Response to Comments on

National Pollutant Discharge Elimination System (NPDES) Permit

For Discharges from the

City of Lewiston and Lewis-Clark State College (Idaho)

Municipal Separate Storm Sewer Systems (MS4s)

NPDES Permit No. IDS028061

September 2020

U.S. Environmental Protection Agency, Region 10

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Acronyms

ACOE	U.S. Army Corps of Engineers
ACM	Alternative Control Measure
AIC	Association of Idaho Cities
AU	Assessment Unit
BMPs	Best Management Practices
CFR	Code of Federal Regulations
CWA	Clean Water Act
EJ	Environmental Justice
EPA	Environmental Protection Agency
FS	Fact Sheet
GP	General Permit
ICL	Idaho Conservation League
ID	Idaho
IDAPA	Idaho Administrative Procedure Act
IDEQ	Idaho Department of Environmental Quality
ITD2	Idaho Transportation Department District 2
LCSC	Lewis-Clark State College
LGDP	Lower Granite Dam Pool
LGR	Lower Granite Reservoir
LLPs	Lewiston Levees, Ponds and Pumping Stations
MEP	Maximum Extent Practicable
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
NOAA	National Oceanic and Atmospheric Administration
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
QA	Quality Assurance
QAP	Qualtiy Assurance Plan
SWMP	Stormwater Management Program
SW	Stormwater
TMDL	Total Maximum Daily Load
UA	Urbanized Area
US	United States
USC	United States Code
USFWS	U.S. Fish and Wildlife Service
WA	Washington
WBAG	Water Body Assessment Guidance
WBAU	Water Body Assessment Unit
WLA	Wasteload Allocation
WQS	Water Quality Standards

Introduction

On December 19, 2018, the U.S. Environmental Protection Agency Region 10 (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer systems (MS4) owned and/or operated by the City of Lewiston (City) and Lewis-Clark State College (LCSC) in Nez Perce County, Idaho. These entities are collectively referred to as the "Permittees," and the Permit document #IDS028061 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.

EPA's public notice stated that the comment period on the 2018 draft Permit would end on February 4, 2019. After the public comment period started, there was a federal government shutdown during which time commenters were unable to ask EPA clarifying questions regarding the proposal. On January 23, 2019, EPA received a request to extend the comment period. As a result, once the shutdown ended EPA granted the request and extended the comment period to 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.
- *Comments referring to EPA's 2007 draft Permit and/or 2007 FS:* Some comments refer to EPA's August 2007 draft MS4 permit and 2007 FS for the City of Lewiston. EPA never issued final permits derived from these 2007 documents. Where relevant EPA clearly differentiates between the 2007 documents and the 2018 draft Permit available for public comment. This document refers to the "2007 draft Permit," "2007 FS," and/or the "2018 draft Permit," "2018 FS," etc.
- *Receiving Water Names:* Some comments referred to receiving waters in the Permit Area using names that were meaningful at the time the comment was originally submitted. These waterbody names can still be found on certain maps or in other information. In some examples, these names do not match the current Clean Water Act (CWA) naming convention used by Idaho Department of Environmental Quality (IDEQ). Specifically, comment references to waterbodies in the north and western portions of the MS4 Permit Area included the *Clearwater River* and *Lower Granite Reservoir (LGR), Corps of Engineers ponds,* etc. In this document, the 2018 FS, and the Final Permit, EPA uses the current IDEQ waterbody names (i.e., *Lower Granite Dam Pool (LGDP), Snake River, Lindsay Creek*, and/or *Tammany Creek*).

State Certification under Clean Water Act §401

On November 13, 2018, 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 15, 2020, IDEQ provided final certification of EPA's final Permit; the final certification is provided in Appendix C.

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). EPA concluded that issuance of MS4 permits to the City of Lewiston, Lewis-Clark State College, and Idaho Transportation Department District 2 is not likely to adversely affect 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 made minor editorial changes throughout the Permit for clarity, grammatical correction, and/or as noted by individual commenters. Major edits are made to the following in response to public comments:

Cover Page: See Response #34
Schedule – page 2; Permit Parts 2.5.2, 2.5.3, and 2.6; Parts 3.1, 3.2, 3.3, 3.4, and 3.5 (multiple); Parts 4.1, 4.3; Parts 6.4, Table 6.4.2; Part 8.2: See Responses #24 - 27
Edits Based on Recent EPA Actions
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 *Green Infrastructure*: Revised consistent with the new definition in the Water Infrastructure Improvement Act. See Response #85.
Part 9 Definition of *Waters of the U.S.*: 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 #86.
Part 8.13; Part 9 Definitions for *Reasonable and Prudent Alternatives* and *Reasonable and Prudent Measures*: 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 #87.
Edits Based on IDEQ Input
Parts 2.5.9; Parts 3.2.7; 4.2.2; 4.3.2; and Appendix A.2: Conditions of IDEQ's *Final §401 Water Quality Certification for the City of Lewiston and Lewis-Clark State College MS4s, NPDES Permit# IDS028061*, dated January 15, 2020. See Appendix C.
Edits Based on Relevant Public Comments Received on Other Proposed MS4 Permits in Idaho:
Permit Part 3.2.2.7, 3.5.6, and 3.5.8: Added "*heavy equipment storage areas*" to listed Permittee facilities to be mapped and maintained /operated in a manner that is protective of water quality.
Permit Part 3.2.6, and Part 9: Added "*and eliminate*" to clarify expected follow-up on illicit discharges – sentence now reads *The Permittees must take appropriate action to address and eliminate the source of an ongoing illicit discharge within sixty (60) days of its detection…";* Corrected definition of *appropriate action*
Parts 3.3.4 (revised 3rd paragraph) and 3.3.5 (new 3rd paragraph): Revised Site Plan Review procedures to better reflect the intent of the federal requirement in 40 CFR § 122.34(b)(4)(D) & (E).

Table 4.3, and Part 9: Replaced the phrase “Pollutants of Concern” with “Impairment Pollutants” in Table 4.3; deleted and replaced relevant definitions in Part 9, based on IDEQ comments dated 7/3/2019 on NPDES MS4 Permit #IDS028207.

Response to Comments

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

- Association of Idaho Cities (AIC)
- City of Caldwell (Caldwell)
- Idaho Conservation League (ICL)
- City of Lewiston (City)

General Topics

1. **(AIC):** The Permittees look forward to working with state and federal partners to develop final permit conditions that conform with federal regulations, protects water quality in areas where stormwater (SW) may be having potential effect, and achieves cost-effective use of local funding and resources. Public health protection and safety is an important responsibility of Idaho communities, who seek to ensure compliance and to preserve the long-term ability to comply with CWA regulations. Communities need both financial and technical resources to make investments that ensure compliance. Such investments must be informed through a MS4 permitting program that employs adaptive management strategies over the long term.

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

2. **(Caldwell):** We appreciate the Permit's emphasis on getting the program up and running by developing guidance documents. It seems like a good place to start.

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

3. **(City):** The City has been managing its MS4 since submitting its permit application in 2003 as though many of the Permit requirements were already in place. The City is committed to improving water quality throughout the system and interested in adjusting current strategies to promote overall efficiency. The City looks forward to a final Permit that meets both EPA and City's requirements.

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

4. **(AIC, City):** *Regarding an Individual Permit vs. a General Permit (GP)* --EPA drafted a statewide GP for Idaho Phase 2 regulated MS4s in 2017, and received initial comments from AIC, City, and other stakeholders. The 2018 FS states the "*EPA has decided to issue individual permits instead of a GP*" and that the "*information received, in conjunction with the permit renewal application and Annual Reports, has been used to inform the current [2018] draft Permit.*" Commenters urge EPA to reconsider this decision. A statewide GP would reduce regulatory agency workload (both federal and state); improve Permittee resource coordination; provide fairness and consistency across Idaho, and a better transition to IDEQ primacy on the NPDES permit program. The City asserts that an individual Permit makes little sense when workload of DEQ and the Permittees are considered.

   Response: Comment noted. No change has been made to the Permit. EPA continues to work closely with IDEQ to create fair and consistent MS4 permit requirements in the Lewiston, Idaho area and in all Urbanized Areas in Idaho. EPA and IDEQ will ensure a smooth and efficient transfer of the MS4 permit program to IDEQ on July 1, 2021.

5. **(AIC):** Commenter supports the following proposed requirements:

   - Establishing feasible timelines for SWMP development and compliance;

- Providing the affirmative statement that "*If the Permittees comply with all the terms and conditions of this Permit, it is presumed that the Permittees are not causing or contributing to an excursion above the applicable Idaho Water Quality Standards.*" (Permit Part 2.1);
- Clarifying allowable non-stormwater discharges as found in Permit Part 2.4.5;
- Ensuring that valid receiving water impacts and public health significance are taken into consideration prior to determining whether a SW discharge is a source of pollution to Waters of the United States (Permit Part 2.4.5.2);
- Acknowledging the Permittee's legal authority under Idaho law and using reports or other mechanisms as a compliance path (Permit Parts 2.5.4, 3.1.4, and 3.3.6)
- Construction plan review only for projects disturbing one (1) or more acres (Permit Part 3.3).
- Controls at new development and redevelopment sites resulting from land disturbance of one (1) or more acres, etc, and that discharge into the MS4 (Permit Part 3.4).
- Allowing alternatives where onsite retention is not feasible (Permit Part 3.4.2.2).
- The affirmative statement that "*A Permittee will be presumed to be in compliance with applicable Idaho Water Quality Standards if the Permittee is in compliance with the terms and conditions of this Permit*," (Permit Part 5).
- Providing reasonable deadlines to submit Annual Reports (Permit Part 6.4); and
- The statement regarding severability in Permit Part 8.12.

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

6. **(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 Permittees 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 the City & LCSC submit proposals that define the substantive Permit terms and conditions. The FS states that the City & LCSC submissions 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 Permittees 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. If modifications are made in the future, the permitting authority will provide public notice and comment as required in 40 CFR Part 124. No change has been made to the Permit.

7. **(City):** The City already implements many of the Permit's control measures to some degree and chooses to not comment on each minimum control measure. The City will update the SWMP to reflect the current program status and set goals that will meet the requirements, and report as much in the Annual Report.

   Response: Comment noted. Permittees have at least 4.5 years from the Permit effective date to fully implement the required control measures. No change has been made to the Permit.

8. **(City):** In the FS and Permit, EPA states it may change Permit requirements if water quality is impaired and/or Idaho Water Quality Standards (WQS) are not met. In all cases, any conclusion about water quality impairment or failure to meet WQS must be based on rules, regulations, guidance and standards set forth in applicable law, including Idaho Administrative Procedure Act (IDAPA), and the Permit should state as much each time the right is asserted in the Permit.

Response: This comment was originally submitted in 2007; it was resubmitted during this comment period. The comment fails to identify specific examples where this language appears in the 2018 draft Permit or 2018 FS. In the 2018 draft Permit, references to permit modification are accompanied by citations to applicable federal law. See 40 CFR §§ 122.62, 122.64, and 124.5. See also: 2018 draft Permit Part 2.6.4 (*Recognition of Alternative Control Measures*), 5.6 (*Permit Revision*), 8.1 (*Permit Actions*), and 8.13 (*Re-opener Clause*). See also 2018 FS Section 2.6 at page 33. No change has been made to the Permit.

Public Meeting

9. (City): The public meeting EPA offered in the 2007 FS should be added back to this current draft. It is important for the public to hear from EPA on the permit requirements, especially due to the time between the 2003 permit application until today. The public is rightfully curious as to why now and what took so long. EPA could also meet with Nez Perce County and other identified entities in the Lewiston, ID-Clarkston, WA Metropolitan Planning Organization (MPO) that require permit coverage.

Response: No change has been made to the Permit as a result of this comment. As noted by the commenter, EPA conducted a public meeting and hearing for the 2007 draft permit on October 10, 2007. EPA substantively revised the 2007 draft Permit and its Fact Sheet as outlined in 2018 FS Section 1.1, pages 6-7. Pursuant to 40 CFR § 124.11, on December 18, 2018, EPA advertised the 2018 public notice of its proposal on the Region 10 webpage and through direct emails and offered the opportunity for the public to request a public hearing on the draft Permit; the opportunity for the public to request a public hearing was reiterated again when EPA extended the public comment period through March 22, 2019. EPA distributed both announcements via email to approximately 458 individuals who expressed interest in EPA's NPDES permit actions in ID. EPA did not receive any requests for a public hearing or meeting regarding the proposed Permit.

Regulatory Setting: Urbanized Area; Other MS4 Operators

10. (City): Include better discussion in 2018 FS Section 1.1. of the Permit's regulatory setting and time frames for issuing the Permit; add a "Regulatory Setting" section, and explain that the City was required to get a MS4 discharge permit based on the Year 2000 Census, creating the MPO that includes other government entities in ID (e.g., Nez Perce County, LCSC and others in Washington State regulated by Washington Department of Ecology (WDOE), (e.g., Cities of Asotin and Clarkston, and Asotin County). EPA should explain: 1) that this MPO was created based on a population that barely reached the 50,000 person threshold under U.S. Census rules for classification as a UA, and subsequent designation under the NPDES Phase II stormwater regulations; 2) that the City comprises only 30,000 of that 50,000 population; and 3) the relationship between the various MS4 operators in this UA. Is EPA obligated to issue MS4 permits simultaneously to all operators in the Lewiston UA so we all know the responsibilities for Best Management Practice (BMP) implementation and monitoring?

Response: Comment noted. It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. EPA acknowledges that the Lewiston, ID – WA Urbanized Area (UA) was as one of 76 new UAs established by the U.S. Census Bureau as a result of the Year 2000 Census, with a recorded population of 50,317.[1] In the 2018 FS at page 6, EPA addressed the status of other NPDES-regulated small MS4s in the Lewiston UA. The Permit authorizes MS4 discharges owned and/or operated by the City and LCSC; in 2018, EPA

[1] See: 67 Federal Register 21962-21967, May 1, 2002.

concurrently proposed a similar MS4 permit for Idaho Transportation Department District 2 (ITD2).

