

Response to Comments on
National Pollutant Discharge Elimination System (NPDES) Permit
For Discharges from the
City of Coeur d'Alene
Municipal Separate Storm Sewer System
NPDES Permit No. IDS028215

October 2020

U.S. Environmental Protection Agency, Region 10

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Introduction

On May 13, 2020, the U.S. Environmental Protection Agency Region 10 (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer system (MS4) owned and/or operated by the City of Coeur d'Alene (City) in Kootenai County, Idaho. The permit document #IDS028215 will be referred to in this document as “the Permit.” The public comment period ended on June 29, 2020.

This document provides EPA responses to comments received on the proposed Permit. Comments are broadly organized by topic in the order the issue appears in the Permit. In general, EPA summarizes each comment, and where appropriate for clarity EPA groups similar comments into one statement. In some cases, EPA includes the comment verbatim. Where indicated, EPA has made changes to the final Permit. The Administrative Record contains copies of each comment letter, as well as information considered by EPA during the permit development process.

State Certification under Clean Water Act §401

On July 1, 2020, the Idaho Department of Environmental Quality (IDEQ) provided EPA with a final Clean Water Act (CWA) Section 401 certification that includes conditions that must be included in the Permit pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). A copy of the final certification is provided in Appendix A of this document. Final certification conditions are included in the Permit. See Table 1.

Endangered Species Act Consultation

On July 13, 2020, EPA submitted its *Biological Evaluation & Essential Fish Habitat Assessment for the City of Coeur d'Alene MS4 NPDES Permit No. IDS028215 & Idaho Transportation Department District 1 MS4 NPDES Permit No. IDS028223* to the U.S. Fish and Wildlife Service (FWS). The BE concludes that issuance of these Permits may affect but are not likely to adversely affect bull trout (*Salvelinus confluentus*) or its designated critical habitat in Coeur d'Alene Lake. There are no threatened or endangered species listed by National Oceanic and Atmospheric Administration – National Marine Fisheries Service (NOAA Fisheries) within the Coeur d'Alene Urbanized Area, therefore consultation with NOAA is not required by the Endangered Species Act.

In a letter dated October 15, 2020, FWS concurred with EPA's determination, and recommended that the Permittees conduct, at a minimum, annual testing of the stormwater discharge into Coeur d'Alene Lake. The final Permit is consistent with this recommendation, insofar as it requires quantitative stormwater monitoring/assessment activities to be conducted at a frequency of at least four times during a calendar year, and further directs that at least one sample each calendar year must be collected in the September - October period. See Permit Parts 4.2 and 6.2.5.4 of the Final Permit. EPA has made no change to the Permit in response to the FWS recommendation.

Edits to the Final Permit

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

EPA has made minor editorial changes throughout the Permit text for clarity, consistency, and/or grammatical correction. Major editorial changes have been made to the following Permit Parts in response to comments and IDEQ certification, as identified in Table 1 below:

Table 1. Edits to Final Permit

Edits Based on Public Comments Received:	
Part 3.1	See Response #11
Edits Based on Recent EPA Actions:	
Part 9 Definition of <i>Green Infrastructure</i>	Revised consistent with the new definition in the Water Infrastructure Improvement Act. See Response #24.
Part 9 Definition of <i>Waters of the United States (U.S.)</i>	Revised to align with EPA’s final Navigable Waters Protection Rule defining “waters of the U.S.,” effective June 22, 2020. See Response #25.
Edits Based on IDEQ Input	
Parts 2.5.7, 3.2.7.1, and 4.3; Appendix A.2	Conditions of IDEQ’s <i>Final §401 Water Quality Certification for the City of Coeur d’Alene Municipal Separate Storm Sewer Systems; NPDES Permit #IDS028215</i> , dated July 1, 2020. See Appendix A of this document.

Response to Comments

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

- Association of Idaho Cities (AIC)
- City of Coeur d’Alene (City)
- Washington Department of Ecology (WDOE)
- Idaho Conservation League (ICL)

General Topics

1. **(AIC):** AIC has discussed the proposed Permit with the City of Coeur d’Alene and has been engaged in a general Idaho MS4 Permittees’ review of the proposed Permit and the City’s comments. Please accept this letter as a statement of concurrence and support for the comments that have been submitted.

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

2. **(WDOE):** Ecology appreciates U.S. EPA’s efforts to reissue and update the NPDES Permits to the Cities of Post Falls and Coeur d’Alene (Permittees). We are confident that the implementation of comprehensive Stormwater Management Programs (SWMP) will assist these two Permittees in reducing pollutants in their stormwater discharges, and improve the water quality of the upper Spokane River and Lake Coeur d’Alene, which serves as the headwaters for the stretch of the Spokane River running through Spokane, Lincoln, and Stevens Counties in the State of Washington.... We are strongly supportive of EPA’s efforts to improve stormwater management throughout the State of Idaho. We commend and acknowledge the effort it takes to develop Permits that put into place consistent practices to improve water quality.

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

3. **(City):** The City requests to be notified in the event that any changes are made to this Permit.

Response: Comment noted. As explained throughout this document, minor changes were made to the Permit as a result of comments and IDEQ's 401 certification. If there are any modifications made to the permit in the future, the City, as the permittee, will be notified.

Comments on FS for Permit #IDS028215

4. **(ICL):** ICL requests EPA explain how it reached the conclusion on FS page 8 that the City has effectively implemented the stormwater control measures in compliance with the prior NPDES permit in a manner that has reduced pollutants discharged through the MS4 to the maximum extent practicable (MEP). It is unclear how EPA applies the MEP standard. For example, does EPA compare the stormwater control measures the City implemented to a range of other stormwater control measures that may or may not further maximize pollutant reduction? Please explain how EPA reached this conclusion and provide EPA's analysis in the fact sheet.

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 stated in FS Section 2.1 (FS page 14-15), permits for regulated small MS4s must include terms and conditions needed to "reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements under the CWA;" otherwise referred to as the "MS4 permit standard." (See EPA MS4 Remand Rule, Final Rule, at 81 FR 89323, 12/9/2016.) MEP is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. What constitutes MEP "should continually adapt to current (water quality) conditions and best management practice (BMP) effectiveness and should strive to attain water quality standards." Neither the CWA nor the stormwater regulations provide a precise definition of MEP, which provides for maximum flexibility in MS4 permitting. (See EPA Phase II NPDES Regulations for Stormwater Discharges, Final Rule, at 64 FR 68753-68754, 12/8/1999).

EPA proposed MS4 permit terms and conditions for the City that satisfy the requirements set forth in 40 CFR § 122.34(a) through (e). FS Section 1.5 (pages 8-9) summarizes information EPA considered to establish the permit terms and conditions that reduce pollutants from the MS4 to the MEP and otherwise defines the MS4 permit standard for the next five-year permit term. These materials include, but are not limited to, current Idaho water quality assessments, and information summarizing the effectiveness of managerial, physical, and/or structural BMPs that, when used singly or in combination, reduce the downstream quality and quantity impacts of storm water runoff. Upon collective consideration of all available information, EPA defined the stormwater management control measures and evaluation requirements that the Permittee must implement, using more narrative detail than was previously required under the administratively continued Permit to ensure that the terms and conditions are "clear, specific, and measurable." See 40 CFR § 122.34(a).

5. **(ICL):** ICL requests EPA provide a discussion of the City's compliance history in the Fact Sheet. Specifically, ICL requests EPA clarify whether or not the City has successfully implemented *all* the SWMP control measures, as required by its current MS4 permit, and ICL requests EPA list each SWMP control measure required in the current permit and identify the date the City implemented the control measure and how.

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 conducted inspections of the City's compliance with its MS4 permit on September 13, 2011, and September 20, 2017; these inspection reports are available as part of the Administrative Record. The City submitted Annual Reports documenting the incremental development and implementation of its SWMP during the permit reporting periods

between Year 2010 – Year 2019; the Annual Reports are also part of the Administrative Record and are available on the City's website at:

<https://www.cdaid.org/623/departments/finance/utilitybilling/stormwater/annual-reports>.

Throughout the FS, EPA acknowledges the City's compliance with the administratively continued permit's terms and conditions. Specifically, see FS Sections 1.4 and 1.5, and related statements on FS pages 16 - 21, 24-27, 29 and 31.

6. **(ICL):** In several FS sections for the proposed permit, EPA discusses the 2009 Coeur d'Alene Lake Management Plan (LMP) in reference to how EPA designed the permit terms and conditions in the City's proposed permit to reflect appropriate requirements that address impairment pollutants, citing 40 CFR §122.44(d)(4) & (d)(5). However, it is unclear from the fact sheet whether or not EPA understands that in 2019 the Coeur d'Alene Tribe officially rescinded its support of the LMP. Although it remains true that existing water quality information for Coeur d'Alene Lake shows that maintaining an oxygenated condition in the bottom waters minimizes the release of dissolved metals from the sediments in the overlying waters, without the Tribe's subscription to the LMP, it is uncertain whether the LMP will or can continue to be fully implemented by the Idaho Department of Environmental Quality.

