Response to Comments on
National Pollutant Discharge Elimination System (NPDES) Permit
For Discharges from the
City of Nampa
Municipal Separate Storm Sewer System
NPDES Permit No. IDS028126

December 2020

U.S. Environmental Protection Agency, Region 10

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Introduction

On September 1, 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 Nampa (City) in Canyon County, Idaho. The permit document #IDS028126 will be referred to in this document as "the Permit." The public comment period ended on October 16, 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 October 7, 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.

Edits to the Final Permit

EPA has made minor editorial changes throughout the Permit text for clarity, grammar, and as identified through public comments. Major changes have been made to the Permit Parts identified in Table 1 below in response to comments and IDEQ certification.

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.

Table 1. Edits to Final Permit

Edits Based on Public Comments Received:	
Effective dates, Schedule, implementation deadlines	See Response #3
Permit Part 3.4.6	See Response #26
Permit Part 6.2.5.4	See Response #32
Permit Part 6.3.1	See Response #37
Permit Parts 8.4 and 8.5	See Response #47
Permit Part 9	See Response #51
Edits Based on IDEQ Actions:	
Permit Parts 2.5.7; 3.2.7.1; 4.2 and 4.3; Appendix A.2	Conditions of IDEQ's *Final §401 Water Quality Certification for the City of Nampa Municipal Separate Storm Sewer System; NPDES Permit #IDS028126*, dated October 7, 2020. See Appendix A of this document.

Response to Comments

The Association of Idaho Cities (AIC) and the City of Nampa (City) submitted comments. This document identifies the single AIC comment as such; all other comments were submitted by the City and are identified either by topic or relevant Permit Part. Comments are generally reflected verbatim, while some have been combined or summarized for brevity.

General

1. **(AIC):** AIC members appreciate EPA R10 staff efforts to ensure the requirements contained in the proposed Permit reflect the plain language of the Clean Water Act (CWA) and Code of Federal Regulations (CFRs) for MS4 permits. Specifically, requirements to reduce the discharge of pollutants to receiving water bodies to the maximum extent practicable (MEP).

   AIC has discussed the proposed Permit with the City of Nampa 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. **Phase II Permit Distinction:** This draft permit does not include any text to distinguish it as a Phase II permit. Please include that distinction on page 1 of the permit. The distinction is important to document as the federal requirements differ for Phase I and Phase II permittees.

   Response: EPA has not revised the text as suggested; no change has been made to the Permit. It is unnecessary to revise the cover page to identify Permit #IDS028126 as a Phase II MS4 Permit. The Fact Sheet supporting the Permit reissuance clearly identifies the City as a regulated small MS4, and the Phase II regulations at 40 CFR §§ 122.30 - 35 as the basis for the Permit's terms and conditions for discharges from the City's regulated small MS4.

3. **Effective Date:** If this permit becomes effective November 1, it should expire October 31 to reflect a full five-year permit term. This end date cuts the permit short by one month. Please revise to October 31, 2025.

   Response: EPA has revised the Permit to provide a full five-year permit term. The Permit will become effective on February 1, 2021 and will expire on January 31, 2026. Associated implementation dates identified throughout the Permit text have been adjusted accordingly to reflect these dates.

4. **Permitting Authority:** This Draft Permit includes references to both EPA and IDEQ, which is confusing regarding identification of the ultimate permitting authority. In some cases, documents must be submitted to both agencies and approvals are required from both agencies. Where both authorities are listed, it is not clear who has ultimate decision-making authority. This could be problematic if EPA and IDEQ were to disagree on an issue. The City must have clarity and certainty related to the permitting authority and the ultimate decision-making authority. We understand efforts are underway to delegate the permitting authority to IDEQ. Until that transition occurs, please include only EPA as the permitting authority for this permit. EPA may provide relevant documents to IDEQ to support the transition as appropriate without requiring submittal of documents to IDEQ in advance of the permit transition. The permit should be modified to include IDEQ only when, or if, that delegation of authority takes place. The City states Permit Part 5.1.1.1 is an example where the NPDES permit authority is unclear.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA disagrees that the decision-making authority is unclear; FS Section 1.2 states: "*…On June 5, 2018, EPA approved Idaho's application to administer and enforce the Idaho Pollutant Discharge Elimination System (IPDES) program. [IDEQ] is taking the IPDES program in phases over a four-year period in accordance with the Memorandum of Agreement…between IDEQ and EPA, and subject to EPA oversight and enforcement. IDEQ will obtain permitting authority for the stormwater phase on July 1, 2021. At that time, all documentation required by the permit will be sent to IDEQ rather than to EPA and any decision under the permit stated to be made by EPA or jointly between EPA and IDEQ will be made solely by IDEQ. Permittees will be notified by IDEQ when this transition occurs."* Emphasis added.