EPA is not obligated to issue permit coverage to all regulated entities at the same time. EPA previously notified other entities in the Lewiston UA of their potential obligation under 40 CFR §§122.32 and 122.33 to obtain NPDES permit coverage for MS4 discharges that they own and/or operate in the Lewiston UA. To date, EPA has not received applications from other MS4 operators in the UA. If the City believes other entities require a MS4 permit, the City may formally petition EPA to designate the entity. EPA and IDEQ will determine whether other entities must obtain MS4 permits on a case-by-case basis. EPA strongly encourages the Permittees to focus their time and resources on their respective SWMP implementation. Permittees may collaborate at any time with other entities in ID or WA regardless of their status as a NPDES regulated MS4. See Final Permit Part 2.5.3 and Part 6.1.

11. **(City)**: The Permit requires the City to implement a full-fledged SW control program with all the same fixed costs, the same as many other larger cities, EPA should state as much in the suggested section of the FS.

    Response: It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. Pursuant to 40 CFR § 122.34, the Permit terms and conditions define actions necessary to reduce pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. The Permit provides considerable flexibility for Permittees to implement their SWMP in a manner that makes sense for their jurisdiction.

12. **(City):** EPA should clearly state in the FS whether other entities have authorities over MS4s which might either discharge to the City's MS4, or to which the City might discharge. The City and public need to be reasonably informed of what other entities in these watersheds will be similarly regulated by EPA, and what EPA considers the legal status of other MS4s. The City, ITD2 and LCSC are being regulated in the same manner and at the same time as the City. The City understands that Nez Perce County is likely to be regulated, that EPA considers Nez Perce County as falling under the MS4 guidelines and that EPA informed Nez Perce County approximately 12 years ago that it must apply for a MS4 permit. EPA should state in the FS when Nez Perce County might expect to be permitted so the City can plan appropriately.

    Response: It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. If Nez Perce County, or any other entity, owns and/or operates a MS4 in the Lewiston UA, the MS4 discharges must be authorized under a NPDES permit. See 40 CFR §§ 122.21 and 122.30 through 122.37. Nez Perce County has not submitted a MS4 permit application. Upon receiving a complete NPDES application, EPA would propose and issue a permit. The City or other interested party may petition EPA to consider designating a MS4 as regulated under the NPDES program. See 40 CFR §122.26(f). See also Response #10.

13. **(City):** EPA should clarify the relationship between MS4 permits for entities in ID and those in WA. Does EPA expect MS4s to cooperate across borders within the UA? Can there be cooperative arrangements across all jurisdictions? For example, it would be good if there were one BMP design manual that applied to the whole MPO.

    Response: Yes, there may be cooperative arrangements across jurisdictions in the UA. The Permit allows and encourages Permittees to cooperate with other entities to implement the SWMP. See Permit Part 2.5.3; see also 40 CFR §122.35. However, EPA notes that it does not expect, and the Permit does not require, any specific coordination or cooperation, beyond that

between the City and LCSC as co-permittees. No change has been made to the Permit as a result of this comment.

Status of the Lewiston Levee and Pumping Stations

14. (City): Regarding the status of the Lewiston Levees, Ponds, and Pumping Stations (LLPs) [aka, the Levee Ponds] that are owned and operated by the U.S. Army Corps of Engineers (ACOE), EPA considers COE's management of the levee ponds and drainage ditches as waters of the U.S., that COE is not contributing to the pollutant load or significantly altering the water quality. EPA should state this information, if applicable, in the FS. The City asserts that ACOE in fact owns and operates a SW system associated with sizeable acreage of levees, ponds, drainage ditches, parks, roads, administrative facilities, etc, along both sides of the LGDP, extending throughout the MPO. The FS should fully describe the ACOE properties and their SW management within the MPO. What is the status of the ACOE? The City is particularly concerned about the ACOE's status under the MS4 regulations, since the City discharges to an ACOE managed drainage system and the LGDP. Clarify the status of the COE properties, management responsibilities, controls of waters in the ACOE levee ponds and drainage ditches, other ACOE property in the MPO, and LGDP. Given that the City must comply with Idaho water quality rules and regulations, EPA should be clear about whether and how Idaho water quality rules and regulations apply to the ACOE levee ponds and drainage ditches.

Response: The Permit contains an adequate description of the receiving waters for the Lewiston/LCSC MS4 discharges. Moreover, the Fact Sheet contained a sufficient description of the City's MS4 as well as the receiving waters that the MS4 discharges into. 2018 FS Section 1.3.2. It is EPA Region 10 policy not to revise the FS based on public comment.

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, Lewiston/LCSC's MS4 Permit conditions would remain the same. No change has been made to the Permit.

15. (City): The City disagrees with EPA's assertion in the FS that the ACOE levee ponds are indistinguishable from the Snake and Clearwater Rivers. The Levee Ponds and ditches are a man-made drainage system that form part of 1st and 2nd order tributary systems to Lower Granite Reservoir. The ACOE levee ponds and drainage ditches were constructed as a drainage system and should be protected for that beneficial use as described in ACOE Design Memorandums.

Response: This comment was originally submitted in 2007; it was resubmitted during this comment period. It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. The 2018 FS does not state that the LLPs are indistinguishable from the LGDP and the Snake River. The LLPs are distinct waterbodies as described in the FS at pages 8-9. See also Response #14.

16. (City): EPA should reconsider whether the COE needs an MS4 permit as a government entity owning and operating a SW management system in the [Lewiston area] MPO. The ACOE asserts that it is simply 'passing through' SW from other governmental entities. Has EPA considered the full range of ACOE's stormwater management in the LLPs, including if the systems contribute to and/or change pollutant loads while the SW is under their control? This is particularly pertinent with the proposed temperature monitoring requirement.

Response: See Response #14. With regard to the temperature monitoring requirement, it is within IDEQ's discretion to determine additional actions necessary to assess the temperature impairment in the Snake River. EPA proposed the temperature monitoring provision in the draft

permit based on the following condition in IDEQ's draft §401 certification dated November 13, 2018: *Temperature Monitoring in Discharge to the Snake River: The permittees must monitor temperature in stormwater discharges from the MS4 to the Snake River to quantify stormwater impacts to the waterbody*. IDEQ subsequently included the condition in its final §401 certification dated January 15, 2020. See Appendix C. Therefore, EPA is required to include this condition in the permit pursuant to CWA Section 401(d). No change has been made to the Permit as a result of this comment.

17. **(City):** The 2007 FS contained numerous inaccuracies regarding the physical relationship between the LLPs and the MS4s owned/operated by the City and ITD, concluding incorrectly that "*These levee ponds (and drainage ditches) are not meaningfully distinct from the Snake and Clearwater Rivers, and are considered waters of the United States for the purposes of this permit.*" While the exact language has been removed from the 2018 FS, this conclusion remains part of updated documents. The commenter provides a variety of evidence that the LLPs were designed and built for the specific purpose of managing waters that are clearly different and separate from the rivers, and now LGDP. While the City does not disagree that the LLPs could be considered waters of the U.S. for the purposes of this Permit, the LLPs are clearly distinct and different from the Snake and Clearwater Rivers, or LGDP, as the case may be.

    Response: This comment refers to the 2007 FS; it was resubmitted during this comment period. Since it is a comment on the 2007 FS, it is moot. See also Responses #14 and #15.

18. **(City):** The City is concerned about the correct identification of Waters of the U.S., not only for complying with the CWA, but also to comply with the Endangered Species Act. The City believes that the status of [LGDP], its beneficial uses, and water quality standards to protect endangered salmonids is far from settled; every analytical method available should be implemented with respect to the Endangered Species issues. The ACOE levee ponds and drainage ditches, while affecting endangered species, play a far different role from [LGDP]. The City asserts that EPA must separate the two to be able to comply with their responsibility to analyze water quality effects on endangered salmonids to the best of their ability. The separation will help in such assessments at the local level.

    Response: EPA has correctly identified waters of the U.S. for the purpose of the Lewiston/LCSC MS4 Permit. See 2018 FS Section 1.7, and IDEQ's Final CWA Section 401 certification in Appendix C of this document. As previously noted, EPA is consulting with USFWS and NMFS as required by the Endangered Species Act. No change has been made to the Permit as a result of this comment. See also Responses #14 and #15.

19. **(City):** There is an assertion that there will be no difference in Permit implementation if the separation is made or not, i.e., that the Permit only requires the City to implement a suite of Best Management Practices (BMPs) and to monitor the effects at the City's outfalls. EPA is in fact requiring considerable water quality monitoring that must be related to in-stream water quality, WQS, and Total Maximum Daily Load (TMDLs), much more than end-of-pipe monitoring. Further, EPA will likely increase requirements for in-stream water quality monitoring in future Permit terms. The City also assumes EPA and IDEQ will soon be required to complete a WQ assessment of [LGDP] which will likely identify several pollutants of concern. Pollutants of concern for the [LGDP] may not have any relationship to what might or should be pollutants of concern in the LLPs, given the substantially different drainage areas for each. We already know enough about potential and likely pollutants of concern in [LGDP] vs. the LLPs, to justify separating the two now. The City prefers to focus BMP implementation and outfall monitoring on the likely local pollutants of concern behind the LLPs.

Response: EPA agrees and encourages the Permittees to focus on BMP implementation and to consider outfall monitoring as a means to assess the adequacy of pollutant controls in their respective jurisdictions. The Permit does not require in-stream water quality monitoring. Instead, the Permit allows considerable flexibility for the Permittees to monitor/assess stormwater management improvements over time. Permit Part 4.2 requires the Permittees to monitor/assess for the impairment pollutants to quantify pollutant loading in the MS4 discharges to Snake River and Lindsay Creek, and Permit Part 6.2 outlines requirements for collecting samples at the point of discharge. EPA also notes that IDEQ will be the NPDES permitting authority for future Permit renewals. No change has been made to the final Permit as a result of this comment. See also Responses #14 and 15.

20. **(City):** If EPA continues to assert that the LLPs are indistinct from [LGDP], (that, in effect, Idaho's Water Body Assessment Guidance (WBAG) does not apply to the LLPs), EPA needs to provide its legal justification, identify the WQS that do apply, and provide the assessment framework to determine whether the WQS are being met or not.

    Response: No change has been made to the Permit in response to this comment. See Responses #14 and 15.

21. **(City):** The LLPs are not connected hydrologically to [LGDP], although some water permeates the structures and is collected by drains internal to the levees. The levee ponds and drainage ditches are on the landward side of the levees and are designed to collect SW and other drainage from the land behind the levees.

    Response: No change has been made to the Permit in response to this comment. See Responses #14 and 15.

22. **(City):** Under Idaho law, the applicable water quality standards are based on the designated or existing beneficial use. The LLPs are man-made waterways with quite different uses from the Snake and Clearwater Rivers. IDAPA 58.01.02.101.02 states "… *man-made waterways are to be protected for the use for which they were developed*."

    Response: In its final §401 certification, IDEQ states that the LLPs are currently unassessed. See Appendix C of this document. The Idaho water quality standards at IDAPA 58.01.02.070.08 states:

    > *Protection of Downstream Water Quality. All waters shall maintain a level of water quality at their pour point into downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including waters of another state or tribe.*

    As explained in the 2018 FS, the permit conditions protect the existing and designated uses of the receiving water and ensure the protection of the downstream uses. No change has been made to the Permit as result of this comment. See also Responses #14 and 15.

EPA's Permit Process

23. **(City):** The FS should contain a section describing the Permit's comment and review process, particularly by USFWS and NOAA/NMFS, or any other entity that retains legal right to review the permit outside the public comment period, and how that might affect the release of a final permit by EPA. This additional section should discuss the process for the final permit certification by IDEQ.

    Response: It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. As part of completing the ESA consultation process for the Permit,

USFWS and/or NMFS may identify additional provisions necessary to protect ESA-listed species. If EPA must modify the Permit to incorporate such additional terms or conditions, EPA will public notice such changes as required in 40 CFR 124.5. Permit Parts 8.1 and 8.13 addresses such permit modifications, which will be conducted consistent with the NPDES regulations at 40 CFR §§ 122.62, 122.64 and 124.5. See also Response #87. As previously noted, on August 11, 2020, EPA submitted its BE and EFH Assessment for the Permit to the Services. EPA continues to engage in consultation with the Services.

The 2018 FS, page 2 describes EPA's request for a draft CWA Section 401 certification from IDEQ as well as EPA's procedure for issuing the final Permit. As previously noted, IDEQ's draft §401 certification included applicable conditions for EPA to include in the Permit; IDEQ's draft certification was available for public comment concurrently as part of EPA's proposal. See 2018 FS, Appendix A. On January 15, 2020, IDEQ provided EPA with its final §401 certification, which included conditions that EPA must include in the final Permit. See Appendix C of this document.

Permit Effective Date, Implementation Schedule, and Submittal Deadlines

24. (AIC): AIC supports Lewiston's requests for the Permit effective date to be the start of their fiscal year, which provides planning opportunities for funding the new Permit requirements. Deadlines for agreements and Alternative Control Measures should also be based on an October 1 effective date.

Response: EPA agrees; the Final Permit's effective date is November 1, 2020, and all subsequent due dates are based on an October 1 – September 30 reporting period, to align with the City's fiscal year.

25. (AIC): AIC supports the timeline providing 4.5 years for implementation updates to the SWMP control measures, concurrent with the re-application deadline.

Response: Comment noted. No change has been made to the Permit. As first term Permittees the City and LCSC are allowed the entire first permit term to fully implement the SWMP control measures. See 40 CFR §122.34(a).