Because EPA's misunderstanding of the status of the LMP may have incorrectly influenced the development of the terms and conditions in the City's proposed permit, ICL requests EPA re-issue revised versions of the City's proposed stormwater permit and associated fact sheet that correctly consider the current status and implementation of the LMP. In addition, ICL requests EPA evaluate whether the uncertainties surrounding the LMP require new or revised permit terms and conditions necessary to ensure the City's stormwater permit is protective of the water quality in Coeur d'Alene Lake and maintains an oxygenated condition in the bottom waters.

Response: It is EPA Region 10 policy not to revise the FS based on public comment. EPA recognizes that the Coeur d'Alene Tribe rescinded its support of the LMP in April 2019. The LMP, however, remains a useful framework that provides science-based recommendations to help manage lake impairments.¹

In IDEQ's CWA Section 401 certification, IDEQ notes that the comprehensive stormwater management, monitoring and pollution reduction activities required by the Permit are consistent with the recommended actions in the LMP. See Appendix A of this document. Regardless of whether the LMP will or can continue, the Lake remains impaired. As such, to ensure that water quality standards are met, EPA concludes that the activities set forth in the Permit are consistent with the LMP and should be implemented by MS4 Permittees.

Beginning in 2016, EPA invited the Coeur d'Alene Tribe to consult on the renewal of Permit terms and conditions for this and other regulated MS4 discharges to the Lake. To date, the Tribe has not provided input on the draft permit.

EPA's issuance of the Coeur d'Alene MS4 Permit establishes mandatory local stormwater management controls to reduce the discharge of nutrient pollutants into the Lake. EPA has made no changes to the Permit in response to this comment, having determined that no new or additional provisions are required.

¹ See: Letter from EPA Regional Administrator Hladick to Coeur d'Alene Tribe Chairman Ernest Stensgar, dated May 9, 2019.

7. **(ICL):** ICL requests EPA include a discussion in the FS of the City's MS4 discharge, including a characterization of the discharge based on the City's discharge monitoring data collected as required by its current stormwater permit. ICL requests this characterization include each pollutant identified in the monitoring, the average and maximum concentrations of each pollutant, the number of samples taken, and the date and time each sample was taken.

Response: It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit. Lab reports, including sample dates and times, are included in the City's Annual Reports; see Response #5. EPA summarized a portion of the City's MS4 discharge monitoring data collected to date by the City in its *Biological Evaluation & Essential Fish Habitat Assessment for the City of Coeur d'Alene MS4 NPDES Permit No. IDS028215 & Idaho Transportation Department District 1 MS4 NPDES Permit No. IDS028223* (dated July 2020), available as part of the Administrative Record for the Permit. An excerpted version of information provided in the document is provided in Appendix B of this document. Note that Appendix B also includes summary monitoring information for the Idaho Transportation Department District 1 MS4 discharges, as required by a separate NPDES Permit No. IDS028223.

8. **(City):** Regarding FS Appendix 5.2-*Spokane River downstream of Idaho/Washington Border*, the City notes that while portions of the Spokane River are listed as impaired in Washington based on fish tissue samples, recent monitoring by the task force indicates, using a blank correction approach that qualifies more results as positive, that the water column in the river is below 170 pg/L from Lake Coeur d'Alene to Lake Spokane. The data from Lake Coeur d'Alene to roughly Kaiser is very close to non-detect and the quantitation limits of the test method.

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.

Applicability; Limitations and Conditions (Permit Parts 1 and 2)

9. **(WDOE): Permit Part 2.4.5.1 – Categories of Non-Stormwater Discharges:** This section lists the types of stormwater discharges allowed under the Permit, provided the discharge is not a source of pollution to waters of the U.S. as defined in Part 2.5.4.2. WDOE is specifically concerned about uncontaminated water line flushing; discharges from potable water sources; dechlorinated swimming pool discharges and fire hydrant flushing. The Permit text is insufficient to ensure that the aforementioned discharges do not negatively affect Idaho and WA's shared receiving waters. The Permit does not address dechlorination and flow control for water line flushing, discharges from potable water sources, and fire hydrant flushing activities. The quantity and flow velocity in these types of discharges can often be significant, causing resuspension of sediments in the stormwater system and, ultimately, depositing the sediments in receiving waters. Sedimentation in our rivers, lakes, and streams increases turbidity; obstructs sunlight and inhibits photosynthesis of aquatic plants; reduces biologically available oxygen; increases water temperature; and carries other pollutants like nutrients, heavy metals, and bacteria with it. Further there is no mention of thermal or flow control requirements for swimming pool discharges in the draft Permit. It is important that swimming pool, spa, and hot tub discharges be thermally controlled to prevent an increase in temperature of the receiving waters and, as previously stated, flow-controlled to prevent resuspension of sediments in the stormwater system.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. As noted, such flows are conditionally authorized provided they are not a source of pollution as defined in Permit Part 2.5.4.2. Further, Permit Part 2.5.7 requires the Permittee to select BMPs from IDEQ's most recent *Idaho Catalog of Stormwater Best Management Practices* (April 2020);

this document contains prescriptive requirements for the disposal of swimming pool discharges. See: <https://www.deq.idaho.gov/water-quality/wastewater/stormwater/>

In addition, requirements for public water line flushing for responsible entities is found in the IDEQ *Guidance for Public Water System Disposal of Water from Construction, Maintenance, and Operations* (April 2014); see: <https://www.deq.idaho.gov/media/1117311/pws-disposal-guidance-0414.pdf>. This document addresses both dechlorination and recommends appropriate disposal alternatives that do not require discharge to the MS4.

- 10. (WDOE): Permit Part 2.5.3 – SWMP Document** states that the Permittee's SWMP document must be completed and updated three times total during the Permit term: December 1, 2021; December 1, 2022; and with the Notice of Intent to Reapply (i.e., April 3, 2025). A Permittee's SWMP is a "living" document that includes standard operating procedures, protocols, and other materials that provide details about how and when different BMPs are completed, and the responsible persons or departments. The SWMP is a reference for managers, staff, contractors, and other parties tasked with implementing, documenting, and managing aspects of the Permit. A complete and up-to-date SWMP helps ensure access to local stormwater program information, and can help promote timely response to problems and inquiries; accountability for program implementation; effective communication and coordination; sound decision-making and Informed allocation of resources. With this in mind, WDOE recommends that the Permittee's required frequency for submitting annually at a minimum, and as needed in instances where activities change over time to meet new or changing permit conditions.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA recognizes the significance of a SWMP document, and notes that the City currently maintains its SWMP document on its website. Page 15 of the FS states that *"the requirement for the Permittee to maintain a SWMP Document is an enforceable condition of the Permit...the contents of the SWMP Document are not directly enforceable as requirements of the Permit. As a result, the Permittee may create and subsequently revise the SWMP Document, as necessary, to describe how the stormwater management activities are implemented in compliance with the Permit. Therefore, updates to the SWMP Document may occur without ...EPA or IDEQ review and approval."* Thus, the Permit only requires that the City submit the SWMP three times during the permit term; however, the City can and should update the SWMP as necessary to describe how the stormwater management activities are being implemented in compliance with the Permit.

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

- 11. (WDOE): Permit Part 3.1 – Public Education and Outreach on Stormwater Impacts** requires Permittees to conduct an ongoing public education, outreach, and involvement program based on stormwater issues of significance. WDOE is concerned that the draft Permits do not definitively state that both Permittees must continue their existing Education and Outreach (E&O) Program during the first year of the Permit term while at the same time, preparing for the new E&O requirements that are described under *Parts 3.1.2 – 3.1.8*. As such, we request that EPA provide clarification that this is either implied in the draft Permits or add the necessary language to the Permits to ensure that both Permittees are continuing to implement their existing E&O Programs from Permit issuance through October 1, 2021.

Response: EPA agrees, and has revised the Permit Part 3.1 as follows:

The Permittee must continue to conduct, or contract with other entities to conduct, an ongoing public education, outreach, and involvement program based on stormwater issues of significance in the Permittee's jurisdictions.

Illicit Discharge Detection and Elimination (Permit Part 3.2)

12. **(WDOE) Permit Part 3.2.3 – Ordinance and/or Other Regulatory Mechanisms** requires the Permittee to prohibit and eliminate, at a minimum, non-stormwater discharges to the MS4 through enforcement of an ordinance or other regulatory mechanism. WDOE appreciates that EPA listed illicit discharges in Part 3.2.3.3 that the Permittee must prohibit through ordinance or regulatory mechanism. WDOE is concerned the list may not be fully exhaustive. To ensure all non-stormwater discharges that are neither *Allowed* nor *Conditionally Allowed* are accounted for in the ordinance or regulatory mechanism, WDOE recommends an additional bullet be added to Part 3.2.3.3 of the draft Permit stating, "All other non-stormwater discharges not covered under Part 2.4.5.1 of this Permit."