EPA is the NPDES permitting authority until June 30, 2021; EPA will review any alternative control measure (ACM) request or submittal prior to that date and will coordinate with IDEQ prior to deciding on final action. Any ACM request or submittal after June 30, 2021 will be decided upon by IDEQ. EPA notes that the City need not wait until the deadline identified in the Permit to submit ACM requests.

5. **Waters of the United States:** In several instances the draft Permit references *"Waters of the State".* Please remove those references and replace them with "Waters of the United States." Specifically, the Permit incorrectly references "waters of the state" in the Permit Part 9 definitions of *toxic substance*, *nuisance, impaired waters;* in Permit Part 3.2.7.1; and Permit Appendix A.

   Response: Response: EPA has not revised the text as suggested; no change has been made to the Permit. In all cases identified in this comment, the Permit appropriately references *Waters of the State* as specific definitions that are either quoted from Idaho water quality standards at IDAPA 58.01.02.010, or that are part of a condition in the final CWA Section 401 Certification for the Nampa MS4 Permit related to reporting of discharges of hazardous or deleterious materials. See Appendix A of this document.

Limitations and Conditions (Permit Part 2)

6. **Part 2.4.5 Non-Stormwater Discharges, specifically subpart 2.4.5.2.9, as quoted below:** The Draft Permit states that the Permittee is not authorized to discharge non-stormwater from the MS4, except where the non-stormwater discharge falls under one of the allowable categories listed in Part 2.4.5.1, AND that it is not a source of pollution to waters of the United States as defined in Part 2.4.5.2. Thereafter, Part 2.4.5.2.9 defines a source of pollution as detailed below. This is problematic because the exception and the definition incorrectly imply that the natural background conditions apply to discharges in the MS4. By their very nature, some allowable non-stormwater discharges may include materials that are not consistent with natural background conditions in receiving waters (e.g., residential car wash runoff, landscape irrigation). Please delete Part 2.4.5.2.9, as it would render many categories of allowable non-stormwater discharges to be un-allowable.

   2.4.5.2.9. Material in concentrations that exceed applicable natural background conditions in receiving waters (IDAPA 58.01.02.200. 09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.01.02.401.

   Response: EPA has not revised the text as suggested; no change has been made to the Permit. This provision was included in the administratively extended Nampa MS4 permit that was issued in 2009. Part 2.4.5.2 in its entirety represents appliable water quality standards for MS4 receiving waters that IDEQ defines as necessary for EPA to include in all Idaho MS4 Permits. At issue is whether information exists showing that the MS4 discharge contains pollutants that

exceed the natural background condition of the receiving water, as defined by the Idaho water quality standards; if so, the MS4 discharge would be considered a source of pollution.

7. **Part 2.4.5.2 Non-Stormwater Discharges – Sources of Pollution to Waters of the United States:** This section conflates requirements for receiving waters and requirements for discharges. Proposed edits are provided below. The language in this section for *Sources of Pollution to Waters of the United States* is problematic because as stated, its intent is to define when a discharge is considered a source of pollution, but instead the language implies that receiving water standards apply to the non-stormwater discharges. Water quality standards apply to the receiving waters and NOT to the MS4 discharges. As such, it is important that the wording in this definition accurately reflects this. Please see the suggested revisions and wording [below].