26. (AIC): AIC supports the Permit referring to actual dates as deadlines and suggests reorganizing the Schedule on Permit Page 2 in deadline date order to help Permittees submit required reports.

Response: Comment noted. EPA disagrees that it is necessary to revise the Schedule on Permit Page 2. As written, the Schedule is organized as deadlines appear in the Permit. No change has been made to the Permit as a result of this comment.

27. (AIC): AIC urges generous deadlines for the development of Alternative Controls and other submittals. Alternative Control Measure (ACM) Requests, Monitoring Assessment Plan, and Pollutant Reduction Activities should be required at least 2 years following the Permit effective date. Any alternative controls would then be understood 2.5 years prior to when the 6 minimum control measures would be required to be in place (i.e., 4.5 years following the permit's effective date).

Response: Consistent with other recently issued MS4 permits in Idaho, EPA is allowing more time for Permittees to submit ACM requests, the monitoring/assessment plan, and/or the pollutant reduction activities. EPA has revised the Permit to establish a deadline twenty-three months following the Permit effective date. As previously noted, the final Permit's effective date is November 1, 2020. See Response #24. EPA therefore has also revised corresponding deadlines in Permit Parts 2.6 and 4.1.1 (regarding submittals of ACM requests, monitoring/assessment plan(s), and pollutant reduction activities); Permit Parts 2.5.5 and 4.1.2 (pertaining to updating the SWMP document(s) with descriptions of monitoring/assessment

plan(s) and pollutant reduction activities); and made multiple necessary edits throughout the Permit to deadlines for specific actions in Permit Parts 3, 6, and 8.2

Environmental Justice

28. (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 the [Permittees] 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 2018 FS, EPA conducted a screening analysis using its nationally consistent geospatial tool called EJ Screen, available at https://www.epa.gov/ejscreen. 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 additional outreach on the proposed Permit, and the Permit includes several provisions that ensure members of the public can remain engaged in the Permittees' SW management activities.

EPA advertised the public notice of the proposed permit beyond the minimum requirements outlined in 40 CFR §124.10. Specifically, on December 19, 2018, EPA contacted stakeholders in the Lewiston area, and throughout Idaho, to advertise the opportunity to review and comment on the 2018 draft Permit during a 45-day (rather than 30-day) public comment period. EPA announced the public comment period and subsequent deadline extension as widely as possible, via EPA Region 10 social media Twitter account and via direct email to approximately 453 interested contacts on the Region 10 MS4 Permit distribution list. This email group included all contacts on EPA Region 10 Environmental Justice mailing list for the State of Idaho. Due to the federal government shutdown, on January 31, 2019, EPA granted a request for extension to the comment period for an additional 45 days. The public notice was advertised on 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 Permittees to actively engage with and inform the community about their SW management activities: See Permit Parts 2.5.5 (*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

29. (AIC): The Permit should affirmatively allow pollutant credit trading. Refer to the 2016 Idaho Water Quality Trading Guidance at http://www.deq.idaho.gov/media/60179211/water-quality-trading-guidance-1016.pdf. Recommend adding new Permit Part 2.7 called "Information Supporting Water Quality Trading" to state: *"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 Idaho Water Quality Trading Guidance documents, trading provisions must be incorporated into a NPDES permit prior to engaging in any trading activity to meet the NPDES permit'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, Snake River, Lindsay Creek or Tammany Creek watersheds. Therefore, while the Permit does not allow for pollutant trading as written, the Permittees are 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

30. (AIC): The Permit should affirmatively provide for EPA's 2012 *Integrated Municipal Stormwater and Wastewater Planning Approach Framework;* see: https://www3.epa.gov/npdes/pubs/integrated_planning_framework.pdf. Recommend adding a new Part 2.8 entitled *"*Information Supporting Integrated Planning" to state: *"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 Permittees have 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 as written. At that point, the Permitting Authority could modify the Permit to include such terms and conditions.

Copies of Public Comments and the ESA Consultation Documents

31. (City): The City would appreciate receiving copies of all comments on the Draft Permit received by EPA, the Biological Assessment on the permit submitted to National Oceanic and Atmospheric Administration – National Marine Fisheries Service (NOAA/NMFS) and U.S. Fish and Wildlife Service (USFWS), and any comments these Services provide. From this date forward, the City would appreciate being copied on all communications to or from EPA regarding this permit.

Response: Documents requested by the commenter have been posted to a publicly accessible FTP site. See: ftp://newftp.epa.gov/Region10/stormwater/IDS028061/. EPA notes that it is not required to share pre-decisional interagency communications; however, EPA will make every effort to continue to keep the City informed as the ESA consultation process moves forward. At their discretion, the City may submit a Freedom of Information Act request for any future communication documents.

Receiving Waters and Applicable Water Quality Standards

32. (City): The 2018 FS Section 1.6.2 does not correctly apply Idaho's water quality standards. The City's understanding of the Idaho water quality regulations as they apply to the Lewiston's stormwater receiving waters is as follows: Water quality assessments in Idaho are no longer applied to water bodies. Based on Idaho's WBAG ([*as originally cited in*] IDAPA 58.01.02.53), and Idaho's 2002 Integrated Report, the appropriate level of assessment for beneficial use support and application of WQS is the Water Body Assessment Unit (WBAU), and these are the units reported in the 2002 Integrated Report. Lewiston's stormwater as it discharges to Waters of the U.S. should be described in relation to the WBAUs identified in [Commenter's Attachment 3]. In the FS, EPA should describe the receiving waters as the WBAUs as listed in the 2002 Integrated Report, and not the more general water bodies. The WBAUs and their identification numbers are listed in Attachment 3.

Response: A version of this comment was previously submitted by the City in 2007; it was resubmitted during this comment period. This comment is not relevant to the 2018 Draft Permit or 2018 FS as the 2002 Integrated Report is no longer the relevant Integrated Report. EPA has used the receiving water assessment units (AUs) from IDEQ's 2014 and 2016 Integrated Report(s), as cited by IDEQ in their final CWA §401 certification. Se Appendix C of this document. No change has been made to the Permit as a result of this comment.

33. (City): The City's MS4 does not discharge to the Clearwater River. If one assumes that the extent of Lower Granite Dam Pool (LGDP) is defined by the highest elevation upstream to which water is backed up by Lower Granite Dam, then all of the City's and COE's discharges are to the [LGDP]. The point is significant because there are different beneficial uses and WQS for the [LGDP] and the Clearwater River. Beneficial uses for the [LGDP] are Cold Water Aquatic Life (CWAL), Primary Contact Recreation (PCR), and Drinking Water Supply (DWS), whereas the Clearwater River above the LGDP has the additional beneficial uses of Salmonid Spawning (SS) and Special Resource Water (SRW).

Response: Comment noted. This comment was previously submitted by the City in 2007; it was resubmitted during this comment period and is no longer relevant to the 2018 Draft Permit or 2018 FS. EPA agrees that the City's MS4 does not discharge to the Clearwater River and also agrees that much of the City's MS4 discharges flow into the LGDP via the LLPs. No change has been made to the Permit as a result of this comment. The 2018 FS, Section 1.6, correctly identifies the receiving waters and beneficial uses as defined by IDEQ. See IDEQ's *Final §401 Water Quality Certification for the City of Lewiston and Lewis-Clark State College Municipal Separate Sewer System (MS4), NPDES Permit #IDS028061*, dated January 15, 2020, in Appendix C of this document. IDEQ defines the beneficial uses for AUs ID17060306CL001_07 (Lower Granite

Dam Pool) and ID17060103SL001_08 (Snake River) as cold water aquatic life; primary contact recreation, and domestic water supply. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics.

MS4 Description and Discharge Locations

MS4 Description - General

34. (City): The City requests that the Permit cover page be changed to reflect the City's discharge locations. Much of the City's discharges are to the LLPs, and then to [LGDP]. The City discharges much smaller volumes to Lindsay Creek and Tammany Creek. The City asserts that it has no stormwater discharge to the Snake River and Clearwater River outside of LGDP.

Response: EPA agrees to revise the Permit to add the LLPs as receiving waters in addition to Snake River, Lindsay Creek and Tammany Creek.

35. (City): 2018 FS Section 1.3.3 incorrectly describes the MS4 infrastructure in the City's Orchards drainage area. It should state "*The Orchards area includes a variety of pipes, culverts, manholes, inlets, ponds, infiltration systems and other MS4 structures including roadside ditches and natural drainage ways.*"

Response: Comment noted. It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit.

36. (City): Several drainages in Lewiston have been converted from ephemeral to perennial resulting from irrigation; EPA needs to establish the physical limits to waters over which it asserts authority. What constitutes receiving waters and what constitutes discharges to other MS4 jurisdictions?

Response: EPA disagrees that it must define the extent of waters of the U.S in the Lewiston UA. By definition, a municipal separate storm sewer discharges to waters of the U.S.; see 40 CFR § 122.26(b)(8); this definition is in the Permit, page 60. Discharges from one Permittee's MS4 into another entity's physically interconnected MS4, although indirect, are a *de facto* discharge to receiving waters.

EPA notes that the federal SW regulations at 40 CFR §122.26(b)(9) defines an "Outfall" as "*a point source…at the point where a municipal separate storm sewer discharges to waters of the United States, and does not include open conveyances connecting two municipal separate storm sewers or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States*." Emphasis added. This definition is also in the Permit, page 61.

No change has been made to the Permit.

37. (City): Are Waters of the U.S. and the City's MS4 or any other MS4 mutually exclusive?

Response: No; waters of the U.S. and a MS4 are not mutually exclusive. See: EPA and ACOE's preamble discussion as part of the National Water Protection Rule, at 85 Federal Register 22323-22324 (April 21, 2020).

38. (City): Where are the physical upstream limits, on-the-ground, to waters of the U.S. as receiving waters to which Idaho WQS standards and TMDLs apply? The City provides a map and narrative discussion as Attachment 3 of it comments submitted as a proposal of what constitutes waters of the U.S. within the City limits, based on guidance from EPA and COE at [now posted online at: https://archive.epa.gov/epa/sites/production/files/2016-04/documents/rapanosguidance6507.pdf]

Response: Permittees should discuss the applicability of the ID WQS to the various receiving waters with IDEQ after conducting a full assessment of its MS4. No change has been made to the Permit as a result of this comment.

39. (City): City outfalls to waters of the U.S. should be described in terms consistent with IDEQ's WQS, WBAG, and Integrated Report to EPA. Correct outfall locations will lead to the identification of applicable beneficial uses, WQS, TMDLs, water quality impaired receiving waters, and pollutants of concern. EPA and DEQ should identify waters of the U.S. inside the City limits so the City knows where and how to define its outfalls. The City's Map, submitted with its comments, provides a proposed map of the extent of waters of the U.S. The City realizes that it is EPA's final decision of what constitutes waters of the U.S. and awaits EPA's concurrence with the City's proposed mapping.

Response: No change has been made to the Permit in response to this comment. EPA has set forth the receiving waters, beneficial uses and impairment status in 2018 FS Section 1.6.2. The City previously submitted this comment in 2007, with the map and description; EPA considered both map and description when developing the 2018 FS and Permit. See Permit Part 3.2.2; the Permit requires the Permittees to maintain current MS4 map(s) and outfall inventory(ies). The City does not have to obtain concurrence from EPA with regard to its MS4 mapping activities.

Snake River

40. (City): Modify 2018 FS Section 1.6, to recognize that the City's MS4 does not discharge to the Snake River. On the Snake River side, even though the COE levee system is not as extensive, all of the City's outfalls are downstream from the upper limit of the LGDP defined by water levels and flows being controlled by the dam. Further, 2018 FS Table 1 erroneously lists Snake River (*Asotin River to Lower Granite Dam Pool*) as a receiving water. There is no "Asotin River" in the vicinity so we assume this was intended to be "Asotin Creek" or "Grande Ronde River."

Response: No change has been made to the Permit as a result of this comment. According to the map provided with the City's comments, the City's MS4 indirectly discharges to the Snake River through the MS4 owned/operated by the ITD2. 2018 FS Table 1 reflects the receiving waters for the Permit. Discharges from one Permittee's MS4 into another entity's physically interconnected MS4 is a MS4 discharge to receiving waters.

The proper name for the receiving water to the west of the City of Lewiston is Snake River; IDEQ has identified this segment as I*D17060103SL001_08 Snake River - Asotin River (Idaho/Oregon border) to LGDP,* as included in 2018 FS Table 2. No change has been made to the Permit as a result of this comment.

EPA erred on 2018 FS pages 14 and 59 when it referred to the AU - ID17060103SL001_08 – as the "Snake River Arm of the LGDP." This AU is not part of the LGDP, and IDEQ refers it as *Snake River - Asotin River (Idaho/Oregon border) to LGDP*. IDEQ verbally confirmed to EPA on December 13, 2019, that there is no Asotin River, however the IDEQ's nomenclature in both IDAPA 58.01.02.130.02 and the IDEQ Integrated Reports nevertheless uses that as its segment name. See: Lower Snake-Asotin-17060103, AU ID17060103SL001_08, as represented in the IDEQ's 2016 Integrated Report online map, at: *https://mapcase.deq.idaho.gov/wq2016/;* and *https://mapcase.deq.idaho.gov/wq2016/scripts/adb2016.aspx?WBIDSEGID=ID17060103SL001_08*.

Lower Granite Dam Pool

41. (City): Modify 2018 FS Section 1.6, Table 1 to recognize that the City's MS4 does not discharge to the Clearwater River. The City discharges to the Lower Granite Dam Pool backed up by Lower Granite Dam within the old channels of the Snake and Clearwater Rivers.

Response: It is EPA Region 10 policy not to revise the FS based on public comment. See Response #34. The 2018 FS -Table 1 accurately reflects the receiving water AUs as named by IDEQ in their 2014 and 2016 Integrated Reports. The City provided a similar comment in 2007; neither the 2018 Draft Permit nor 2018 FS reference the Clearwater River as a receiving water.