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Permit Part 2.4 sufficiently limits the discharges that are authorized under the Permit. That Permit Part states: "*The Permittee is not authorized to discharge non-stormwater from the MS4, except where such discharges satisfy one of the following conditions: ...*"

13. **(WDOE) Permit Part 3.2.4.2 – Response to Complaints or Reports from the Public** states, "*The Permittee must respond to and investigate all complaints or reports of illicit discharges as soon as possible, but no later than within two (2) working days.*" The Permit does not state that complaints or reports of spills, in addition to illicit discharges, should be investigated as soon as possible or within two (2) working days. To fully protect the MS4 and receiving waters, WDOE requests language be included to require the Permittee to respond immediately to any complaint or report of illicit discharge or spill that could be a threat to human health, welfare, or the environment, as this is not also currently implied nor addressed in the Permits.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. See Responses #15 and #16.

14. **(ICL) Permit Part 3.2.6 – Illicit Discharge – Followup:** ICL requests EPA revise requirements for responding to recurring illicit discharges at Section 3.2.6 (page 21) of the proposed stormwater permit to reflect the requirements established in the current stormwater permit for the City of Coeur d'Alene MS4 (City). In the current permit, EPA requires the City to investigate any illicit discharge within 15 days of detection and to take action to eliminate the source of the discharge within 45 days of detection. In the proposed permit, EPA increased the time with which the City must investigate and take action to eliminate illicit discharges to 30 and 60 days, respectively. EPA regulations require that, when renewing or reissuing a NPDES permit, standards or conditions must be at least as stringent as the final standards or conditions in the previous permit. See 40 CFR §122.44(l)(1); see also U.S. Environmental Protection Agency, NPDES Permit Writers' Manual, §7.2.2. Standards or conditions in a renewed or reissued permit may only be less stringent than the previous permit, if the circumstances on which the previous permit was based have materially and substantially changed since the time the previous permit was issued and would constitute a cause for permit modification or revocation and reissuance under §122.62. *Id.* EPA did not provide a rationale for making the conditions in Section 3.2.6 of the proposed permit less stringent than the conditions that were issued in the City's current permit. Accordingly, ICL requests EPA revise the proposed permit to require the City to investigate any illicit discharge within 15 days of detection and to take action to eliminate the source of the discharge within 45 days of detection.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The NPDES Permit Writers' Manual, §7.2.2. states that the "regulations at § 122.44(l)(1) restrict the relaxation of final effluent limitations and the relaxation of standards or conditions contained in existing permits....Under the regulation, a permittee must meet one of the causes for modification under § 122.62 for the reissued permit to allow relaxation of such limitations, standards, or conditions."

Section 402(o) of the Clean Water Act (CWA) generally prohibits the establishment of effluent limits in a reissued NPDES permit that are less stringent than the corresponding limits in the previous permit and provides limited exceptions. Section 402(o)(1) of the CWA states that a permit may not be reissued with less-stringent limits established based on Sections 301(b)(1)(C), 303(d) or 303(e) (i.e. water quality-based limits or limits established in accordance with State treatment standards) except in compliance with Section 303(d)(4). Section 402(o)(1) also prohibits backsliding on technology-based effluent limits established using best professional judgment (i.e. based on Section 402(a)(1)(B)). In this case, Permit Part 3.2.6 is not a water quality-based limit, is not established pursuant to State treatment standards, and is not established based on CWA Section 402(a)(1)(B).

EPA revised the timeframes required to investigate any illicit discharge and take action to eliminate the source (from within 15/45 days of detection, respectively, to 30/60 days) based on its review of information listed in FS Section 1.5 to inform this and other MS4 Permit provisions. This information includes specific input from stakeholders on EPA's preliminary draft MS4 general permit(s), which were not issued (see also FS Section 1.1, page 7); EPA guidance and national summary information regarding MS4 permits, specifically, *Compendium Part 1: Six Minimum Control Measure Provisions* (November 2016); and *MS4 Permit Improvement Guide* (April 2010); and other Idaho MS4 permits issued by EPA and other state NPDES permitting authorities. Based on consideration of these materials, EPA revised the IDDE response timeframes.

- 15. (City) Permit Part 3.2.7 - Prevention and Response to Spills to the MS4** – The City requests the portion of the requirement directing the *cleanup of private laterals or failing septic systems* be removed. Related to Permit Part 3.2.7.1 [and related provisions of Appendix A-2] the City requests EPA specify what the reporting limits would be.

Response: EPA has not revised the text in Part 3.2.7 as suggested; no change has been made to the Permit. EPA provides sufficient flexibility in the provision, as written: *The Permittee must respond to, contain, and clean up any spill of sewage and other material that may discharge into the MS4 from any source (including private laterals and/or failing septic systems) in the Permit Area to the extent allowable pursuant to authority granted the individual Permittee under Idaho state law.* [Emphasis added].

With regard to reporting limits, the IDEQ website entitled Emergency Response Overview (<https://www.deq.idaho.gov/about-deq/emergency-response-overview/>) states: *Report a Spill or Accident - To report a spill or accident involving oil, gas, hazardous materials, anthrax, or explosives, call 911 to activate Idaho's Emergency Response Network, which consists of state and local agencies (including designated DEQ regional office personnel), and, if necessary, federal agencies.*

The Idaho Water Quality Standards at IDAPA 58.01.02.850, .851 and .852 establish the State's procedures for addressing Hazardous Materials Spills and Petroleum Oil Spills, respectively. In general, IDEQ requirements state that a hazardous materials spill (i.e., anything other than

petroleum products) requires immediate notification. Immediate notification is also required for above ground petroleum spills that exceed 25 gallons or causes sheen on surface water. Petroleum spills less than 25 gallons and that does not cause sheen on surface water does not have to be reported, unless the spill cannot be cleaned up in 24 hours. See also: *Idaho Environmental Guide for Local Governments: Emergency Response* (<https://www.deq.idaho.gov/assistance-resources/environmental-guide-for-local-govts/special-env-concerns/emergency-response/>) and IDEQ's spill response presentation posted online at: <https://www.deq.idaho.gov/media/60179607/swp-workshop-spill-response-presentation.pdf>

The National Response Center is the federal point of contact for reporting chemical or oil spills that are discharged to waters of the US. For releases of hazardous substances, the federal government has established Superfund Reportable Quantities (RQs). If a hazardous substance is released to the environment in an amount that equals or exceeds its RQ, the release must be reported to the National Response Center, unless certain reporting exemptions for hazardous substance releases also apply. See: <https://www.epa.gov/emergency-response/when-are-you-required-report-oil-spill-and-hazardous-substance-release>.

- 16. (WDOE) Permit Part 3.2.7 – Prevention and Response to Spills to the MS4:** This provision directs the Permittee to respond to spill but does not give a timeline and/or deadline to respond. Part 3.2.7.1 requires Permittees to report spills within a particular timeframe, as directed under Part 7.9, but does not clarify when Permittees are to respond to the described spills. WDOE requests that a specific response time, to be described as “immediate”, be included in these parts of the Permit in order to ensure there is no ambiguity as to when Permittees must address these types of spills to the MS4.

Response: EPA has not revised the text in either Permit Part 3.2.7 as suggested; no change has been made to the Permit. Consistent with the relevant condition of IDEQ's final CWA Section 401 certification of the Permit in Appendix B, EPA revised Permit Part 3.2.7.1 and Permit Appendix A-2 to direct that all spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported to IDEQ and EPA. See also Response #15.

- 17. (WDOE) Permit Parts 3.2.9, 3.3.7, 3.4.7. and 3.5.10 – Provisions regarding Staff Training:** These Parts each state the Permittee must ensure all persons responsible for implementing the described requirements are trained or qualified to conduct such activities. WDOE agrees the Permittee should provide training for new staff within the first six (6) months of employment. While initial orientation and training of employees is critical, it is also important that they receive follow-up training, as needed, to address any changes in municipal procedures, techniques, and/or Permit requirements. WDOE recommends a statement be added to each of these parts stating as such.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The first sentences in each Part cited in this comment states “*The Permittee must ensure that all persons responsible for the [relevant control measure components] as required by this Part are trained or otherwise qualified to conduct such activities.*” This provision requires the Permittee to properly train all responsible persons and requires additional/follow-up training to ensure that responsible individuals are qualified to conduct relevant activities. Thus, the commenter's concerns are addressed in the permit as written.

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

18. (WDOE) Permit Part 3.4.5 – Permanent Stormwater Controls Inspection and Enforcement

requires the Permittee to inspect high priority permanent stormwater controls at new development and redevelopment sites that result in land disturbance of greater than or equal to one (1) acre, including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one (1) acre or more, that discharge to the MS4. The Permittee must also establish a prioritization system to “identify sites for inspections of permanent stormwater controls installation and operation.” Further, according to Part 3.4.5.1 – Permittees must identify “high priority” controls and inspect them at least once annually. It is not clear to WDOE that that the Permit explicitly requires the Permittee to inspect all permanent stormwater controls that discharge to the MS4; only that the Permittees establish an “inspection prioritization system,” and inspect “high priority” controls. Does this mean “low priority” permanent stormwater controls may/will never be inspected? WDOE requests clarification of the draft Permit language in this respect.