2.4.5.2 Sources of Pollution to Waters of the United States

A discharge is considered a source of pollution to waters of the United States if it contains:

2.4.5.2.1 Hazardous materials in concentrations found to be of public health significance or to impair beneficial uses in receiving waters. ("Hazardous materials" is defined in IDAPA 58.01.02.010.47 and Part 9 of this Permit); and/or

2.4.5.2.2 Toxic substances in concentrations that impair designated beneficial uses ~~in~~ ***when discharged to*** *receiving waters. ("Toxic substances" is defined at IDAPA 58.01.02.010.102 and Part 9 of this Permit); and/or*

2.4.5.2.3 Deleterious materials in concentrations that impair designated beneficial uses ~~in~~ ***when discharged to*** *receiving waters. ("Deleterious materials" is defined at IDAPA 58.01.02.010.21 and Part 9 of this Permit); and/or*

2.4.5.2.4 Radioactive materials or radioactivity at levels ***that when discharged would result in exceedences of*** *~~exceeding~~ the values listed in 10 CFR § 20 in receiving waters; and/or*

2.4.5.2.5 Floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or in concentrations that may impair designated beneficial uses ~~in~~ ***when discharged to*** *receiving waters; and/or*

2.4.5.2.6 Excessive nutrients that can cause visible slime growths or other nuisance aquatic growths that impair designated beneficial uses ~~in~~ ***when discharged to*** *receiving waters; and/or*

2.4.5.2.7 Oxygen-demanding materials in concentrations that would result in anaerobic water conditions ~~in~~ ***when discharged to*** *receiving waters; and/or*

2.4.5.2.8 Sediment above quantities specified in IDAPA 58.01.02.250.02.e or in the absence of specific sediment criteria, above quantities that impair beneficial uses ~~in~~ ***when discharged to*** *receiving waters; and/or*

~~2.4.5.2.9 Material in concentrations that exceed applicable natural background conditions in receiving waters (IDAPA 58.01.02.200. 09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.01.02.401.~~

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA is not applying the Idaho water quality standards to the MS4 discharge. If the MS4 discharge exceeds the narrative Idaho water quality standard reflected in Permit Part 2.4.5.2, the MS4 discharge will be considered a source of pollution. The edits suggested by the commenter are not needed, because the intent of the provision is the same (i.e., if the MS4 discharge contains pollutants as listed in Permit Part 2.4.5.2, the discharge is considered a

source of pollution). EPA also notes that the text in Permit Part 2.4.5.2 is included in all MS4 permits issued by EPA Region 10, including the administratively extended Nampa MS4 permit as issued in 2009.

8. **Part 2.4.5.2 *Non-Stormwater Discharges – Sources of Pollution to Waters of the United States*,** specifically, **Part 2.4.5.2..4:** This Part needs to be reworded as this section is about: "A discharge is considered a source of pollution to waters of the US if it contains..." The way it is worded now is reflective of the receiving water and not the discharge. This indicates the standard applies in pipe which is not the case. Please revise to say, "at levels *that would cause exceedences* of the values listed in 10 CFR 20 in receiving waters." See edits in Comment #7.

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

9. **Part 2.4.5.2 *Non-Stormwater Discharges – Sources of Pollution to Waters of the United States,*** specifically, **Part 2.4.5.2.9**: Please delete this Part 2.4.5.2.9. By their very nature, some of the allowable non-stormwater discharges would have materials that exceed natural background conditions. If this section is maintained, then please reword as suggested so that it reflects that this section applies to the discharge and not to the receiving water. The way it is worded implies that the natural background conditions would apply to the discharge which is not correct. See edits in Comment #7.

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

10. **Part 2.5.2 *Maintain Adequate Legal Authority*:** The Draft Permit states that the Permittee must maintain relevant ordinances and/or regulatory mechanisms to control pollutant discharges into and from its MS4 to comply with the permit. The City does not have the authority to regulate discharges into the MS4 that originate from outside of its jurisdiction. Please reword this sentence to add the underlined text: "The Permittee must maintain relevant ordinances and/or regulatory mechanisms to control pollutant discharges into and from its MS4 *that originate within its permit coverage area*."