EPA erred on 2018 FS pages 9 and 59 when it narratively referred to the AU - ID17060306CL001_07 as the "Clearwater Arm of the LGDP." IDEQ identifies this AU simply as the *Lower Granite Dam Pool.*

42. (City): In all cases for discharges to LGDP, the City's stormwater passes through the LLPs, the ITD2 MS4, or Nez Perce County jurisdiction before reaching the LGDP. In the case of discharges to the LLPs, the City is discharging to waters of the U.S. if one assumes that the LLPs are not an MS4 themselves.

Response: Comment noted. No change is made to the Permit as a result of this comment. See Responses #36 and 40.

Tammany Creek

43. (City): In the Tammany Creek watershed, the City does not discharge to the 3rd order AU.

Response: Comment noted. No change has been made to the Permit as a result of this comment.

Description of Idaho Transportation Department District 2's MS4

44. (City): In 2018 FS, Section 1.3.3 - The last bullet point regarding the ITD2 cooperative agreement needs to be amended to reflect the fact that ITD2 operates and maintains some of the drainage features, storm sewers, and culverts for U.S. Highway 12 and its frontage road, U.S. 95 and State Highway 128. ITD2 retains ownership, capital and other responsibilities of all their MS4 in City limits.

Response: Comment noted. It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. The 2018 FS describes the MS4s and discharge locations owned and/or operated by the City and LCSC. ITD2's operational responsibilities for their MS4 within the Lewiston Urbanized Area is described in the concurrently proposed NPDES Permit #IDS028258. See 2018 FS, page 6, Section 1, last paragraph.

Limitations and Conditions (Permit Part 2)

Part 2.1 – Compliance with WQS

45. (AIC): Permit Part 2.1 should be edited to include an affirmative statement regarding achieving the MEP standard. Regulated small MS4 operators are required to obtain a NPDES Permit, implement a comprehensive stormwater management and monitoring program, and use BMPs to reduce pollutants in SW to the MEP. AIC appreciates EPA constructing the Permit to preserve the MEP standard under the CWA. EPA should insert the following text in 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." AIC supports EPA and Idaho in the preservation of the MEP standard in this and other MS4 permits and justifies this suggestion by noting that Congress did not mandate a "minimum standards" approach or specify that EPA develop minimal performance requirements (See 1992 Natural Resources Defense Council Inc. vs. U.S. EPA; at https://openjurist.org/966/f2d/1292/natural-resources-defense-council-inc-v-united-states-environmental-protection-agency); Under CWA Section 402 (p)(3)(B)(iii), it is EPA's discretionary choice to include either management practices or numeric limitations in permits; (See: 1999 Defenders of Wildlife vs. Browner; at: https://yosemite.epa.gov/oa/eab_web_docket.nsf/8362EA577FA6FBF3852570830051362A/$File/Ariz.%20Mun.%20SW%209th%20Cir.%20Dec..1.17.2018pdf.pdf); and EPA understands MS4s need flexibility to determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. (See 81 FR 237, pg. 89323, December 9, 2016; https://www.gpo.gov/fdsys/pkg/FR-2016-12-09/pdf/2016-28426.pdf).

Response: 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 as a result of this comment.

Part 2.2 - Snow Management

46. (City): Regarding Permit Part 2.2, the City questions whether this requirement is appropriate. It is unwarranted unless specific regulations support it. Polluted rainwater, polluted snowmelt, just like polluted snow, are all prohibited from discharge. Clean snow as it melts produces clean water that qualifies for discharge as stormwater. The City knows of no reason why clean snow would not qualify as stormwater as it melts. If the snow is contaminated, then it would be prohibited just as any other contaminant.

Response: No change has been made to the Permit as a result of this comment. "Stormwater" as defined at 40 CFR § 122.26(b)(13), and included in Permit Part 9, page 62, means "*stormwater runoff, snow melt runoff and surface runoff and drainage*." The Permit conditionally authorizes the discharge of stormwater, including snow melt, from the MS4s named in the Permit. The purpose of Permit Part 2.2 is to expressly prohibit the practice of dumping excess snow collected from urban areas directly into waters of the United States. Excess snow that is collected from the urban streets and roads likely contains pollutants commonly found on those roads/streets. Part 2.2 limits the discharge of pollutants in snow melt water from Permittee-owned snow disposal sites and from the Permittees' snow management practices, by requiring the use of appropriate BMPs to manage excess snow. See references in Appendix B of this document. This provision is consistent with 40 CFR § 122.34(a) and is included in all MS4 permits issued by EPA Region 10; e.g., City of Caldwell's MS4 permit contains this provision at Part I.C.4. See also: EPA's Response to Comments for NPDES Permit IDS028118, City of Caldwell MS4 - Response #19, pages 11-12, at https://www.epa.gov/sites/production/files/2017-12/documents/r10-npdes-caldwell-ms4-ids028118-rtc-200909-41pp.pdf.

Part 2.5.7 – SWMP Resources

47. (Caldwell): The Permit contains a lot of training (audiences internal and external), reporting (facility Pollution Prevention Plans, annual reports, inspection reports), and inspection (dry weather, Illicit Discharge Detection, construction, catch basins & inlets, finish SW BMP's maintenance). Does EPA anticipate all this could be completed by one part-time employee for a Phase 2 municipality? What's EPA's vision regarding necessary resources the City need to comply with the Permit?

Response: Permittees must provide adequate finances, staff, equipment and other support capabilities to conduct the required control measures of the Permit. EPA expects that Permittees will identify cost effective means of establishing - and thereafter maintaining - the SW control measures in a manner appropriate for their jurisdiction. Permittees may work with neighboring jurisdictions or other entities to share responsibilities. Where additional funding or support is needed for compliance, the Permittee should explicitly document such needs in the Annual Report(s) and engage the Permitting Authority to discuss any compliance concerns. No change has been made to the Permit as a result of this comment.

48. (City): The City has complied with the intent of Part 2.5.7 for 16 years, and thus far has been committing resources based on EPA guidance. The City wants to limit requirements that add costs and minimize future unforeseen requirements that might come from this permit. Additional cost is unwarranted for a city of 30,000 people, especially in light of our consistent effort to comply. EPA, in its response, should recognize the City's efforts to date, and its full intent to continue implementing the program. EPA should recognize that Lewiston has limited resources for this program.

Response: Comment noted. EPA recognizes the resources both the City and LCSC have expended in anticipation of the final Permit. EPA is confident that the City and LCSC can implement a fully satisfactory SWMP that complies with the Permit. No change has been made to the Permit as a result of this comment.

49. (City): In anticipation of the final Permit in 2008, the City had implemented a Stormwater Utility, but the ensuing legal challenges led to refunding all the fees that had been collected. The City is currently developing a revised stormwater user fee consistent with prior court decision to fund its program. Without the user fee, it will be difficult for the City to come up with additional funds to develop a monitoring program as required. Monitoring should be deferred to the second 5-year permit term, when the City will more likely to have resources to conduct monitoring of SWMP effectiveness.

Response: Comment noted. Permittees may create any type of monitoring/assessment program they believe appropriate, as long as such activity serves to assess and control impairment pollutants in the MS4 discharges to Lindsay Creek, Tammany Creek, and Snake River as identified in Table 4.3. No change has been made to the Permit as a result of this comment.

Part 2.6 - Alternative Control Measures

50. (AIC): Regarding Permit Part 2.6, AIC supports EPA Region 10's approach to address the Phase 2 MS4 Remand Rule requirements by applying Option 2 – the "Two-Step Approach."

Response: Comment noted. No change has been made to the Permit as a result of this comment. Terminology regarding the "Two Step Approach" is specific to NPDES general permits for MS4 discharges; see 40 CFR § 122.28(d). For the Lewiston/LCSC MS4 Permit, 40 CFR §§ 122.62 and 122.64 provide authority to EPA/NPDES Permitting Authority to consider modifying individual NPDES permits based on new information submitted after Permit issuance. As written, the Permit affords Permittees the flexibility to submit new information in support of Alternative Control Measure requests, Monitoring/Assessment plans, and/or Pollutant Reduction Activities. If EPA/NPDES 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; and 40 CFR §§ 122.62 and 122.64.

51. (City): The City submits its *Draft Stormwater Design Manual*, available online at https://www.cityoflewiston.org/filestorage/551/745/809/draft_Design_Manual_10_10.PDf as an

ACM request under Permit Part 2.6 to satisfy the Permit's new development and redevelopment requirements.

The process in the Manual provides a level of pollutant removal greater than what is proposed in the 2018 Draft Permit. The final Permit should recognize the Draft Manual as meeting the Permit requirements. The Manual is based on the Eastern Washington Manual, which is approved by EPA for this purpose in our adjacent municipality that shares the Lewiston UA. If that manual is sufficient for Asotin County, EPA bears the burden of proof to show the Lewiston Manual is insufficient Lewiston if that is EPA's position.

The Draft Manual was a result of significant public input and has been discussed at multiple City Council Meetings. It was published for public comment and 12 separate responses were received and incorporated into the current draft. It has also been used successfully as a voluntary alternative to the City's current 80-100 ordinance for 8 years. It has often been used by design professionals familiar with the Eastern Washington Manual rather than having to learn the City's somewhat idiosyncratic ordinance 80-100. This experience informs our opinion that the 95% storm retention standard in the proposed permit would be a cumbersome impediment to development, especially in light of the immediate availability of a better approach that has been tailored to Lewiston through public comment. The City can provide substantial background and support information if requested by EPA. If EPA chooses not to recognize the Lewiston Manual in the final Permit, please consider this comment as an Alternative Control Measure request as provided in Part 2.6 and begin review immediately for the purposes of amending the final Permit for its inclusion.

Response: No change has been made to the Permit as a result of this comment. The City did not submit the Draft Lewiston Manual for EPA consideration as part of a revised MS4 permit application; because the document was not submitted to EPA, the manual was not available for public review and comment with the 2018 draft Permit. To be considered a formal ACM request, the City must provide the required background and supporting information set forth in Permit Part 2.6.3. The purpose of Part 2.6.3 is to ensure that EPA, IDEQ, and the public have adequate opportunity to consider the Permittee's complete rationale supporting any ACM request, including how the alternative meets or exceeds the existing Permit requirement, and the City's intended schedule for formal adoption. The City did not submit all the information needed to adequately assess whether the Draft Manual can be considered an ACM. EPA recognizes the significant work done by the City to date to control pollutants discharged through their MS4. Contrary to the commenter's observation, EPA did/does not approve or disapprove of the Eastern Washington Stormwater Management Manual.

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

Response: EPA has not revised Permit Part 2.6.4 as suggested; no change has been made to the Permit. See Response #20.

Stormwater Management Program Control Measures (Permit Part 3)

Part 3.1.4 – Stormwater Education Activities

53. (ICL): Permit Part 3.1.4 requires the Permittees 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 the Permittees 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. The Permittees may choose the audience and emphasize relevant topics that support their local SWMP implementation. Allowing Permittees flexibility to determine selected topics and audiences is appropriate for their SWMP educational efforts.

Part 3.1.5 – Public Outreach and Education – Assessment

54. (Caldwell): Public education activities are difficult to assess, and even more difficult to quantify without baseline (pre-permit) sampling data. Even with data, stormwater quality varies so much from City to season to event, it could still be impossible to make an inference of any certainty. A detailed summary of the activity and community attitude (response) might be more achievable.

Response: EPA agrees that "activity and community attitude (response)" assessment is an achievable endpoint for Permittees. No change has been made to the Permit as a result of this comment. As stated in the 2018 FS, page 21, "*A vital, yet challenging, component of a successful education program is the assessment of whether the Permittees' efforts are achieving the goals of increasing public awareness and behavior change to improve water quality…EPA …encourages the long-term nature of such assessment activities….there may be opportunities for the Permittees to work together within the State, or with other watershed organizations, on specific MS4 topics if they choose to do so.*"

Part 3.5.7 – Pesticides Herbicides and Fertilizers

55. (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 G*eneral 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 (Permit Part 4)

General

56. (City): The LLPs were designed, in part, as stormwater treatment facilities. It is unclear what result EPA expects from the City conducting outfall monitoring to the LLPs absent concomitant monitoring by the ACOE to describe the resulting treatment of the City's stormwater. The more appropriate

course would be to leave it to the City and ACOE to determine the type and level of monitoring of outfalls to the LLPs to meet ACOE expectations as the receiving jurisdiction.

Response: As drafted, the 2018 Permit does not require the City to monitor MS4 discharges into or from the LLPs; instead, it is an option available that the City may consider as part of its monitoring program, and the City may choose to discuss with ACOE. See Permit Part 2.6 and Part 4. However, MS4 discharge characterization is appropriate and relevant; if the City chooses to monitor their MS4 discharge quality into the LLPs, resulting data would start to quantify pollutant loading to a water of the U.S. Comparing such results to any measurements collected from the LLPs' pump stations (at the point where the LLP water is transferred into the LGDP) would similarly serve to characterize pollutant loading into the LGDP. As written, the Permit provides broad flexibility for the City to develop, and begin implementation of, such a plan. No change has been made to the Permit as a result of this comment.

57. (City): Where TMDLs have been developed (Lindsay Creek and Tammany Creek), EPA guidance requires the development of wasteload allocations (WLAs) for SW if any part of the pollutant exceedance source is determined to be stormwater. The only WLA for Lewiston's SW is in Lindsay Creek for sediment. The whole SW permit process would be clear and simple were IDEQ and EPA to complete water quality assessments and develop appropriate WLAs for the pollutants of concern.