WDOE believes it is essential that all permanent structural stormwater controls at new and redevelopment sites be inspected to protect the MS4 and, in turn, water quality. As such, WDOE requests that the Permittee be required to inspect all other permanent stormwater controls (i.e., those not categorized as “high priority”) on a recurring interval of some kind, and offer a suggestion comparable to the Eastern WA Phase II Municipal Stormwater Permit requirement of “once every 5 years.”

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The City has only 1600 acres of its jurisdiction that discharges to receiving waters through eleven (11) MS4 outfalls. FS Section 1.3, page 7. Given the relative size and scope of the City’s MS4, associated drainage areas, and other relevant information, the City has documented through its Annual Reports that the implementation of their pollution prevention/good housekeeping SWMP control measures that are required pursuant to the administratively continued permit are controlling pollutants from the MS4.

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

19. (WDOE): Permit Part 3.5 – Pollution Prevention/Good Housekeeping for MS4 Operations

states: “The [Permittee] must properly operate and maintain the MS4 and its facilities, using prudent pollution prevention and good housekeeping as required by this Part, to reduce the discharge of pollutants through the MS4.” Part 3.5.3 further states “... the Permittee “must ensure that those [operations and maintenance] procedures are conducted in a manner to protect water quality...”

WDOE recognizes that a robust operations and maintenance program is essential to the goal of preventing and reducing runoff from municipal operations. Using pollution prevention and good housekeeping and developing procedures is a fraction of what is typically accounted for in an MS4’s Operations and Maintenance (O&M) Plan. Permittees’ O&M Plans should include, at a minimum:

- a. An inventory of facilities and associated O&M activities;
- b. A schedule of O&M activities;
- c. Specific Best Management Practices (BMPs) that, when applied to the activities and facilities, will protect water quality and reduce the discharge of pollutants to the maximum extent practicable;

- d. Procedures for implementing said BMPs; *and*
- e. Departments/employees responsible for BMP inspection and maintenance.

Consistent with WDOE's comments on previous draft Permits submitted to the U.S. EPA in 2019, we recommend the Permittee be required to implement full Operations & Maintenance (O&M) Plan that fully and formally outline the specific procedures and control measure components that the Permittee will take to minimize impacts to water quality from its own facilities and activities.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The Permit as written already requires an O&M Plan, the requirements of which are identified in Permit Part 3.5. Documentation of this is required in the City's SWMP document; See Permit Part 2.5.3. Further, Permit Part 2.5.7 requires the Permittee to select BMPs from IDEQ's most recent *Idaho Catalog of Stormwater Best Management Practices* (April 2020); this document contains requirements for O&M plans to summarize O&M activities. See: <https://www.deq.idaho.gov/water-quality/wastewater/stormwater/>.

- 20. (WDOE): Permit Part 3.5.2 – Inspection and Cleaning of Catch Basins and Inlets** requires the Permittee to “inspect all Permittee-owned or operated catch basins and inlets in the MS4 at least once every five (5) years and take all appropriate maintenance or cleaning action based on those inspections.” Consistent with our comments on previous draft Permits submitted to the U.S. EPA in 2019, WDOE reiterates concerns that the proposed frequency of catch basin and inlet inspections of “once every five (5) years” is insufficient to ensure that the facilities continue to function as designed. The Eastern WA Phase II Municipal Stormwater Permit establishes a recurring catch basin inspection schedule of at least once every two (2) years, and that Permittees are to clean them if the inspections indicate cleaning is warranted. WDOE therefore requests the inspection frequency be comparable to that currently required for Eastern WA Permittees.

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

Monitoring (Permit Parts 4 and Part 6)

- 21. (ICL):** ICL requests that EPA revise the City's proposed permit at section 4.2 Monitoring/Assessment Expectations to require the following:

1. Sampling must occur at least once during each of the following periods: March - April, May - June, July - August, and September – October; and
2. Sample collection must be performed within the first 30-60 minutes during stormwater events.

As EPA states at page 12 of the FS, EPA guidance recommends that the NPDES permitting authority include permit terms and conditions that can characterize pollutant loading and BMP effectiveness of a discharge facility. However, the grab sampling EPA requires in the City's current permit only provides a snapshot of current water quality conditions. Given local climate patterns in the North Idaho region, it is important to require a sampling protocol that captures the seasonality of the City's discharge, which is necessary to assess the pollutant reduction goals in this permit. In addition, the monitoring requirements we requested above are included in the current stormwater permit, and should, therefore, be carried over into the City's proposed permit. See 40 CFR §122.44(l)(1).

Response: EPA has not revised the text as suggested; no change has been made to the Permit. As drafted, the Permit sufficiently addresses sample frequency in both Permit Table 4.2: *Minimum Monitoring/Assessment Expectations* (“At least four (4) samples during a calendar

year”) and Permit Part 6.2.5.4 (“*The samples must be collected at least four (4) times per year... At least one sample each calendar year must be collected in the September - October period.*”). With regard to collecting samples within the first 30-60 minutes of a discharge event, EPA is providing the Permittee flexibility to work with watershed partners to determine the best way to continue assessing stormwater discharges over the next permit term. See FS discussion page 32. This may include revising their monitoring plan to collect samples through the entire storm event, including first flush, in recognition that pollutant concentrations vary during a storm event, and it is often important to take multiple samples throughout the storm. See, for example, *Monitoring to Demonstrate Environmental Results: Guidance to Develop Local Stormwater Monitoring Studies Using Six Example Study Designs* (August 2008), at: <https://owl.cwp.org/mdocs-posts/monitoring-guidance-for-ms4s-six-example-study-designs/> and other references in EPA’s Administrative Record.

- 22. (City): Regarding Permit Part 4.3 - Pollutant Reduction Activities** (requiring activities designed to reduce pollutant loadings from the MS4) and Part 6.4.4 - Pollutant Reduction Activity Report, (requiring a summary report of load reductions to date), the City is unsure how to quantify loadings and request [the term] loadings be removed.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA recommends that the City continue to discuss appropriate means of calculating pollutant loads with IDEQ and other watershed partners. In general, pollutant load is a calculated relationship reflecting runoff quantity, concentration, and total drainage area. In 2011, in response to the City’s inquiry, EPA provided the City with IDEQ staff’s suggested guidance regarding calculating pollutant loads using the Simple Method,² as outlined and available at <https://www.stormwatercenter.net/>. An alternative example for calculating pollutant loads includes the Washington Department of Ecology’s *Calculating Pollutant Loads for Stormwater Discharges Standard Operating Procedure* Version 1.1, Publication 18-10-026 (July 2018), available at <https://fortress.wa.gov/ecy/publications/documents/1810026.pdf>.

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

- 23. (City) Regarding Permit Part 7.10 (Bypass of Treatment Facilities)** the City notes that it is unclear of how this section is related to Coeur d’Alene’s MS4.

Response: NPDES regulations at 40 CFR §§ 122.41 through 122.43 require the provisions reflected in Permit Parts 7 and 8 to be included in each NPDES permit. Specifically, 40 CFR §122.41 states:

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

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

² See: Schueler, T.R. 1987. *Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs*. Metropolitan Washington Council of Governments, Washington, DC.; currently available at <https://www.stormwatercenter.net/>; once there, click on *Monitoring & Assessment > Rapid Assessment Methods > The Simple Method*.

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

In prior Phase II MS4 permits previously issued in Idaho, EPA erred by not including all mandatory provisions as required by 40 CFR §§122.41 through 122.43. As explained in the Fact Sheet, “if a particular provision in Permit Parts 7 or 8 does not apply to the Permittees MS4 discharges or facilities, the Permittees do not need to comply with that provision.” See FS at page 33. However, in response to similar comments on other Idaho MS4 permits,³ EPA notes that this provision can be interpreted in light of overall maintenance and operation of the MS4. The first sentence of Part 7.10.1 addresses most if not all situations likely to be encountered by a Permittee during the appropriate operation and maintenance of a MS4: “*The Permittees may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation.*”

In this case, the Permit’s “effluent limitations” are the narrative terms and conditions requiring the Permittee’s implementation of the stormwater management control measures through the SWMP. See preamble to EPA’s *NPDES Municipal Separate Storm Sewer System General Permit Remand Rule*, December 9, 2016, at 89 FR 89337. EPA anticipates it unlikely there will be situations where stormwater must be forced to bypass a treatment BMP that is unrelated to essential maintenance or severe weather-related emergency.

Definitions (Permit Part 9)

24. Subject: 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>. EPA has revised the definition of green infrastructure in the Permit to read as follows:

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

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

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

³ See: EPA’s *Response to Comments on National Pollutant Discharge Elimination System (NPDES) Permit For Discharges from the City of Idaho Falls and Idaho Transportation Department District #6 Municipal Separate Storm Sewer Systems (MS4s) NPDES Permit No. IDS028070* (February 2020).