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA recognizes that the City does not have authority to regulate discharges that originate from outside its jurisdiction; however, this issue was addressed during EPA's Phase II stormwater regulation rulemaking and, as seen below, the expectation is that the City will regulate/control discharges in its own MS4 and should work with neighboring jurisdictions if there is an illicit discharge that originates in a neighboring jurisdiction. Specifically, the preamble to that rulemaking states:

    > *"EPA received comments regarding an MS4's legal authority beyond its jurisdictional boundaries to inspect or take enforcement against illicit discharges. EPA recognizes that illicit flows may originate in one jurisdiction and cross into one or more jurisdictions before being discharged at an outfall. In such instances, EPA expects the MS4 that detects the illicit flow to trace it to the point where it leaves their jurisdiction and notify the adjoining MS4 of the flow, and any other physical or chemical information. The adjoining MS4 should then trace it to the source or to the location where it enters their jurisdiction. The process of notifying the adjoining MS4 should continue until the source is located and eliminated. In addition, because any non-storm water discharge to waters of the U.S. through an MS4 is subject to the prohibition against unpermitted discharges pursuant to CWA section 301(a), remedies are available under the federal enforcement provisions of CWA sections 309 and 505."*

- From: *National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule;* 64 FR 68757 (12/09/1999).

11. **Part 2.5.2.6 *Maintain Adequate Legal Authority*,** in subpart as quoted below**:** Please replace the word "determine" with the word "support." "Determine" is a very definitive word. While our programs work to identify compliance and noncompliance, it cannot be 100% confirmed as we cannot be in all locations at all times**.**

    2.5.2.6. Carry out all inspection, surveillance, and monitoring procedures necessary to ~~determine~~ ***support*** *compliance and noncompliance with these Permit conditions, including the prohibition of illicit discharges to the MS4.*

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA developed the Permit text in this subpart from federal stormwater regulations at 40 CFR 122.26(d)(2)(i) and 40 CFR 122.34(b)(3)(ii)(B), (b)(4)(ii)(A), and (b)(5)(ii)(B)), and this Part 2.5.2 is intended to be implemented "to the extent allowable pursuant to authority granted the Permittee under applicable Idaho state law." EPA expects the City to have an ordinance or other enforceable mechanism in place that allows the City to carry out inspections, etc. that determine compliance with the City's requirements and, as a result, with the MS4 permit conditions. EPA further clarifies that the word "determine" doesn't mean to verify compliance 100% of the time.

12. **Part 2.5.7 *Best Management Practice (BMP) Selection*** This document reference here only appears to be applicable to the construction and post-construction programs and not all SWMP control measures. Language here says the document MUST be considered for all the required SWMP control measures. It should specify that the document is for construction and post-construction control measures only and not refer to all required SWMP control measures. Commenter suggests inserting text to recognize "*for Construction Site Runoff Control (Part 3.3) and Post-Construction Site Stormwater Management (Part 3.4)"*

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. This requirement to consider IDEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties* is a condition of IDEQ's final CWA Section 401 certification. Therefore, pursuant to CWA Section 401(d), EPA is required to incorporate this provision into the Permit. It should be noted that this provision has been revised to reflect the final condition in the final CWA Section 401 certification from IDEQ. See Appendix A of this document. The revised language states:

    Best management practices must be designed, implemented, inspected, and maintained by the Permittee to fully protect and maintain the beneficial uses of waters of the United States and to improve water quality at least to the maximum extent practicable.

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

    Given IDEQ's revision to the text through its CWA Section 401 certification condition, it is clear that the Permittee is required to *consider* practicable BMPs identified in IDEQ's document. The condition does not require strict adherence to selecting BMPs from IDEQ's document.

13. **Part 2.6** ***Alternative Control Measure (ACM) Requests, General Requirement, Actions to Address Discharges to Impaired Waters,*** and ***Recognition of Alternative Control Measures*****:** [First, it is] not appropriate to have two permitting authorities listed here and throughout the permit. Where does the buck stop in terms of decision making, and do we have to wait for approval from both? What if we get approval from one entity? Is that good enough? Please just list EPA and modify the permit to replace EPA with IDEQ when, or if that transition takes place. [Second], please provide a timeline or timeframe for when the City can expect to receive responses from EPA regarding submitted ACM requests. Without this timeline, it is very difficult to set budgets and schedule staff activities with any certainty.

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. See also Response #4. EPA is the NPDES permitting authority until June 30, 2021; EPA will review any ACM request or submittal prior to that date and will coordinate with IDEQ prior to deciding on final action. Any ACM request or submittal after June 30, 2021 will be decided upon by IDEQ. EPA notes that the City need not wait until the deadline identified in the Permit to submit ACM requests.