Response: This comment was previously submitted by the City in 2007; it was resubmitted during the current public comment period. This comment is not relevant to the 2018 Draft Permit or 2018 FS. See EPA discussion of applicable WLAs established by IDEQ for municipal stormwater in 2018 FS, Appendix 6.1 regarding Tammany Creek, and Appendix 6.2 regarding Lindsay Creek. See also IDEQ's Final CWA §401 certification, Appendix C of this document. No change has been made to the Permit as a result of this comment.

Schedule

58. (City): In terms of schedule, 54 months (4.5 years) from the Permit effective date is too quick to require monitoring to be in place. Before that can happen, EPA or DEQ must provide the City with mapping of waters of the U.S., the City must do its outfall mapping and evaluation, a monitoring program must be developed, it will have to be approved by EPA and DEQ, it will have to be submitted to City Council for funding, and equipment will have to be purchased, put in place and tested. A more reasonable monitoring start date would be the next 5-year permit cycle.

Response: The final Permit requires the monitoring/assessment plan to be submitted twenty-three months after the Permit effective date. See Response #27. EPA believes the Permittees already have sufficient information upon which to base its decisions regarding where and how to quantitatively assess and control impairment pollutants in their MS4 discharges to Lindsay Creek and Tammany Creek. No change has been made to the Permit as a result of this comment.

Lindsay Creek

59. (City): The Lindsay Creek TMDL does not assign a nutrient load to the Lewiston's MS4 discharges, contrary to statements in 2018 FS Appendix 6.2. Instead it should be noted that IDEQ identified nutrient loading from septic systems both inside and outside the Lewiston MS4 Area. IDEQ's report *An Evaluation of Septic Effluent Presence and Spatial Distribution in the Lindsay Creek Watershed*, January 2019, is the most recent summary of these findings. EPA's FS should recognize that hundreds of septic systems inside the area served by the Lewiston MS4 discharge pollutants into the MS4 system, and that these nutrients are accounted for as non-point source septic in origin, and <u>not</u> attributed to the Lewiston MS4.

Response: It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. In its 2018 FS, EPA does not state that the Lindsay Creek TMDL establishes a nutrient load to the City's MS4. The 2018 FS, page 57, states "*The Lindsay Creek TMDL does not assign a WLA to urban runoff for nutrients, attributing the nutrient loading in Lindsay Creek to agricultural sources elsewhere in the watershed.*" This statement reflects EPA's understanding of the Lindsay Creek TMDL as approved by EPA in 2007. No change has been made to the Permit as a result of this comment.

The January 2019 information cited by the City in this comment provides additional justification for requirements in the final Permit for monitoring and pollutant reduction activities into Lindsay Creek; if the MS4 conveys the impairment pollutants to an impaired water body, it is the responsibility of the MS4 operator to work to remove those pollutants from the MS4 discharge.

EPA specifically states in the preamble to the federal Phase II stormwater regulations that: "…*On-site sewage disposal systems (i.e. septic systems) that flow into storm drainage systems are within the definition of illicit discharge as defined by the regulations. Where they are found to be the source of an illicit discharge, they need to be eliminated similar to any other illicit discharge source*." Emphasis added. See 40 CFR 122.26(b)(2), and 64 FR 68757 - 68758 (Dec. 8, 1999). At a minimum, the Permit requires the Permittee to identify all known locations where such cross connection occurs. In those locations the Permittee must work with property owners to eliminate such cross-connection. Where pollutants are due to contaminated groundwater seeping into the MS4, at a minimum the Permittee must submit a list of such locations as part of the permit renewal application. See Permit Parts 3.2.6 and 8.2.

60. (City): The City has several discharge locations on Lindsay Creek. Any data from these locations will be confounded by non-point sources from Nez Perce County, i.e., data collected will not provide necessary information to identify the influence of storm water from the Lewiston MS4. IDEQ is still working through the TMDL implementation planning. It is premature to begin any monitoring that will require Surface Water Monitoring as a needed input for water quality assessment. The City requests that Part IV.A.5 of the permit be deleted completely, that any end-of-pipe monitoring for this 5-year permit period focus exclusively on characterizing the periodicity and pollutant content of the outfalls, more-or-less at the City's discretion as part of its IDDE program.

Response: This comment references numbering from the 2007 Draft Permit; the 2018 draft Permit does not use roman numerals, nor does it propose or require surface water monitoring. The final Permit requires the City to develop and conduct monitoring/assessment of the City's MS4 discharge to Lindsay Creek, and to conduct at least one pollutant reduction activity. The Permittees have the flexibility to determine what type of monitoring/assessment appropriately supports the goals of the Lindsay Creek Watershed Advisory Group. See IDEQ's Final CWA §401 certification, and Permit Part 4. No change has been made to the Permit as a result of this comment.

61. (City): Sediment limitations in the Lindsay Creek TMDL are WLAs during high flow periods and can be calculated from grab samples and instantaneous flows. However, both sediment and nutrient limitations are narrative standards, not based on numeric pollutant loadings, and require beneficial use analysis which can only to be done by DEQ. Bacteria analyses can be done instantaneously at any flow to indicate a potential problem, but probably could never be done 5 times over 30 days at any City outfall, as required by IDAPA to compare data to Idaho's WQS. The only appropriate method for assessing compliance with WQS is through protocols set up through the TMDL process. Surface Water Monitoring by agencies other than DEQ cannot result in a water quality compliance determination. EPA needs to wait until the 2nd 5-year permit term to require water quality

assessment monitoring. By that time, in Lindsay Creek, an updated TMDL implementation plan should be completed. At that point, the appropriate analytical framework will be in place.

Response: EPA disagrees that any MS4 discharge monitoring/assessment activities must wait until the completion development of a TMDL implementation Plan. The 2018 draft Permit does not require surface water quality assessment monitoring. No change has been made to the Permit as a result of this comment.

Tammany Creek

62. (City): Delete the requirement in Permit Part 4.3 for implementing at least one pollutant reduction activity to reduce loading from the MS4 to Tammany Creek. The small areas of the City that do drain to Tammany Creek are very physically distant from the Creek itself and are predominantly production agricultural lands and hobby farms served by surface drainage. These drainages, if they do reach Tammany Creek itself, must pass through large areas of Nez Perce County managed land and drainage features. It would be practical for the City to work with a Nez Perce County led effort to reduce MS4 pollutant loading to Tammany Creek. The recent Vollmer Road drainage improvements by Nez Perce County would be an appropriate model for future sediment and other pollutant reduction efforts. As identified in the map submitted as part of these comments, the City discharges to the Nez Perce County MS4, with some surface and street drainage into Grelle Draw leading to Tammany Creek

Response: If the City's MS4 is physically interconnected to conveyances owned and/or operated by Nez Perce County or other parties, the City's MS4 indirectly discharges to impaired segments of Tammany Creek. EPA suggests the City share its completed MS4 map with IDEQ, the County, and the Watershed Advisory Group for Tammany Creek to discuss and define appropriate MS4 management responsibilities in the watershed. The requirement in Permit Part 4.3 for pollutant reduction activity for MS4 discharges to Tammany Creek is a condition of IDEQ's Final CWA § 401 certification of the Permit, thus, pursuant to CWA Section 401(d), it must be incorporated into the Permit. See Appendix C of this document. See also Response #12. No change has been made to the Permit as a result of this comment.

Snake River

63. (City): Regarding Impairment Pollutants Cited in Table 4.2, the only impairment pollutants of concern for Lewiston's receiving waters are sediment, nutrients and bacteria. The City requests that temperature be removed from the pollutants in Table 4.2.

Response: Temperature is listed in Table 4.2 as an impairment pollutant pursuant to IDEQ's 2016 Integrated Report and is included in the Permit pursuant to the condition identified in IDEQ's Final CWA § 401 certification of the Permit. See Appendix C of this document; see also CWA Section 401(d). No change has been made to the Permit as a result of this comment.

Washington State/Snake River

64. (City): EPA's 2007 FS stated: "*Stormwater discharges are not considered a source of Total Dissolved Gas*." This statement should be added back in in reference to WDOE's 2003 TMDL for Lower Snake River Total Dissolved Gas.

Response: It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. EPA included the referenced statement in the 2007 FS based on input from IDEQ on June 1, 2007, regarding impairment to the Clearwater River. Appendix 6.5 of the 2018 FS states that the WDOE TMDL for Total Dissolved Gas does not address municipal stormwater discharges.

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

65. (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 and highlights the significance of the CWA responsibilities.

Response: No change has been made to the Permit as a result of this comment. The Permit is issued in accordance with the CWA. NPDES implementing regulations require the Permitting Authority include provisions that ensure that State WQS are met. See 40 CFR § 122.44(d)(2). Permit Part 5 sufficiently 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.

Monitoring, Recordkeeping & Reporting (Permit Part 6)

General Comments regarding Monitoring

66. (City): All monitoring requirements should be eliminated from the first term permit. In this first term, the City should assess its stormwater program and outfalls and develop a plan for monitoring that would serve the needs of both EPA and the City, long term. The Permit should not be more restrictive than the Washington State MS4 Permit. If EPA insists, monitoring should be limited to that described in the City's application and consistent with the rules at the time the application was submitted. The City would also agree to do observational outfall monitoring, collection and analyses of samples of obviously polluted waters. Consistent with the MS4 general permit in Washington, the City would agree to submit a monitoring plan by the end of the first 5-year period.

Response: The final Permit provides Permittees broad flexibility to determine how the monitoring/assessment activity should be conducted. No change has been made to the Permit as a result of this comment. The commenter provides no legal or technical justification to "grandfather" applicable requirements to City's March 2003 permit application. EPA's rationale for requiring some type of MS4 discharge monitoring/assessment into impaired waters is well established. See also CWA §§ 308 and 402(a)(2); regulations at 40 CFR §§ 122.34(c) and 122.44(i); and relevant EPA memorandums regarding stormwater permit provisions that reflect applicable Total Maximum Daily Loads dated November 2014 and November 2002. Rationale for provisions related to monitoring discharges into impaired waters is in 2018 FS at pages 31-34 and 39; See also IDEQ's Final CWA §401 certification of Permit IDS028061. EPA recognizes that the City seeks flexibility in defining what constitutes such monitoring/assessment and the final Permit affords that flexibility as written.

EPA also recognizes that MS4 operators in Washington are subject to different monitoring requirements. However, as explained above, the Permit provides the Permittees with ample freedom to define the type of monitoring/assessment that can be conducted. The City can develop monitoring/assessment activity that complements or is consistent with similar actions conducted by the Washington MS4 permittees, but the Permit as written does not make such coordination mandatory.

67. (City): Permit Part 3 sets out measures of success for BMPs based on determination of exceedances of WQS. Measures of compliance with WQS go beyond EPA guidance for permitting MS4s which recommends that measures of success for the program should be measures of BMP applications to

the MEP and measures of BMP effectiveness. EPA does not follow its own guidance, when it states: "*Absent evidence to the contrary, it is presumed that a permit for a small MS4 operator who implements a SWMP that covers the six minimum measures does not require more stringent limitations to meet WQS*." Monitoring to meet WQS is a more stringent limitation. Monitoring BMP implementation will demonstrate that the City is controlling stormwater discharges to impaired waters.

Response: This comment was originally submitted in 2007; it was resubmitted during the current public comment period. The comment is moot. The commenter's quotes are not in the 2018 draft Permit or 2018 FS. Instead, EPA and IDEQ have included clear, specific and measurable Permit terms and conditions, including requirements determined appropriate based on water quality impairment of Lindsay Creek, Tammany Creek, and Snake River. See 40 CFR § 122.34(c)(1). No change has been made to the Permit as a result of this comment.

68. (City): EPA's reasons for imposing further monitoring fails to provide any evidence that Lewiston's program needs further restrictions. The only water quality impaired waters to which Lewiston MS4 discharges are Tammany and Lindsay Creeks. Neither TMDL identifies the City's stormwater as a significant source of pollutants. The pollutants are virtually all from non-point source agriculture, grazing and small hobby farms. There is no reasonable way of arguing that the City's limited stormwater discharges to these water bodies are contributing significantly to their impairment.

Response: No change has been made to the Permit as a result of this comment. EPA did not state that the City's stormwater discharges are significantly contributing to the water quality impairments; rather EPA and IDEQ stated that it is appropriate to characterize MS4 discharges to better quantify impacts to the waterbodies and demonstrate compliance with applicable watershed goals.

The 2018 FS, page 15, clearly states the rationale requiring monitoring/assessment activities: "*NPDES permit terms and conditions for regulated stormwater discharges must be consistent with the assumptions and requirements of WLAs in TMDLs. In general, EPA's guidance recommends that the NPDES permitting authority use BMPs to implement applicable WLAs and load reduction targets in a MS4 permit. When using BMPs as narrative permit limitations to implement a WLA or load reduction target, the NPDES permit must include a monitoring mechanism to assess compliance*." This sentence summarizes applicable NPDES regulations at 40 CFR §§ 122.34(c)(1) and 122.44(d)(1)(vii)(B), consistent with EPA guidance and discussions, such as: *Interim Permitting Policy for Water Quality Based Effluent Limitations in Stormwater Permits* (61 FR 43761, November 26, 1996); *Establishing Total Maximum Daily Load Waste Load Allocations for Stormwater Sources and NPDES Permit Requirements Based on Those WLAs* (EPA Office of Water Memo, November 22, 2002); *Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Stormwater Sources and NPDES Permit Requirements Based on Those WLAs*" (EPA Office of Water memo, November 26, 2014); and *NPDES Municipal Separate Storm Sewer System General Permit Remand*, Final Rule (81 FR 89320, Dec. 9, 2016.).

The 2018 FS Appendix 6 cites reasons why monitoring discharges to impaired waters is consistent with applicable TMDLs for Lindsay and Tammany Creeks. See also 2018 FS pages 31-34. Further, in its CWA §401 Certification, IDEQ has included conditions necessary to ensure compliance with WQS or other appropriate water quality requirements of state law, specifically for temperature monitoring based on WQ impairment in Snake River AU ID17060103SL001_08 (*Snake River - Asotin River (Idaho/Oregon border) to LGDP*), and pollutant reduction activities in Tammany and Lindsay Creeks.

