relevant to cold water aquatic life and primary contact recreation uses of the Clearwater River – Lower Granite Dam Pool 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 pollutants relevant to cold water aquatic life and primary contact recreation uses of the Clearwater River – Lower Granite Dam Pool (IDAPA 58.01.02.052.05). These include sediment, nutrients, heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) 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 maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements under the Clean Water Act. “Maximum extent practicable” is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. The proposed MS4 permit relies on practices to identify and reduce discharge of pollutants to the maximum extent practicable (Permit parts 2 & 3). The Idaho Transportation Department – District #2 must map their MS4 and all associated outfalls (Permit part 3.2.2). 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 permittee is required to manage the effectiveness of these stormwater management practices, monitor discharge and, if necessary, adapt its management practices.

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.<sup>1</sup> Due to the nature of MS4 permits, implementation requires investigating and resolving complaints; continual discovery of pollutant sources; use, monitoring, and refinement of BMPs; and additional knowledge through training opportunities.

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 and aquatic life uses. Therefore, DEQ has reasonable assurance that at a minimum, no degradation will result from the discharge of pollutants from the Idaho Transportation Department – District #2 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).

## **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, monitored, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the United States and to improve water quality at least to the maximum extent practicable.

When selecting best management practices the permittee 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/>.

### ***Reporting of Discharges Containing Hazardous Materials or Deleterious Material***

Pursuant to IDAPA 58.01.02.850, 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 Regional Office at 208-799-4370 during normal working hours or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

<sup>1</sup> Urban Stormwater Management in the United States, National Research Council, 2008

Idaho Department of Environmental Quality

§401 Water Quality Certification

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

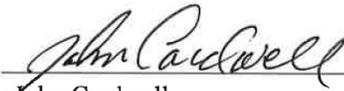
## Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

## Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Sujata Connell, Lewiston Regional Office at 208-799-4370 or via email at [Sujata.Connell@deq.idaho.gov](mailto:Sujata.Connell@deq.idaho.gov).



John Cardwell  
Regional Administrator  
Lewiston Regional Office