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

14. **Parts 3.1.2** ***Conduct a Public Education, Outreach and Involvement Program*** and **3.1.3** ***Stormwater Education Activities*****s** This section is confusing as [in the first sentence] it says you need to target one of the four audiences. Text highlighted below is written in a way that could be interpreted to contradict that (see related comment below).

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. The purpose of this section is to require the Permittee to specifically target educational efforts during the permit term. The first sentence in Part 3.1.2 states that, "*coordination and educational efforts must target <u>at least one of the four audiences</u> listed in Part 3.1.4.*" [Emphasis added]. The first sentence in Part 3.1.3 states the Permittee *must distribute and/or offer at least eight (8) educational messages or activities over the permit term to the selected audience(s)…*"

    EPA therefore clarifies that the Permittee must select at least one of the audiences listed in Part 3.1.4 as a focus for their educational efforts during the permit term but is free to decide to target more than one audience if they choose. A minimum of eight educational messages must be accomplished during the Permit term; those eight (or more) educational efforts may be distributed to a single target audience, or to multiple audiences, as determined by the Permittee.

15. **Part 3.1.5** ***Public Education Assessment:*** This is a complex task if it is going to be done in a way that results in meaningful or useful information. Behavior changes happen over the long term and are very difficult to measure or see on an annual basis. There is not enough information generated in a year, or even in multiple years to obtain meaningful evaluations and conclusions regarding the effectiveness of public education programs related to changing behaviors. It will require significant resources beyond what is feasible on an annual basis to conduct the type of assessments (e.g., baseline and follow-up public surveys) that would provide any type of useful results. We request that this requirement is removed from the permit. If it remains, it should only be required once during the permit term. In the second sentence, it should say "The resulting assessments must be considered..." as opposed to "The resulting assessments must be used..." It is possible that the assessments may not result in useful information. In addition, the fact sheet should provide examples of what types of assessments would provide valuable information.

Response: EPA has not revised the text as suggested; no change has been made to the Permit as a result of this comment. As explained on page 18 of the FS " *…A vital, yet challenging, component of successful education programs is the assessment of whether the Permittees' efforts are achieving the goals of increasing public awareness and behavior change to improve water quality…..EPA recognizes and encourages the long-term nature of such assessment activities, and notes that there may be opportunities for Permittees to work together within the State, or with other organizations, on specific MS4 topics if they choose to do so.*" [Emphasis added]

EPA intends for the Permittee to build-in a means of measuring success or failure regarding their selected education activity(ies); such measurement/assessment may be scaled to the activity and need not occur within the five-year permit term. EPA recognizes that assessment of public education efforts occurs over the long term, and the Permit text, as written, recognizes that the Permittee might be reporting on the "incremental assessment" of their selected public education and outreach efforts in each Annual Report and at the end of the permit term. EPA encourages the City to consult with watershed partners and other MS4 Permittees in Idaho to find common goals and shared activities.

16. **Part 3.1.7 Education on SWMP Control Measures,** as quoted below. Regarding 3.1.7.1. this is duplicative with 3.1.4.3. It is confusing to have different education requirements located in different areas of the permit. Please consolidate so they are all in one place. Regarding 3.1.7.2, the City can provide training to educate but we can't ensure that the audiences are aware and informed. Please reword as indicated with edits.

    3.1.7 Education on SWMP Control Measures

    For each SWMP control measure listed below, the Permittee must provide educational opportunities and materials for appropriate audiences in their jurisdiction.

    3.1.7.1 Outreach/Training on Construction Site Control Measures: At least twice during the Permit term, the Permittee must provide educational materials for construction operators working in their jurisdiction pertaining to the Permittee's

    *3.1.7.2 Outreach/Training on Permanent Stormwater Controls: At least twice during the Permit term, the Permittee must provide opportunity and/or conduct training sufficient to educate ~~and ensure that~~ engineers, site designers, and/or other locally appropriate audiences working in their jurisdiction ~~are aware and informed~~ ~~of~~ **regarding** appropriate selection, design, installation, use, and maintenance of permanent stormwater controls imposed by the Permittee as described in Part 3.4.3.*

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA clarifies that Part 3.1.4.3 identifies one of four optional audiences (namely, the Construction/Development audience of local engineers, contractors, developers, landscape architects, site design professionals) that the Permittee may select to focus its primary public education and outreach efforts. The Permittee may choose to target their efforts on the general public, on business/industrial/commercial entities, or on their elected officials and land use policy/planning staff.