69. (City): How will the monitoring program deal with mixtures of point and non-point source discharges?

Response: The City should design a monitoring/assessment activity that can identify impairment pollutants from its MS4 discharges, and that over time can serve to demonstrate progress towards meeting the goals of the applicable TMDL(s). The monitoring/assessment activity is also intended to add baseline information to characterize MS4 discharge quality in anticipation of a new TMDL's development. If other types of discharges are impacting the receiving water, the City should identify those inputs in concert with its MS4 mapping efforts pursuant to Permit Part 3.2.2 and may choose to document such surface water pollutant inputs in the Annual Reports submitted to EPA and IDEQ.

70. (City): When the City MS4 discharges to another MS4, what monitoring requirements apply?

Response: The City must design a monitoring/assessment activity to characterize impairment pollutant loading from its MS4 to an impaired receiving water. The City may choose to sample/assess at a catch basin or other location immediately upstream or ahead of where the City's MS4 physically connects to the MS4 of another operator, in order to characterize only the City's MS4 discharge.

71. (City): BMP effectiveness monitoring should be the primary monitoring required by the Permit, followed by pollutant screening monitoring and pollutant load monitoring at representative outfalls, at the discretion of the City as part of its Illicit Discharge Detection and Elimination program. End-of-pipe monitoring coupled with in-stream monitoring for compliance with WQS should be limited to those situations where discharges are to "Water Quality-Impaired Receiving Waters" (40 CFR 122.44(d)), as described in Section 7 of the Fact Sheet, and to situations where in-stream and outfall flows data can be collected that can be analyzed following WQS protocols set forth in IDAPA.

Response: No change has been made to the Permit in response to this comment. Monitoring to assess or identify non-stormwater discharges from the MS4 during dry weather or other illicit discharges under Permit Part 3.2.5 is described as a SWMP control measure component. This comment was originally submitted in 2007; it was resubmitted during the current public comment period. As previously noted, the final Permit provides Permittees both flexibility and discretion to determine how monitoring/assessment activity is conducted.

72. (City): EPA should distinguish between what are Minimum Control Measures as BMPs and what are Monitoring Activities related to the effectiveness of the BMPs. The City recognizes that monitoring in general is a BMP. However, given that EPA chooses to establish a separate monitoring requirements section of the permit, the City requests that all required monitoring be set forth in that section.

Response: The City previously submitted this comment in 2007; it was resubmitted during the current public comment period. The comment makes an irrelevant distinction between SWMP implementation status, BMP effectiveness monitoring and MS4 discharge characterization monitoring. EPA disagrees that it is necessary to distinguish between monitoring to identify illicit discharges into the MS4 and monitoring/assessment to characterize MS4 discharges and measure BMP effectiveness. No change has been made to the Permit as a result of this comment.

73. (City): Regarding FS Page 15, Part 1.6.2, last three paragraphs: The City is concerned about the statement, "…*the Permit requires the Permittees to conduct at least two (2) pollutant reduction activities, and appropriate monitoring/assessment activities. The Permittees must develop and submit descriptions of their selected pollutant reduction and monitoring/assessment activities within*

180 days of the Permit effective date." The City asserts throughout these comments that there is at most one location in the whole city where receiving waters could be monitored with any hope of producing useful results. The City proposes that no receiving water monitoring should be required in this first 5-year permit cycle. This would be consistent with other MS4 permits in the region such as those across the border in Washington.

Response: It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. The Permit does not require surface water or receiving water monitoring. The final Permit requires the Permittees to submit a monitoring/assessment plan no later than October 1, 2022. Receiving water monitoring may be a component of that plan but is not required. No change has been made to the Permit as a result of this comment.

Part 6.2.2 - Monitoring/Assessment Plan and Objectives

74. (City): Deadline for the monitoring/assessment plan required by Part 6.2.2 should be changed to one year from the permit effective date. There are many steps to be completed: identification/evaluation of MS4 outfalls, drafting the plan and QAP, DEQ commitment and approval for sediment and nutrient beneficial uses support monitoring as required, approval by DEQ and EPA of the whole plan, and plan approval and funding by the City Council. Additional time recognizes the unusual complexity introduced by the COE system, and is warranted for this unique situation.

Response: EPA revised the Permit to provide Permittees up to twenty-three months from the permit effective date to submit a monitoring/assessment plan in accordance with Part 4. See also Response #27.

Part 6.2.3 - Representative Sampling

75. (City) Regarding Part 6.2.3 – Representative Sampling – Add the following to this section: "*Samples collected for water quality assessment in relation to Idaho's WQS must be collected meeting requirements set out in IDAPA 58.01.02.*"

Response: Permit Part 6.2.3 reflects a standard NPDES condition that must be included in all NPDES permits. See 40 CFR §122.41(j)(1). The Permit does not require WQ monitoring. However, WQ monitoring is an option that the Permittees may consider for the monitoring/assessment plan. Moreover, IDEQ did not include a CWA Section 401 certification condition requiring samples collected to meet the requirements in the regulatory section cited. No change is made to the Permit as a result of this comment.

Part 6.2.6 – Quality Assurance (QA) Requirements

76. (City): Deadlines for QA Plan (QAP) development and approval should be extended. There are many steps to be completed: draft of a comprehensive monitoring plan and QAP, commitment and approval from DEQ for sediment and nutrient beneficial uses support monitoring as required, approval by DEQ and EPA of the whole plan and QAP, approval and funding of the plan and QAP by the City Council.

Response: See Responses #24-27 about revised submittal timelines in the final Permit. The QAP should be developed with the monitoring/assessment plan and submitted on or before October 1, 2022.

77. (City): Revise first sentence to reflect that QAPs are only required for SW discharge and surface water (receiving water) monitoring, specifically not for BMP effectiveness. One may think that a QAP for BMP effectiveness monitoring is a good idea but wording in Part 6.2.6 indicates that EPA intends it to apply only to water pollutant monitoring. If EPA requires a QAP for outfall pollutant screening

and/or outfall pollutant loading monitoring, EPA should require different QAPs with different levels of Quality Assurance.

Response: No change has been made to the Permit as a result of this comment. QAPs can and should be developed and implemented to determine BMP effectiveness. The Permit sufficiently outlines this expectation. For BMP effectiveness measurement, EPA recommends Permittees consult additional resources at the following websites:

EPA, Water Environment Research Foundation, et al:

http://www.bmpdatabase.org/monitoring-guidance.html

IDEQ: http://www.deq.idaho.gov/assistance-resources/quality-management/

Washington Department of Ecology: https://fortress.wa.gov/ecy/publications/UIPages/PublicationList.aspx?IndexTypeName=Topic&NameValue=Standard+Operating+Procedure+(SOP)+%e2%80%94+Stormwater&DocumentTypeName=Publication

Other

78. (City): Regarding the IDEQ's CWA Section 401 Water Quality Certification for Temperature Monitoring in MS4 Discharge to the Snake River: The City believes no discharge temperature monitoring should be required in the first permit cycle. There is no current TMDL for temperature in the Snake River, although the City understands one is currently being developed. The City has some temperature records for discharge it would voluntarily provide to Idaho Dept of Environmental Quality if requested for assistance in developing the TMDL. Making it a permit requirement would simply be a burden on a small municipality that has only de minimis thermal load. This would also allow EPA to correct their receiving water body designations in the permit, where the City has no discharges to the free-flowing units of the Snake River, but only to Lower Granite Reservoir.

Response: Because the provision is a condition of the IDEQ CWA 401 Certification, the comment is referred to IDEQ for response. EPA is required to include conditions from 401 certifications pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). No change has been made to the Permit.

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

79. (AIC): Permit Part 7 is copied from wastewater permits, and some language is not suitable or relevant to SW. Simplify Part 7 to include only language directly applicable to SW permits. 2018 FS Section 2.8 states that there are provisions in Part 7 that do not apply to MS4s. If the provisions do not apply, they should be removed. Precedence exists for not including these provisions in MS4 permits; see: Montana Phase 2 General permit. EPA's (2008) *TMDLs to Stormwater Permits Handbook* states the differences between SW and wastewater and the need for unique and distinct permit language.

Response: No change has been made to the Permit as a result of these comments. 40 CFR §§122.41 through 122.43 require standard provisions to be included in each NPDES permit. Such provisions are found in Permit Parts 7 - 8. 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 must include such provisions in all MS4 permits. See 40 CFR §122.34 (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 Phase II MS4 permits previously issued in Idaho, EPA erred by not including all mandatory provisions required by 40 CFR §§122.41 - 122.43. Nothing in the referenced 2008 Handbook referenced offers the permit writer ability to omit mandatory provisions identified in federal regulation. As stated at 2018 FS at page 35, "i*f a particular provision in Permit Parts 7 or 8 does not apply to the Permittees MS4 discharges or facilities, the Permittees do not need to comply with that provision*."

80. (City, AIC): Regarding Permit Parts 7.6 (*Toxic Pollutants*), 7.7 (*Planned Changes*), and 7.11 (*Upset Conditions*) - Simplified to address SW responsibilities by deleting Parts 7.6, 7.7, and 7.11.

Response: See Response #79. EPA notes that there are no ELGs applicable to MS4 discharges under CWA § 307(a). Therefore, though EPA is required to include the Toxic Pollutants provision per 40 CFR § 122.41, it is irrelevant as to MS4 dischargers and does not apply. However, EPA notes that as a condition of its certification under CWA Section 401, IDEQ requires the Permittees to immediately report to IDEQ and EPA all spills of hazardous and deleterious materials, and petroleum products, which may impact ground and surface waters of the state. See Permit Part 3.2.7.1. and Appendix C. Regarding Part 7.7 (*Planned Change*s), EPA previously in other Idaho MS4 permits stated that this provision does not require approval from EPA or IDEQ for planned changes to the MS4. MS4 annexations by one operator from another are not considered "physical changes or additions to the permitted facility" envisioned by the federal regulation. If the operator has questions as to whether to report a planned change, the operator should contact EPA or IDEQ for clarification. See: EPA Response to Comment on the Ada County Highway District MS4 Permit No. IDS028185, August 2009, page 30 at https://www.epa.gov/sites/production/files/2017-10/documents/r10-npdes-ada-county-ms4-ids028185-rtc-2009.pdf

81. (AIC): Regarding Permit Part 7.9 *(Twenty-Four Hour Notice of Noncompliance Reporting*)- Remove the last two bullets in this section to be applicable to SW noncompliance reporting.

Response: See Response #79. No change has been made to the Permit as a result of this comment.

82. (Caldwell): Regarding Permit Part 7.9 (*Twenty-Four Hour Notice of Noncompliance Reporting)* – Does bullet #1 include discharges that result from regular sampling? For example, when the laboratory results are returned, and the Permittee sees an excursion above the WQS, is this also subject to 24-hour noncompliance reporting? Or only anticipated spills/upsets/etc?

Response: Yes, if laboratory results indicate that pollutants in MS4 discharges may endanger human health or the environment, such result would require compliance with this provision, as well as the requirements in Permit Part 5.

83. (AIC): EPA should replace text in Part 7.10 (*Bypass of Treatment Facilities*) to clarify required Permittee actions in light of a SW treatment system; use adapted language from the Eastern Washington Phase 2 general MS4 permit, which is applicable to SW and more suitable for this permit.

"The Permittees are prohibited from intentionally bypassing stormwater from all or any portion of a stormwater treatment BMP as long as the design capacity of the BMP is not exceeded unless the following conditions are met.

Bypass is: (1) unavoidable to prevent the loss of, personal injury, or severe property damage or

(2) necessary to perform construction or maintenance-related activities essential to meet the requirements of the (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: EPA appreciates the interpretation relative to MS4 discharges and agrees that this provision can be interpreted in light of overall MS4 maintenance and operation. However, EPA cannot revise the text of a standard permit condition. No changes have been made to the Permit as a result of this comment. As drafted EPA believes the first sentence of Part 7.10.1, sufficiently addresses most situations to be encountered by a Permittee during MS4 operation and maintenance: "T*he 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 narrative terms and conditions requiring implementation of the SW 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. It is unlikely there will be situations where SW must be forced to bypass a treatment BMP that is unrelated to either essential maintenance or severe weather-related emergency.

Definitions (Permit Part 9)

84. (City): The City requests that the definition of the word "operate" be included in the Fact Sheet.

Response: 40 CFR § 122.2 states that "*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the NPDES program." The word "operate" as a verb has the common definition as cited in the Merriam Webster dictionary meaning "to perform a function" or "to cause a function."

85. 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 evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.

86. 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 NWPR 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.