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



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, ID 83814 • (208) 769-1422
www.deq.idaho.gov

Brad Little, Governor
John Tippets, Director

July 1, 2020

Misha Vakoc, Municipal Stormwater Permit Coordinator
Permitting, Drinking Water and Infrastructure Branch - Water Division
U.S. EPA Region 10
1200 6th Avenue, Suite 155
Mail Code WD-19-H16
Seattle, WA 98101-3188

Subject: FINAL §401 Water Quality Certification for the City of Coeur d'Alene Municipal Separate Storm Sewer System (MS4); NPDES Permit # IDS028215

Dear Ms. Vakoc:

On May 3, 2020, the Coeur d'Alene Regional Office of the Idaho Department of Environmental Quality (DEQ) received the proposed final draft of the above-referenced permit for the City of Coeur d'Alene Municipal Separate Storm 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 direct any questions to Chantilly Higbee at 208.666.4605 or Chantilly.Higbee@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Dan McCracken".

Dan McCracken, Regional Administrator
Coeur d'Alene Regional Office



Idaho Department of Environmental Quality Final §401 Water Quality Certification

July 1, 2020

NPDES Permit Number(s): City of Coeur d'Alene Municipal Separate Sewer System (MS4); NPDES Permit # IDS028215

Receiving Water Body: Coeur d'Alene Lake, Spokane River, and Fernan Creek

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

Based upon its review of the above-referenced permit and associated fact sheet, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

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

Antidegradation Review

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

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

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

Pollutants of Concern

The City of Coeur d'Alene MS4 discharges the following pollutants of concern: sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*), and organic chemicals (pesticides and industrial chemicals). Terms and conditions of the permit and this certification require permittees to reduce pollutant loading to the maximum extent practicable.

Receiving Water Body Level of Protection

The City of Coeur d'Alene MS4 discharges to the Spokane River, Fernan Creek, and Coeur d'Alene Lake within the Upper Spokane River and Coeur d'Alene Lake Subbasin assessment units (AU)s 17010305PN004_04 (Spokane River - Coeur d'Alene Lake to Post Falls Dam), 17010303PN032_03 (Fernan Creek - Fernan Lake to mouth), and 17010303PN001L_0L (Coeur d'Alene Lake). These AUs have the following designated beneficial uses: cold water aquatic life, salmonid spawning, 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 (IDAPA 58.01.02.100).

According to DEQ's 2016 Integrated Report, the Upper Spokane River AU is not fully supporting its cold water aquatic life use. Causes of impairment include lead, phosphorus, and zinc. The contact recreation use is fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use and Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I for the contact recreation use (IDAPA 58.01.02.052.05.c) for the Spokane River.

The Coeur d'Alene Lake AU is not fully supporting its aquatic life use due to exceedances of cadmium, lead, and zinc; the contact recreation use is unassessed. However, *E.coli* data collected in 2008 and 2014 indicate that the recreation use is fully supported. Therefore, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use and Tier II protection (IDAPA 58.01.02.051.02), in addition to Tier I, for the contact recreation beneficial use.

Fernan Creek is not supporting its aquatic life use due to temperature impairment. The contact recreation beneficial use in Fernan Creek is fully supported. Therefore, DEQ will provide Tier I protection for the aquatic life use and Tier II protection, in addition to Tier I, for the contact recreation use of Fernan Creek.

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 municipal separate storm sewer system (MS4) discharge must reduce the discharge of pollutants to the maximum extent practicable (MEP). The terms and conditions contained in the City of Coeur d'Alene MS4 permit and this certification will reasonably assure that permittees reduce pollutants to the MEP.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a 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. The cold water aquatic life use in the Spokane River is not fully supported due to excess lead, zinc and phosphorus (2016 Integrated Report). Although a subbasin assessment and TMDL for lead and zinc has not yet been developed for the Spokane River, this effort is currently underway. A TMDL for phosphorus has not yet been developed, but recent new lower phosphorus effluent limits for municipal dischargers are being implemented. Support status will be re-evaluated in the future and, if necessary, a new TMDL will be developed. Prior to the development of TMDLs for the Spokane River, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04). The permit requirement to execute a comprehensive stormwater management program that includes targeted pollution reduction activities and pollutant assessment and monitoring in each impaired AU by the City of Coeur d'Alene, is consistent with the developing TMDL.

The cold water aquatic life use in Coeur d'Alene Lake is not fully supported due to excess lead, zinc, and cadmium (2016 Integrated Report). A TMDL has not yet been developed for Coeur d'Alene Lake; however, a lake management plan has been developed and is being implemented to limit basin-wide nutrient inputs that impair lake water quality conditions, which in turn influence the solubility of mining-related metals contamination contained in lake sediments.

The cold water aquatic life use in Fernan Creek is not fully supported due to excess heat according to the 2016 Integrated Report. The *Coeur d'Alene Tributaries Temperature Total Maximum Daily Loads: Addendum to the Coeur d'Alene Lake Subbasin Assessment and TMDLs* (DEQ 2012) identified that the cause of impairment is excess temperature loading, due to a lack of shade. The TMDL sets target loads for shade cover with the goal of returning the watershed to natural background vegetation conditions. The TMDL indicates that unique hydrologic conditions exist at the lower portion of Fernan Creek relevant to this MS4, which make it unlikely that the MS4 has any meaningful heat contribution to Fernan Creek during the months when temperatures are most likely to exceed Idaho's WQS. For example, a backwater condition exists at the confluence of Lake Coeur d'Alene and Fernan Creek below the outfall, which influences temperature independent of upstream shade and solar loading. This reach is also directly below the Fernan Lake outlet, making temperature heavily influenced by the upstream lake. In addition, a dam, which controls the elevation of Fernan Lake, exists directly above the reach. Consequently, this reach is significantly dewatered during the late summer months, which makes meeting shade targets on this reach of Fernan Creek unrealistic. These flow alteration and backwater conditions preclude the ability to fully mitigate temperature impairment caused by this condition. Additionally, surface water and stormwater discharge data collected by DEQ and the

City of Coeur d'Alene, respectively, indicate that stormwater discharges from the MS4 contribute temperatures that are on average, consistently cooler than the ambient temperature of Fernan Creek between the months of April through August, which are the months of concern for temperature exceedances of Idaho WQS.

Prior to the development of TMDLs for the Spokane River and Coeur d'Alene Lake, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04). Although the antidegradation policy and implementation provisions do not require consistency with the Coeur d'Alene Lake Management Plan, DEQ notes that the comprehensive stormwater management, monitoring, and pollution reduction activities required by the permit are consistent with the recommended actions in the Plan.

The permit contains clear, specific and measureable provisions for the continued implementation of specific controls, management practices, control techniques, and system design and engineering methods to achieve the requirements of the permit. The provisions in this MS4 permit are at least as stringent as those established in the prior individual MS4 permit for the City of Coeur d'Alene.

Specific terms and conditions of the permit that ensure the Spokane River, Fernan Creek, and Coeur d'Alene Lake receive a Tier I level of protection include:

- a prohibition on snow disposal directly into surface waters;
- specific prohibitions for non-stormwater discharges;
- a requirement to develop/revise a stormwater management plan that includes five control measures:
 - a) public education and outreach,
 - b) illicit discharge detection and elimination,
 - c) construction site stormwater runoff control,
 - d) post-construction stormwater management for new development and redevelopment,
 - e) pollution prevention/good housekeeping for MS4 operations;
- quantitative monitoring/assessment of pollutants removed by BMPs in conjunction with their required maintenance in all impaired AUs;
- requirements for the City of Coeur d'Alene to implement pollutant reduction activities; 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 permittee must take a series of actions to remedy the situation.

In summary, the terms and conditions contained in the City of Coeur d'Alene MS4 permit provide reasonable assurance that the permittee will reduce discharge of pollutants to the maximum extent practicable. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Spokane River, Coeur d'Alene Lake, and

Fernan 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 Spokane River, Fernan Creek, and Coeur d'Alene Lake are considered high quality for recreational uses. As such, the water quality relevant to these uses must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to the primary contact recreation use of the Spokane River, Fernan Creek, and Coeur d'Alene Lake (IDAPA 58.01.02.052.05). Pollutants relevant to recreational uses include the following: microbial pollution, nutrients, metals, chlorides, petroleum hydrocarbons, and organic chemicals.

For a reissued permit or license, the effect on water quality is determined by looking at the difference in water quality that would result from the activity or discharge as authorized in the current permit and the water quality that would result from the activity or discharge as proposed in the reissued permit or license (IDAPA 58.01.02.052.06.a). NPDES permits for regulated small 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. To achieve these goals, the current and proposed MS4 permits implement minimum control measures and rely on iterative practices to identify and reduce discharge of pollutants. Permittees' implementation of these practices must be documented in annual reports to EPA and DEQ for review (Permit Part 6.4.2), and is subject to on-site inspections (Permit Part 8.7). EPA also determined that additional pollutant reduction activities were required for the City of Coeur d'Alene.