    In contrast, Permit Parts 3.1.7.1 and 3.1.7.2 identifies specific actions and audiences that the Permittee must address to continue advancing general understanding and proper implementation of the City's stormwater requirements.

17. **Part 3.1.8.2 Publicly Accessible Website**- specifically, text that reads …"*[r]eports, plans, strategies, or documents generated by the Permittee in compliance with this Permit, in draft form when the Permittee is soliciting input from the public, and in final form when the document is completed'"*

    There are many documents generated in terms of compliance with this permit. This language should specify exactly which documents are being referred to here such as the annual reports, stormwater management plan, post construction standards and construction standards. In addition, it does not always seem appropriate to post draft documents. For example, it does not seem appropriate to require all public education materials to be posted in draft and final form. Please be more specific here for clarity.

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. The provision directs the Permittee to include all documents required by the Permit to be readily available to the public. Documents required by the Permit include the Stormwater Management Program Document; Annual Reports; Monitoring/Assessment Plan(s) and description of pollutant reduction activities specifically identified and submitted by the Permittee in compliance with Permit Part 4. The City must follow its local and state public notice requirements to seek input as appropriate on local ordinances or policies; in such cases, EPA is requiring the City to make such documents available on its publicly accessible website. As an example of this process, the Pocatello Urbanized Area MS4s recently sought public input on their draft Stormwater Monitoring and Quality Assurance Project Plans through meetings with local watershed stakeholders and by posting the documents on their website prior to submitting the documents to EPA as required by their MS4 Permit. EPA has proposed to modify the MS4 Permit to incorporate the Monitoring Plan as an enforceable provision of the Pocatello Urbanized Area MS4 Permit, and the draft materials may be removed from the Permittees' website.

Illicit Discharge Detection and Elimination (Permit Part 3.2)

18. **Part 3.2.2** ***Illicit Discharge Detection and Elimination-MS4 Map and Outfall Inventory,*** as quoted below: Please remove "overall physical condition" from the mapping requirement. Our mapping is mostly completed for the outfalls and this requirement would result in the need to investigate our over 1,600 outfalls and require resources beyond those that are available for implementing our stormwater program. We have an asset management program that will include collection of this kind of information on an incremental basis over a longer term.

    The Permittee must update, or develop if not already completed, a map of their MS4 and all associated outfall locations under its operational control within the Permit Area.

    The Permittee must maintain an outfall and interconnection inventory to accompany the MS4 map(s). The purpose of the inventory is to identify each outfall and interconnection discharging from the Permittee's MS4; record its location (by latitude and longitude) ~~and overall physical condition~~; and provide a framework for the Permittee to track its outfall inspections, dry weather discharge screenings, maintenance, and other activities required by this Permit.

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. The City's asset management system contains sufficient information about the MS4, and the incremental addition of data that the City intends on collecting through their asset management program to record the physical condition is sufficient to comply with this requirement.

19. **Part 3.2.4.2** ***Illicit Discharge Detection and Elimination-Response to Complaints or Reports from the Public,*** as quoted below**:** What if some complaints are deemed harmless? A complaint doesn't

necessarily mean it is an illicit discharge. Using the word "all" here is potentially problematic. Please reword to say that the Permittee must consider all complaints and respond and investigate as appropriate to address illicit discharges as soon as possible, but no later than within two (2) working days.

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.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. If the City investigates the complaint or report and determines the report to be harmless, then the City has responded/investigated the report or complaint as the Permit requires. The City cannot deem a complaint or report to be harmless without some measure of investigation or follow-up.

20. **Part 3.2.5.3 *Illicit Discharge Detection and Elimination-Monitoring of Illicit Discharges,*** as quoted below: Please add the underlined text below to the sentence below, and delete the text as indicated. Sometimes sources are not identifiable even with significant efforts to track flows. Identification of what? Please strike these two words. This section specifies "in-field" analysis. However, many of the parameters listed cannot be analyzed in the field (e.g., TSS). Please remove parameters that cannot be analyzed in the field.