87. 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 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 #IDS028061

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

Contents

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

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

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

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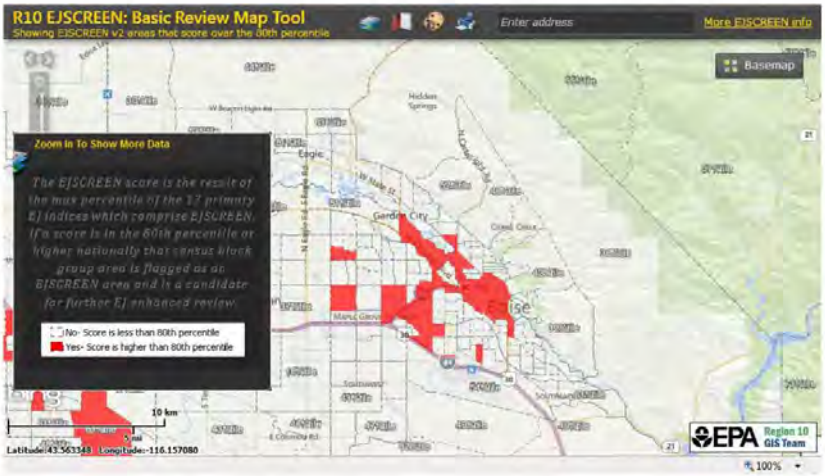
1. City of Boise, City Garden City, et al. MS4:

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: http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua08785_boise_city_id/DC10UA08785.pdf					
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	*Boise River, from the Diversion Dam to River Mile 50*: Cold water aquatic life, salmonid spawning, domestic water supply, and primary contact recreation and special resource water. *Boise River, from River Mile 50 to Indian Creek:* Cold water aquatic life, salmonid spawning and primary contact recreation. *Boise River, Indian Creek to mouth*: 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

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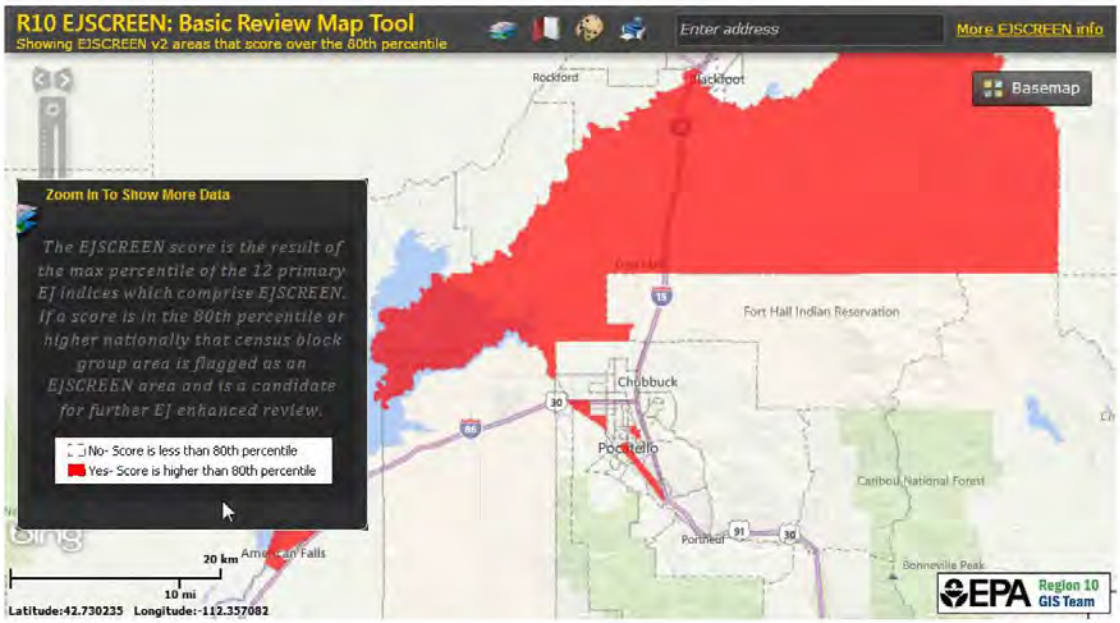
2. City of Pocatello, et al. MS4:

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

2010 Census Urbanized Area Map	**Pocatello, Idaho Urbanized Area:** http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua70426_pocatello_id/DC10UA70426.pdf

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

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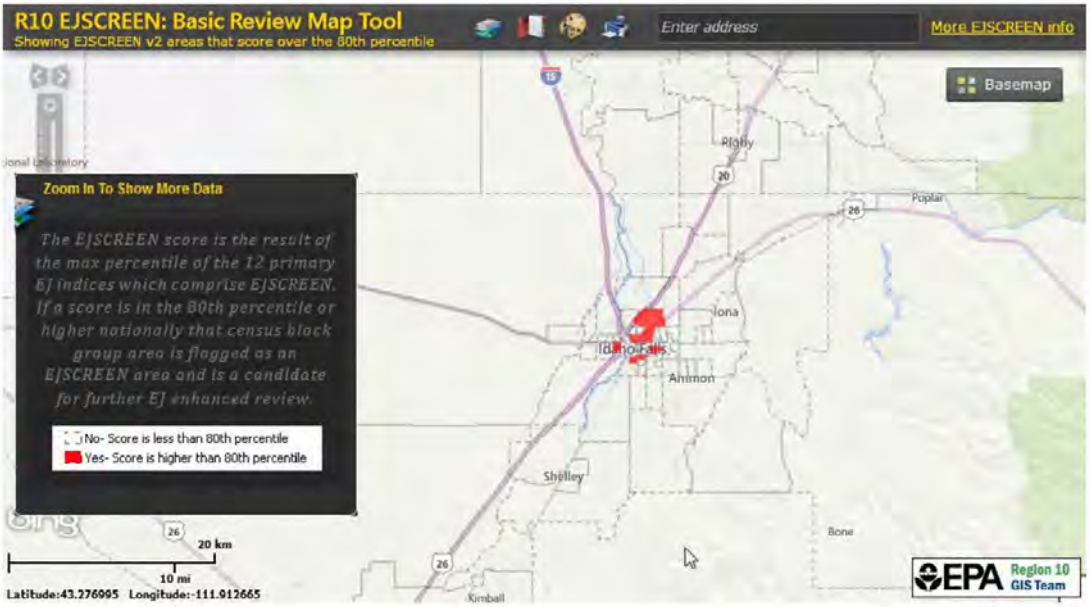
3. City of Idaho Falls et al. MS4:

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

2010 Census Urbanized Area Map	**Idaho Falls, Idaho Urbanized Area:** http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua40996_idaho_falls_id/DC10UA40996.pdf

Area	Estimated (Jurisdiction) Zip Code(s)				Estimated (Jurisdiction) Latitude	Estimated (Jurisdiction) Longitude
Idaho Falls	83401	83402	83403	83404	43.491651	-112.033965
	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

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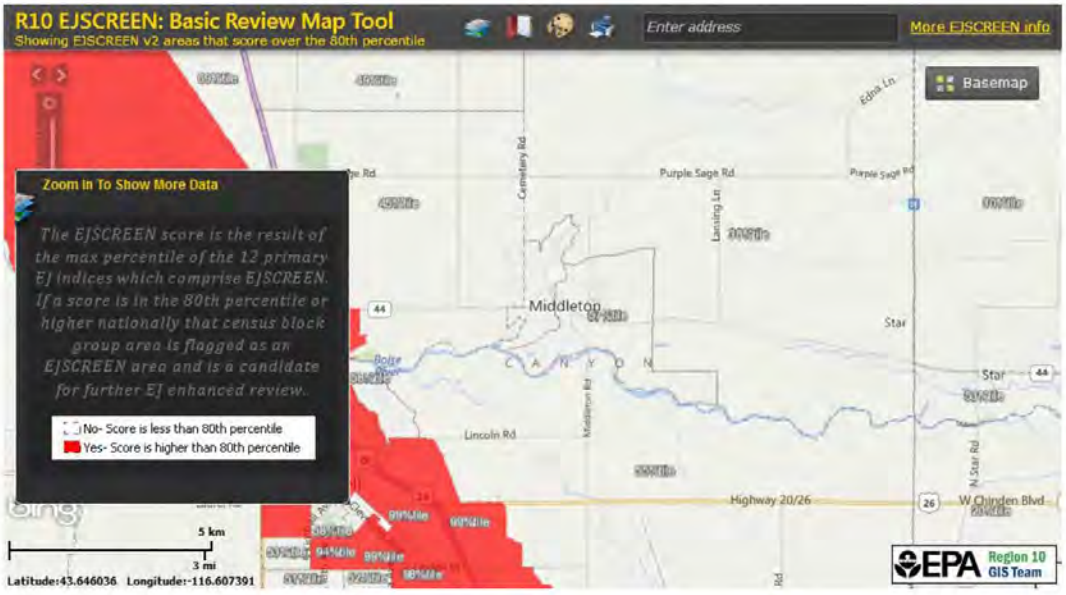
4. City of Middleton MS4

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

2010 Census Urbanized Area Map	**Nampa, Idaho Urbanized Area:** http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf

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	*Boise River, from River Mile 50 to Indian Creek:* Cold water aquatic life, salmonid spawning and primary contact recreation *Boise River, Indian Creek to mouth*: 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

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5. City of Caldwell MS4:

Current Permit #IDS028118

2010 Census Urbanized Area Map	**Nampa, Idaho Urbanized Area:** http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf

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	*Boise River, from River Mile 50 to Indian Creek:* Cold water aquatic life, salmonid spawning and primary contact recreation *Boise River, Indian Creek to mouth*: 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

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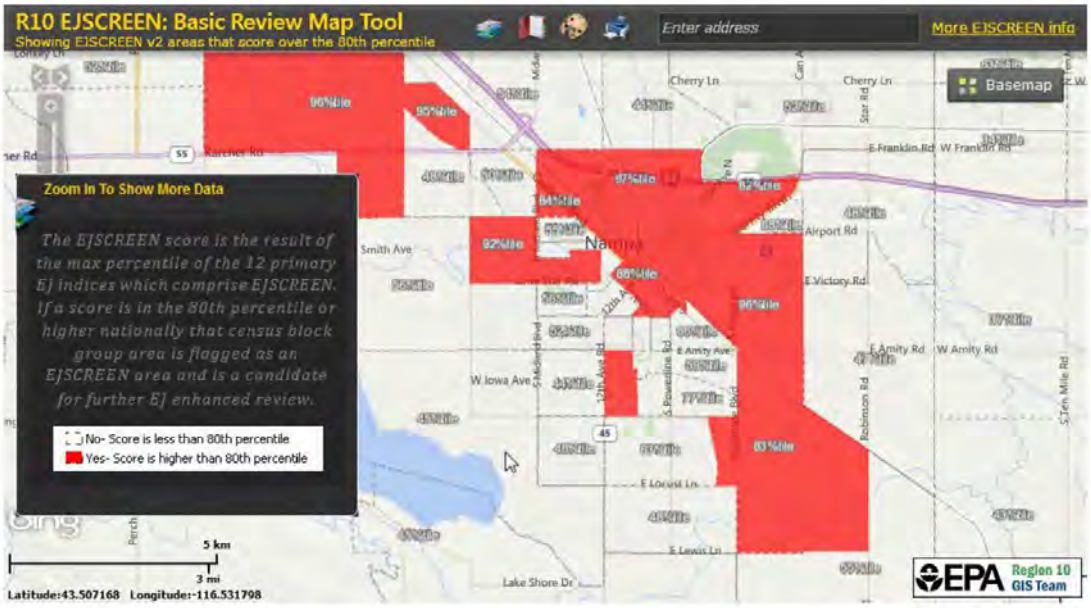
6. City of Nampa MS4:

Current Permit #IDS028126

2010 Census Urbanized Area Map	**Nampa, Idaho Urbanized Area:** http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua60976_nampa_id/DC10UA60976.pdf

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	*Boise River, from River Mile 50 to Indian Creek:* Cold water aquatic life, salmonid spawning and primary contact recreation *Boise River, Indian Creek to mouth:* 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

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7. City of Post Falls MS4

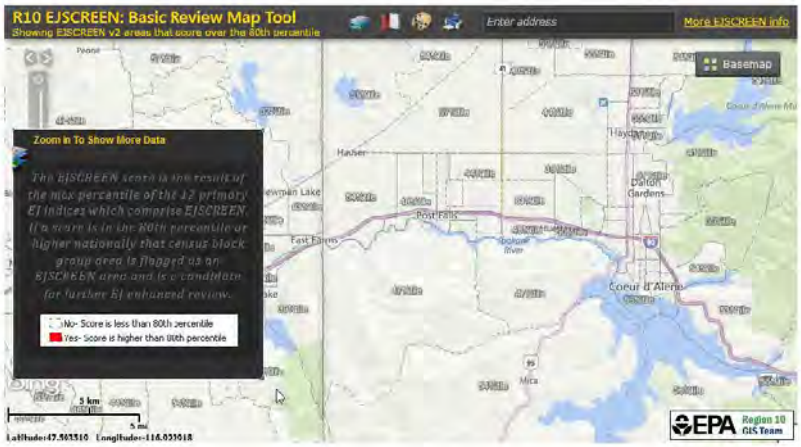
Current Permit #IDS028231, (no red zone; EJ Indices all <80th percentile). Neighboring jurisdiction covered by MS4 Permit includes Post Falls Highway District.

2010 Census Urbanized Area Map	Coeur d'Alene, Idaho Urbanized Area: http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua18451_coeur_dalene_id/DC10UA18451.pdf

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 20ºC. (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

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8. City of Coeur d'Alene MS4

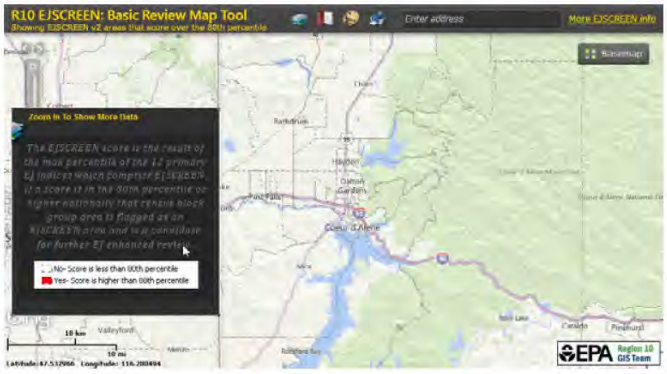
Current Permit #IDS028215; (no red zone; EJ Indices all <80th percentile). Neighboring jurisdictions with MS4 Permit includes ITD District #1; Lakes Highway District; and Eastside Highway District (application only).