This permit reissues the City of Coeur d'Alene's MS4 permit. Due to the nature of MS4 permits, implementing their requirements results in a continual discovery of pollutant sources, use and refinement of BMPs, feedback from BMP implementation and maintenance, additional knowledge through training opportunities, and investigating and resolving complaints. This level of scrutiny and effort combined with requirements to address pollution sources typically leads to improved water quality the longer the permit is in effect. It also generally results in minimal to no adverse change in water quality significant to recreational and aquatic life uses. The permit contains monitoring and assessment expectations for the City of Coeur d'Alene MS4 (Permit Part 4.2). A multitude of case studies illustrate that the use of best management practices (which include stormwater management program elements, permit prohibitions, and other permit conditions) have a measurable positive effect on water quality or a biological metric.¹ In addition, the City of Coeur d'Alene is required to conduct at least two pollutant reduction activities (Permit Part 4.3) targeting pollutants causing impairments in the Spokane River and Coeur d'Alene Lake. Therefore, DEQ has reasonable assurance that insignificant or no degradation will result from the discharge of pollutants from the City of Coeur d'Alene MS4 permit. EPA oversight through review of annual reports and periodic inspections should ensure

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

such correct BMP design, construction, and maintenance. At a minimum, water quality conditions should be maintained from current conditions. Therefore, no adverse change in water quality and thus no degradation is expected with respect to these pollutants.

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

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

Pollutant Reduction Activities in Spokane River and Coeur d'Alene Lake

In carrying out the requirements of Part 4.3 of the permit, the City of Coeur d'Alene must define and implement at least one pollutant reduction activity designed to reduce lead, zinc, and total phosphorus loadings from the MS4 into the Spokane River, and at least one pollutant reduction activity designed to reduce lead, zinc, cadmium, and total phosphorus loadings from the MS4 into Coeur d'Alene Lake.

Reporting of Discharges Containing Hazardous Materials or Deleterious Material

All spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the Coeur d'Alene Regional Office at 208-769-1422 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 Chantilly Higbee, Coeur d'Alene Regional Office at 208-769-1422 or via email at Chantilly.Higbee@deq.idaho.gov.



Dan McCracken

Regional Administrator

Coeur d'Alene Regional Office

Appendix B: Excerpted Information Regarding Monitoring Data

The following information is from Appendix 7 of EPA's *Biological Evaluation & Essential Fish Habitat Assessment for the City of Coeur d'Alene MS4 NPDES Permit No. IDS028215 & Idaho Transportation Department District 1 MS4 NPDES Permit No. IDS028223*

MS4 Discharge Monitoring Locations and Data

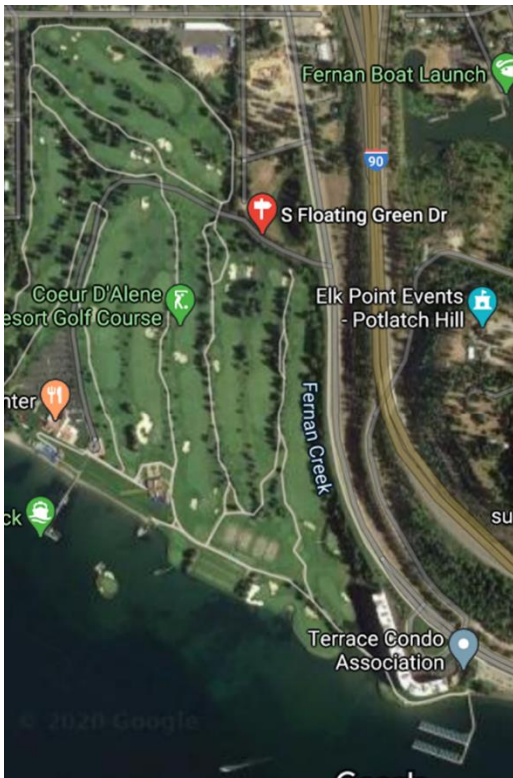
See also Section 5.4.

Sampling Locations

Figure A.7.1 – 1. ITD1's Sherman Interchange outfall to Fernan Creek, a tributary to Lake Coeur d'Alene

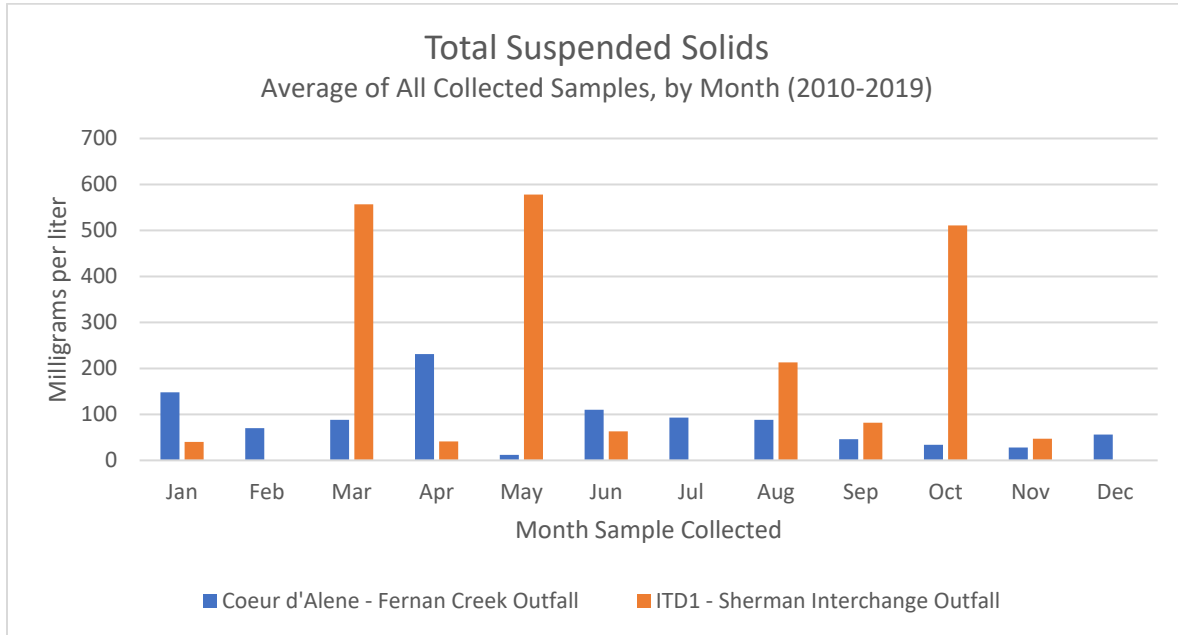


Figure A.7.1 – 2. City's Fernan Creek outfall is located at approximately S. Floating Green Dr. and S. 24th St.



Total Suspended Solids

Figure A.7.2 – 1.



Coeur d’Alene’s median total suspended solids value is 79 mg/l; ITD1’s median value is 82 mg/l.

IDEQ’s narrative standard for sediment and suspended solids are found in IDAPA 58.01.02.200.05 and .08:

05. Floating, Suspended or Submerged Matter. Surface waters of the state shall be free from floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses. This matter does not include suspended sediment produced as a result of nonpoint source activities.

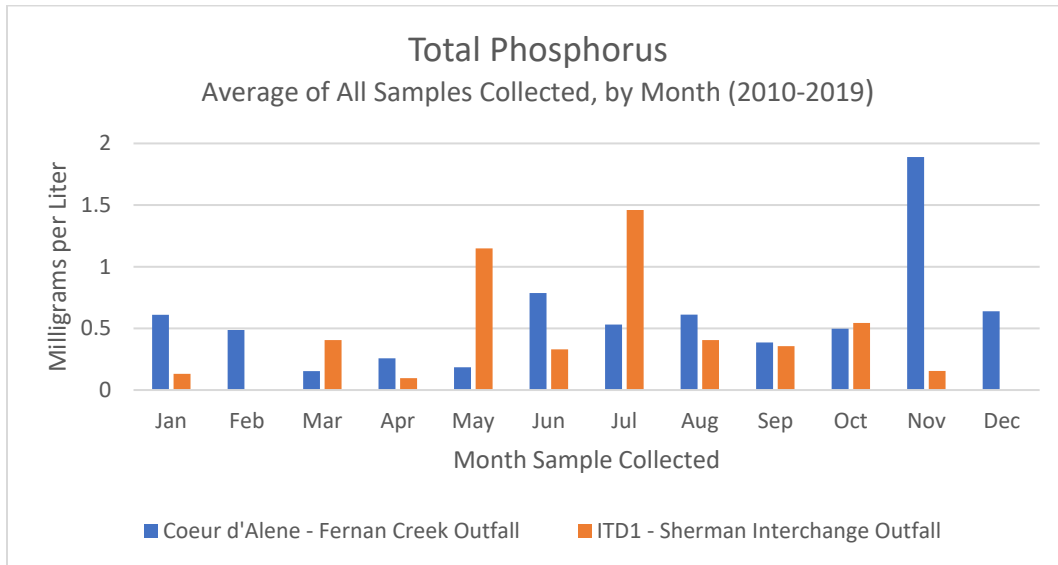
.....