Where dry weather flows from the MS4 are identified by the Permittee, the Permittee must ***conduct work to attempt to*** *identify the source of such flows* ***as feasible****, and take appropriate action to eliminate the flows to the extent allowable pursuant to authority granted the Permittee under Idaho state law. At a minimum, the Permittee must conduct sampling of dry weather flows via grab samples of the discharge for in-field analysis ~~and identification~~ and may elect to use the following as indicator constituents: pH; total chlorine; detergents as surfactants; total phenols; E. coli; total phosphorus; turbidity; temperature; and suspended solids concentrations. Results of any field sampling must be compared to established trigger threshold levels and/or existing state water quality standards to direct appropriate follow-up actions by the Permittee in accordance with existing protocols and the ordinance/regulatory mechanism established by the Permittee*.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Adding the suggested edits to this provision would not make the text more "clear, specific, and measurable" as required by 40 CFR § 122.34. See also Response #55.

With regard to in-field analysis of constituent presence in dry weather discharges, the Permit text states that the Permittee may elect to use one or more of the subsequently listed constituents as indicator constituents. Thus, the City is not required to analyze the discharge for all of the listed pollutants; instead, the City is required to select at least one of the pollutants for in-field analysis. EPA recognizes that *E. coli,* total phosphorus, and suspended solids concentrations are not necessarily suited for in field analytical tests; however, other MS4 permittees in the Lower Boise River watershed (such as Ada County Highway District) include analytical methods for these parameters in their dry weather MS4 discharge investigations, specifically in order to identify whether they are present and contributing to impaired receiving waters. See: Ada County Highway District Phase I Stormwater Management Plan, Appendix 17, Dry Weather Outfall Screening Plan. December 2019. Permit No. IDS-027561. At: https://www.achdidaho.org/Documents/Engineering/Stormwater/StormwaterManagementPlanPhaseI.pdf.

21. **Part 3.2.6 – *Illicit Discharge Detection and Elimination- Follow up***, as quoted below: The word determine here is very definitive. The City will attempt to determine the source. Please insert the words "attempt to" before the word "determine."

Within thirty (30) days of its detection, the Permittee must investigate recurring illicit discharges identified as a result of complaints or identified as a result of the dry weather screening investigations and sampling, to determine the source of such discharge.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The Permit requires the Permittee to investigate and identify the source of an illicit discharge once it is discovered in the MS4 discharge in order to respond and eliminate the discharge appropriately if it is not identified as a conditionally allowable non-stormwater discharge as listed in Permit Part 2.4. See also Response #11.

22. Part 3.2.8 *Proper Disposal of Used Oil and Toxic Materials*: This is an education requirement and it would be helpful if all education requirements were included in Part 3.1 for clarity in implementation. Please move to Part 3.1.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA clarifies that Permit Part 3.1.4 lists optional target audiences from which the Permittee must select; in contrast, Permit Part 3.2.8 contains a mandatory requirement to support appropriate education and outreach regarding proper household hazardous waste disposal.

Construction Site Stormwater Runoff Control (Permit Part 3.3)

23. *Part 3.3.2 Construction Site Stormwater Runoff Control – Ordinance or other regulatory mechanism,* specifically the underlined text as quoted below: EPA administers permits for construction sites that disturb 1 acre and greater. Therefore, this requirement would put a duplicative requirement on developers. Why is this included in [the MS4 Permit] when it is EPA's responsibility to administer this program? Please remove any duplication between program responsibilities***.***

To be considered adequate, the Permittee's regulatory mechanism must require construction site operators to maintain effective controls to reduce pollutants in stormwater discharges to the MS4 from sites in the Permittee's jurisdiction, as described in Part 3.3.3. The Permittee must require construction site operators to submit construction site plans for projects disturbing one or more acres for Permittee review, as described in Part 3.3.4. The Permittee must use inspections and enforcement actions (for example, written warnings, stop work orders and/or fines) to ensure compliance, as described in Part 3.3.5 below, and must maintain a written enforcement response policy, as described in Part 3.3.6.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA does not review construction site plans as part of NPDES Construction General Permit (CGP) administration in Idaho. Therefore, this statement, and the accompanying Permit requirement in Part 3.3.4, is not duplicative with EPA actions to administer the CGP for individual construction site operators. All MS4 permittees must have site plan review procedures that incorporate consideration of potential water quality impacts from construction sites disturbing one or more acres within their jurisdiction. See 40 CFR § 122.34(b)(4)(D).