2010 Census Urbanized Area Map	Coeur d'Alene, Idaho Urbanized Area: http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua18451_coeur_dalene_id/DC10UA18451.pdf

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*	**Spokane River (Washington portion, between River Mile 58.0 and RM 96.0):** "Class A" waterbody, site-specific temperature criterion of 20ºC. (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

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9. City of Lewiston MS4

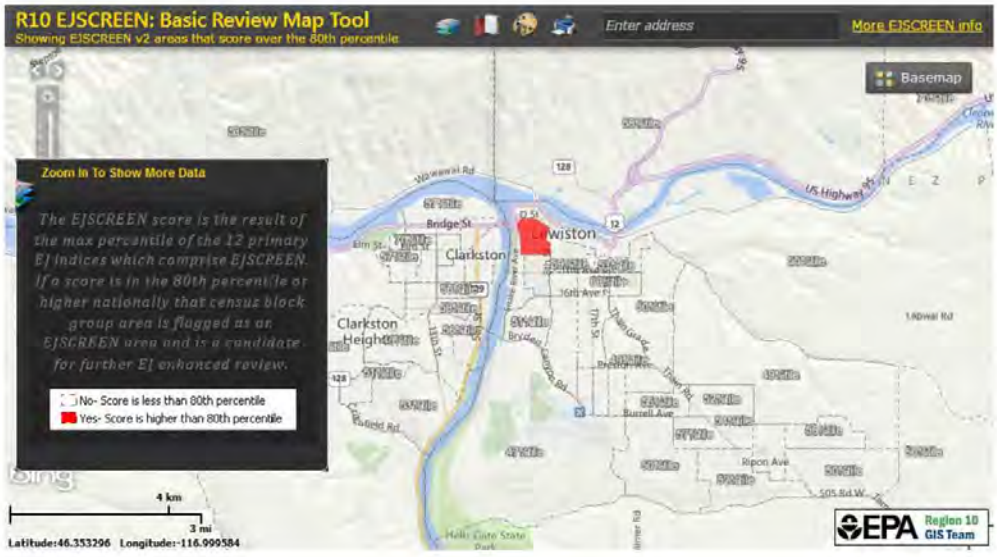
Proposed Permit #IDS028061 – no final permit issued. Neighboring jurisdictions needing MS4 permit includes ITD District 2 and Lewis Clark College

2010 Census Urbanized Area Map	**Lewiston, Idaho Urbanized Area:** http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua49312_lewiston_id--wa/DC10UA49312.pdf

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

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10. City of Moscow MS4

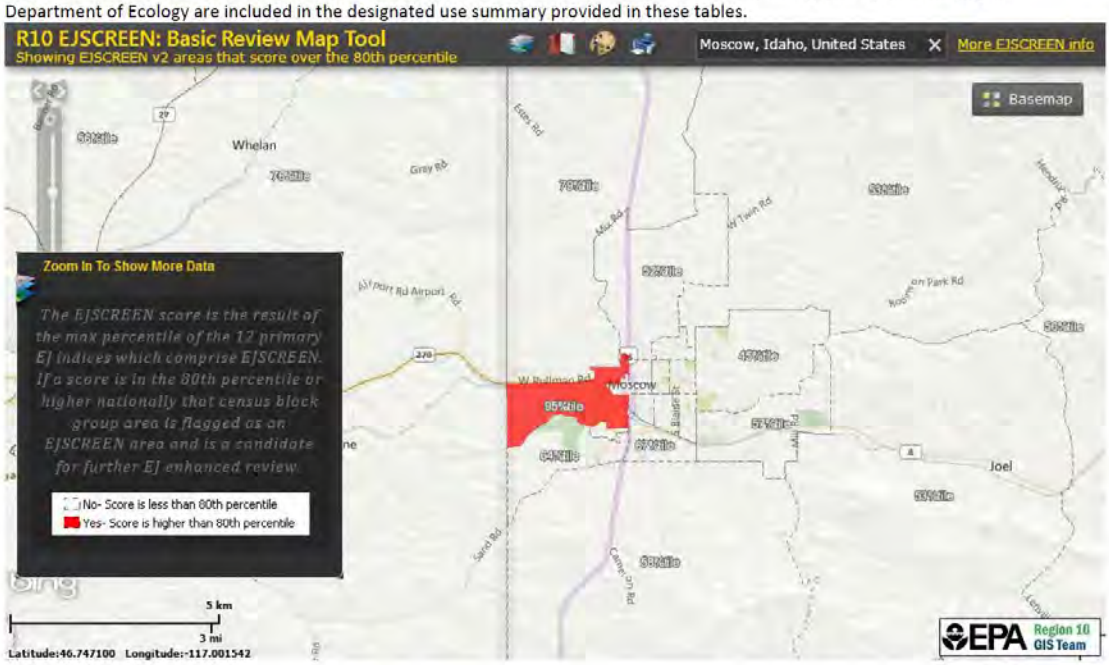
Proposed to be designated as Regulated MS4- Application only. Other likely jurisdiction needing MS4 Permit includes University of Idaho.

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: Snow Management References

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

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

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

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

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

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

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

New Hampshire Department of Environmental Services Snow Disposal Guidelines: https://www.des.nh.gov/organization/commissioner/pip/factsheets/wmb/documents/wmb-3.pdf

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

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

Governor Brad Little
Director John H. Tippets

January 15, 2020

Susan Poulsom, 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 City of Lewiston and Lewis-Clark State College Municipal Separate Sewer System (MS4), NPDES Permit #IDS028061

Dear Ms. Poulsom:

On December 26, 2019, the Lewiston Regional Office of the Idaho Department of Environmental Quality (DEQ) received the proposed final draft of the above-referenced permit for the City of Lewiston and Lewis-Clark State College 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,

John Cardwell
Regional Administrator
Lewiston Regional Office

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

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

January 15, 2020

NPDES Permit Number(s): City of Lewiston and Lewis-Clark State College, IDS028061
Receiving Water Body: Clearwater River (Lower Granite Dam Pool), Lewiston Levee Ponds, Lindsay Creek, Tammany Creek, and the Snake River

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

For discharge into the Clearwater River (Lower Granite Dam Pool), Lindsay Creek, Tammany Creek, and the Snake River, DEQ certifies, based upon its review of the above-referenced permit and associated fact sheet, that if the permittees comply 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. For discharge into the Lewiston Levee Ponds, DEQ waives certification.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Antidegradation Review

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

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

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

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

Pollutants of Concern

The City of Lewiston and Lewis-Clark State College discharge the following pollutants of concern: sediment, nutrients (nitrogen and phosphorous), heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) and organic chemicals (pesticides and industrial chemicals).

Receiving Water Body Level of Protection

The City of Lewiston and Lewis-Clark State College discharge to the Clearwater River- Lower Granite Dam Pool, Lindsay Creek, the Snake River, and Tammany Creek within the Clearwater and Lower Snake Asotin Subbasin assessment units (AU) ID17060306CL001_07 (Lower Granite Dam Pool), ID17060306CL003_02 (Lindsay Creek – source to mouth), ID17060306CL003_03 (Lindsay Creek – source to mouth), ID17060103SL001_08 (Snake River), ID17060103SL016_02 (Tammany Creek – source to Unnamed Tributary (T34N, R04W, Sec19)), ID17060103SL014_02 (Tammany Creek – WBID 015 to unnamed tributary), ID17060103SL014_03 (Tammany Creek – Unnamed Tributary to mouth).

The AUs defined above, are each designated for cold water aquatic life beneficial uses. In addition, ID17060306CL001_07 (Lower Granite Dam Pool) and ID17060103SL001_08 (Snake River) are designated for primary contact recreation and domestic water supply beneficial uses. The remaining assessment units —ID17060306CL003_02 (Lindsay Creek – source to mouth), ID17060306CL003_03 (Lindsay Creek – source to mouth), ID17060103SL016_02 (Tammany Creek – source to Unnamed Tributary (T34N, R04W, Sec19)), ID17060103SL014_02 (Tammany Creek – WBID 015 to unnamed tributary), ID17060103SL014_03 (Tammany Creek – Unnamed Tributary to mouth)—are designated for secondary contact recreation 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, the Lindsay Creek and Tammany Creek AUs are not fully supporting their aquatic life or contact recreation beneficial uses. Causes of impairment include nutrients, sediment/siltation, and *Escherichia coli* (*E. coli*). The Snake River AU is not fully supporting its aquatic life use. The cause of impairment is temperature. The contact recreation beneficial use for the Snake River is unassessed in DEQ's 2016 Integrated Report; however, data collected by DEQ in 2017 indicate that recreation beneficial use is fully supported. The aquatic life and recreation beneficial uses for the Clearwater River are fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life and

recreation beneficial uses in the Lindsay Creek and Tammany Creek AUs and Tier I protection for the aquatic life use in the Snake River AU. Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I will be provided for the contact recreation use in the Snake River and Clearwater River AUs (IDAPA 58.01.02.052.05.c) as well as the aquatic life use in the Clearwater River AU.

In addition to the water bodies discussed above, the final NPDES permit states that the City of Lewiston and Lewis-Clark State College also discharge to the Lewiston Levee Ponds. The draft permit did not identify the Lewiston Levee Ponds as distinct receiving waters, so DEQ's draft water quality certification did not separately address the discharge to the ponds. The final permit identifies the ponds as receiving waters as a result of comments EPA received on the draft, and EPA notified DEQ of this change by letter dated December 26, 2019. The same letter requested state certification of the final permit within 30 days of December 26, 2019, and noted that certification would be deemed waived if DEQ did not act before that deadline. Aside from including the Lewiston Levee Ponds as a receiving water, however, the final permit does not contain any new or different permit conditions for the MS4 discharge to the ponds.

There is insufficient information in the record for DEQ to conduct antidegradation analysis and act on EPA's request to certify the discharge to the Lewiston Levee Ponds. The Lewiston Levee Ponds are unassessed. The record contains little information regarding existing uses of the ponds. The record also lacks information regarding the ponds' current water quality or the effect, if any, of the MS4 discharge into the ponds. Without such information, DEQ cannot complete a Tier I review (IDAPA 58.01.02.052.07), nor determine whether Tier II protection is appropriate (IDAPA 58.01.02.052.05). Further, because EPA has provided no assurance that it will provide more time for the certification process, DEQ risks waiving certification entirely if it attempts to obtain such information. Therefore, DEQ is exercising its discretion to waive certification under section 401, 33 U.S.C. § 1341, with respect to only those portions of the MS4 that discharge to the Lewiston Levee Ponds.

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing and designated uses and the level of water quality necessary to protect existing and designated uses shall be maintained and protected. In order to protect and maintain existing and designated beneficial uses, a permitted MS4 discharge must reduce the discharge of pollutants to the maximum extent practicable. The terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit and this certification require the permittees to reduce the discharge of pollutants to the maximum extent practicable.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. A central purpose of TMDLs is to establish wasteload allocations for point source discharges, which are set at levels designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL.

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

The Snake River is in Idaho's 2016 Integrated Report in Category 5 as impaired by temperature but does not have a current TMDL. The EPA-approved *Lindsay Creek Watershed Assessment and Total Maximum Daily Loads* (June 2007), *Tammany Creek Sediment TMDL* (February 2002), and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum* (December 2010) establish wasteload allocations for *E. coli* bacteria, nutrients, and sediment. These wasteload allocations are designed to ensure that Lindsay Creek and Tammany Creek will achieve the water quality necessary to support existing and designated aquatic life and contact recreation beneficial uses and comply with the applicable numeric and narrative criteria. The terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit and the conditions of this certification are consistent with the applicable waste load allocations in the TMDLs.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection and compliance with the Lindsay Creek and Tammany Creek TMDLs 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,
    - Post-construction stormwater management for new and redevelopment,
    - Pollution prevention/good housekeeping for MS4 operations;
- Quantitative monitoring/assessment to determine BMP removal of pollutants of concern in all impaired AUs;
- Requirements for the City of Lewiston and Lewis-Clark State College to implement pollutant reduction activities and quantitative monitoring and assessment for discharges to Lindsay Creek and Tammany Creek;
- Requirements for the City of Lewiston and Lewis-Clark State College to monitor and assess temperature in discharges to the Snake River; and
- The stipulation that if either EPA or DEQ determine that an MS4 causes or contributes to an excursion above the water quality standards, the permittees must take a series of actions to remedy the situation.

In summary, the terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit will reduce the discharge of pollutants to the maximum extent practicable and are consistent with the wasteload allocations established in the *Lindsay Creek Watershed Assessment and Total Maximum Daily Loads*, *Tammany Creek Sediment TMDL*, and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in Lindsay Creek and Tammany

Creek 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. The Snake River is also considered high quality for 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 and the Snake River must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to cold water aquatic life and primary contact recreation uses of the Clearwater River – Lower Granite Dam Pool and the Snake River (IDAPA 58.01.02.052.05). These include *E.* coli, sediment, heat, nutrients, metals, chlorides, petroleum hydrocarbons, and organic chemicals (pesticides and industrial chemicals).

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

Pollutant reductions should be realized as each element of the stormwater management plan is developed and implemented during the permit cycle. Stormwater control measures, when designed, constructed, and maintained correctly have demonstrated the ability to reduce runoff, erosive flows, and pollutant loadings[1]. 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. Water quality is expected to improve in Lindsay Creek and Tammany Creek, and the downstream receiving waters of the Clearwater River and Snake River, as a result of conducting these pollutant reduction activities (Permit part 4.3).

This level of scrutiny and effort combined with requirements to address pollution sources should lead to improved water quality the longer the permit is in effect and should result in minimal to

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

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 City of Lewiston and Lewis-Clark State College MS4s.

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

Pollutant Reduction Activities in Tammany Creek and Lindsay Creek

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

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

Temperature Monitoring - Discharges to the Snake River

The permittees must monitor temperature in stormwater discharges from the MS4 to the Snake River to quantify stormwater impacts to the waterbody.

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.

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 .

John Cardwell
Regional Administrator
Lewiston Regional Office