08. Sediment. Sediment shall not exceed quantities specified in Sections 250 and 252, or, in the absence of specific sediment criteria, quantities which impair designated beneficial uses. Determinations of impairment shall be based on water quality monitoring and surveillance and the information utilized as described in Section 350.

Suggested limits for suspended sediment have been developed by the European Inland Fisheries Advisory Commission and the National Academy of Sciences. A limit of 25 mg/L of suspended sediment provides a high level of protection of aquatic organisms; 80 mg/L moderate protection; 400 mg/L low protection; and over 400 mg/L very low protection (Thurston et al. 1979).

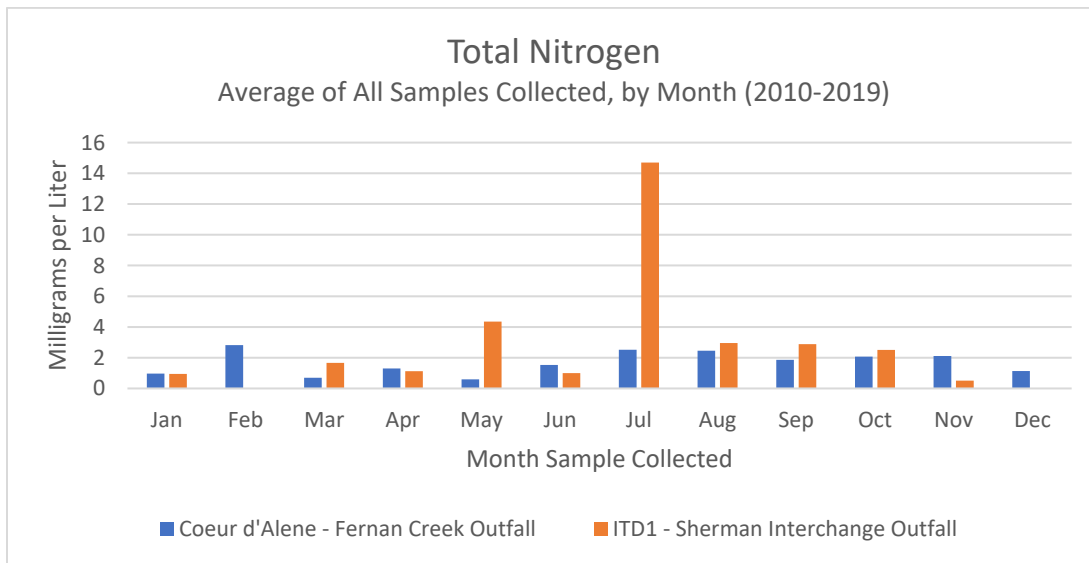
Total Phosphorus and Total Nitrogen

Figure A.7.3 – 1.



Coeur d’Alene’s median total phosphorus is 0.51 mg/l; ITD1’s median is 0.38 mg/l.

Figure A.7.3 – 2.



Coeur d’Alene’s median total nitrogen value is 1.7 mg/l; ITD1’s median total nitrogen is 2.1 mg/l.

IDEQ’s narrative standard for excess nutrients and oxygen demanding materials are found in IDAPA 58.01.02.200.06 and .07

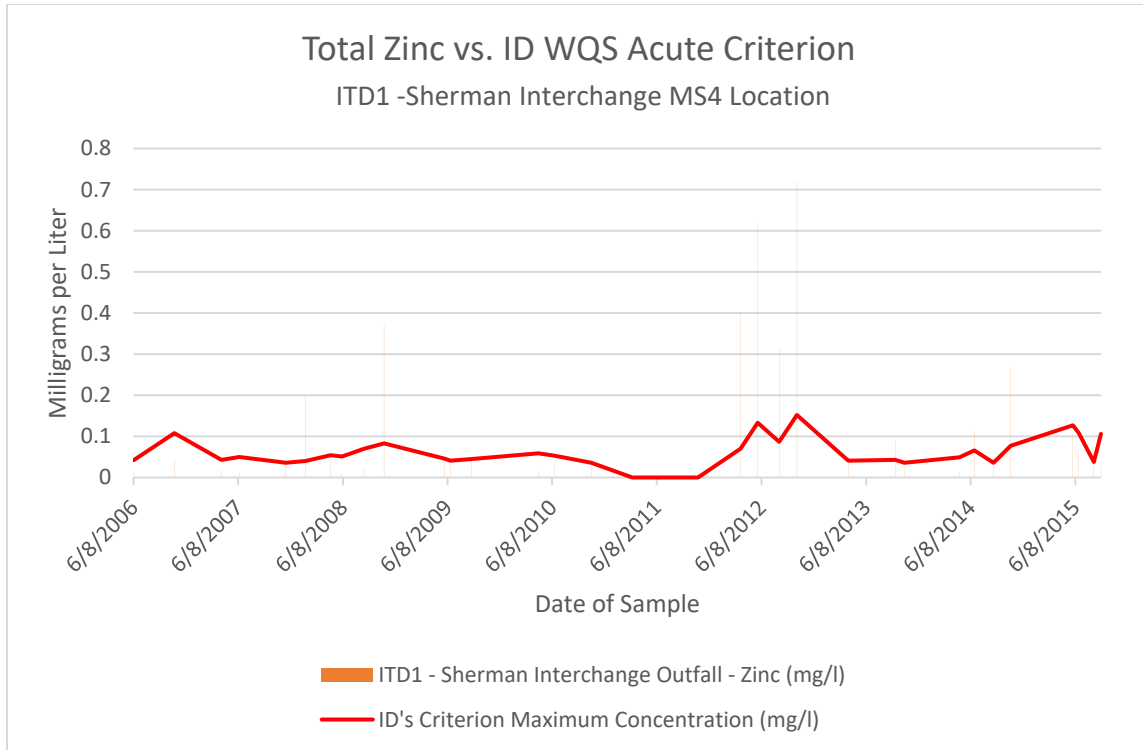
06. Excess Nutrients. Surface waters of the state shall be free from excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated beneficial uses. (8-24-94)

07. Oxygen-Demanding Materials. Surface waters of the state shall be free from oxygen-demanding materials in concentrations that would result in an anaerobic water condition.

EPA’s National Recommended Criteria for total phosphorus is 0.1 mg/L.

Total Zinc and Total Lead

Figure A.7.4 – 1. ITD1 Total Zinc



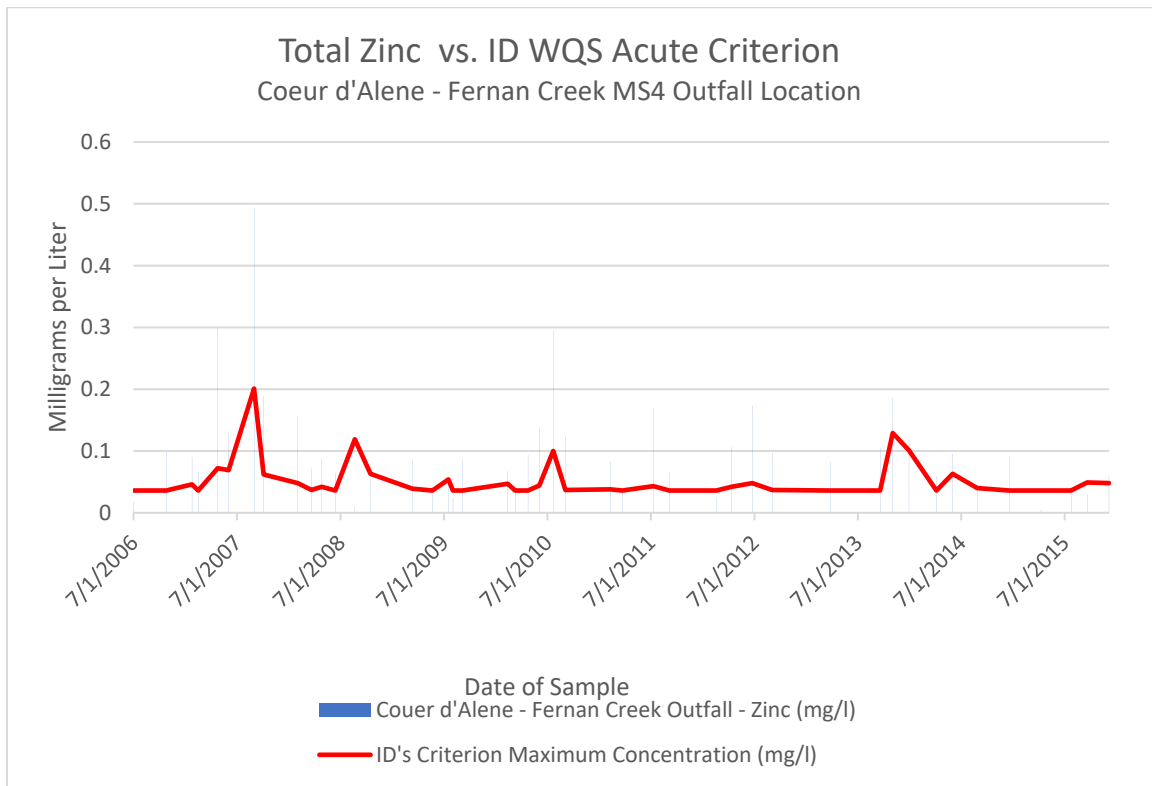
ITD1's median total zinc value is 0.041 mg/l.

Note: Same day samples were analyzed for total zinc and hardness; the IDEQ water quality standard for total zinc is hardness dependent.

The graphs above compare the collected samples to IDEQ's ambient acute water quality criteria for total zinc, otherwise known as the criterion maximum concentration (CMC).

Calculations for the CMC were done using the IDEQ recommended spreadsheet for metals at <https://www.deq.idaho.gov/water-quality/surface-water/water-quality-criteria/toxic-substances-criteria/>

Figure A.7.4 – 2. Coeur d'Alene Total Zinc



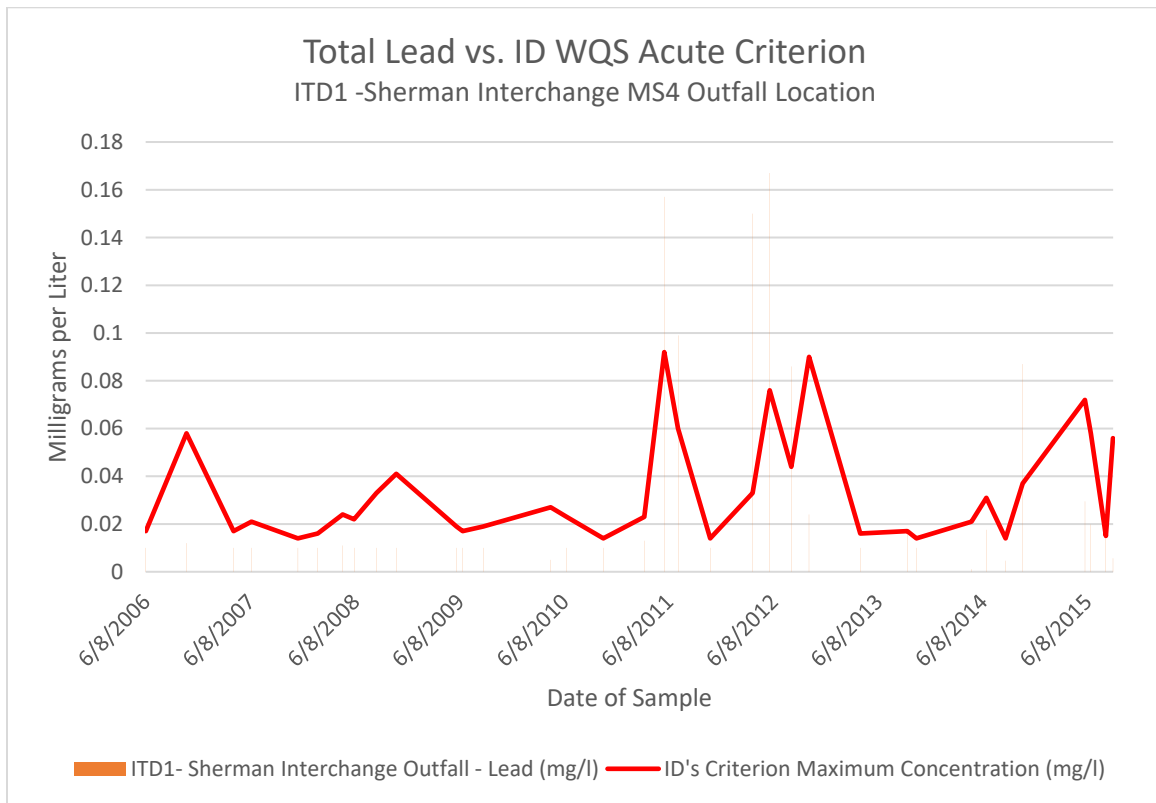
Coeur d'Alene's median total zinc value is 0.09 mg/l.

Note: Same day samples were analyzed for total zinc and hardness; the IDEQ water quality standard for total zinc is hardness dependent.

The graphs above compare the collected samples to IDEQ's ambient acute water quality criteria for total zinc, otherwise known as the criterion maximum concentration (CMC).

Calculations for the CMC were done using the IDEQ recommended spreadsheet for metals at <https://www.deq.idaho.gov/water-quality/surface-water/water-quality-criteria/toxic-substances-criteria/>

Figure A.7.4 - 3. ITD1 Total Lead



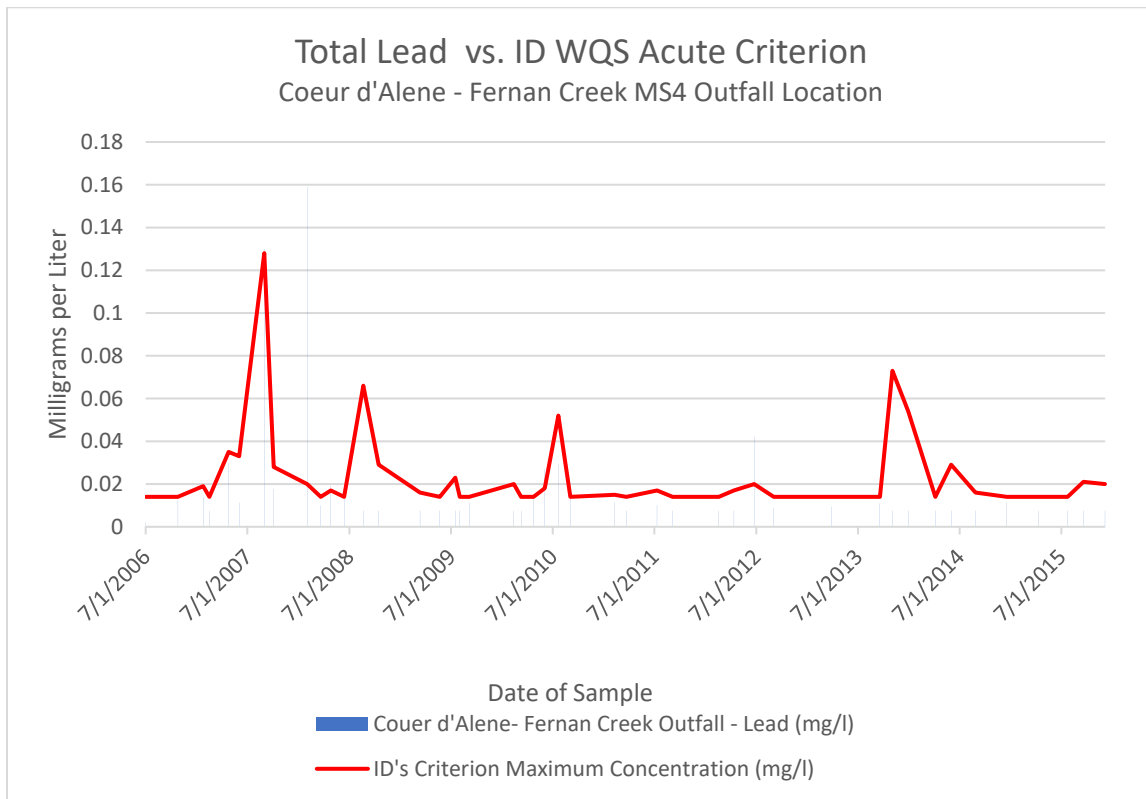
ITD1’s median total lead value is 0.01 mg/l.

Same day samples were analyzed for total lead and hardness; the IDEQ water quality standard for total lead is hardness dependent.

The graphs above compare the collected samples to IDEQ’s ambient acute water quality criteria for lead otherwise known as the criterion maximum concentration (CMC).

Calculations for the CMC were done using the IDEQ recommended spreadsheet for metals at <https://www.deq.idaho.gov/water-quality/surface-water/water-quality-criteria/toxic-substances-criteria/>

Figure A.7.4 – 4. Coeur d'Alene Total Lead



Coeur d'Alene's median total lead value is 0.0075 mg/l.

Same day samples were analyzed for total lead and hardness; the IDEQ water quality standard for total lead is hardness dependent.

The graphs above compare the collected samples to IDEQ's ambient acute water quality criteria for lead otherwise known as the criterion maximum concentration (CMC).

Calculations for the CMC were done using the IDEQ recommended spreadsheet for metals at <https://www.deq.idaho.gov/water-quality/surface-water/water-quality-criteria/toxic-substances-criteria/>