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

24. Part 3.4.2 *Post-Construction Stormwater Management for New Development and Redevelopment -Ordinance and/or other regulatory mechanism,* as quoted below***.*** Is this retention doable for Nampa?

Required permanent stormwater controls must be sufficient to retain onsite the runoff volume produced from a 24-hour, 95th percentile storm event; or sufficient to provide the level of pollutant removal greater than pollutant removal expected by using onsite retention of runoff volume produced from a 24-hour, 95th percentile storm event.

Response: There may be areas within the City's jurisdiction where such retention may be accomplished. Where such retention is infeasible, the subsequent text in Part 3.4.2.1 allows the City to require treatment in lieu of onsite retention, provided that runoff treatment requirements are deemed to be equivalent to water quality benefits that would be achieved by onsite retention. The text in Part 3.4.2.2 allows for alternatives to an onsite retention requirement at a particular site based on factors of technical infeasibility, and/or site constraints. No change has been made to the Permit in response to this comment.

25. ***Part 3.4.3.2 Permanent Stormwater Controls Specifications – Acceptable control practices*** as quoted below: The word "practices" should be changed to "controls" here to be consistent.

...Acceptable control practices, including sizing criteria, performance criteria, illustrations, design examples, and guidance on selection and location of ~~practices~~ controls; and…

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The suggested edit does not change the meaning or intent of the provision.

26. **Part 3.4.6 *Operation and Maintenance (O&M) of Permanent Stormwater Controls*** as quoted below: in the last sentence, delete the words "activity and schedule**"** as it is not clear what this is referring to.

The tracking system must also include reference to the type and number of permanent stormwater controls; O&M requirements; ~~activity and schedule~~; responsible party; and any applicable self-inspection schedule.

Response: EPA agrees to delete the words as requested.

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

27. **Part 3.5.2 *Inspection and Cleaning of Catch Basins and Inlets*** as quoted below: The requirement to inspect all MS4 catch basins and inlets at least once every five years is of significant concern to the City. It is not feasible for the City to meet that inspection frequency within the standard of this permit to reduce pollutants to the Maximum Extent Practicable. Current inspection levels are based on the City's 7-year rotating asset management program. The City has two staff and a vactor truck to inspect and clean approximately 50-75% of the stormwater infrastructure in one of the 7 asset management zones each year. Increasing inspection and maintenance frequencies to what is currently listed in the Draft Permit would be infeasible and require a significant increase in staffing as well as investment in a new vactor truck and associated appurtenances such as the development of a new washout pit.

[It] seems like there is a conflict between the first sentence which specifies an inspection frequency of once every five years and the second paragraph which states that the Permittee may establish a catch basin inspection prioritization system and establish alternate inspection frequency. Please delete the requirement to inspect all catch basins and inlets every five years, and instead, maintain the requirement to establish a catch basin inspection and prioritization system as listed in the second paragraph. This will allow us to establish an inspection and prioritization system that works within our 7-year rotating asset management program.

3.5.2 Inspection and Cleaning of Catch Basins and Inlets

The Permittee must inspect all Permittee-owned or operated catch basins and inlets in the MS4 at least once every five years and take all appropriate maintenance or cleaning action based on those inspections to ensure the catch basins and inlets continue to function as designed.

The Permittee may establish a catch basin inspection prioritization system, and establish alternate inspection frequency, provided the Permittee describes all relevant factors used to target such inspections to specific areas of the MS4 in the SWMP Document required by Part 2.5.3.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The Permit, as written, establishes what actions the Permittee must do to reduce pollutants to the MEP, protect water quality, and comply with appropriate CWA requirements. The first sentence in Part 3.5.2 requires the Permittee to inspect all catch basins and inlets at least one time every five years. The second sentence in Part 3.5.2 allows the Permittee to establish a prioritization system for inspecting the catch basins and inlets within that 5 year period; this prioritization may be informed and justified by the City's knowledge and understanding of the MS4 and its drainage basins. EPA recognizes the City's Asset Management System and its implementation during the development of the Permit (for example, see FS page 28). In its comment letter, the City provides a justification for its alternate catch basin inspection and cleaning frequency, as allowed by Part 3.5.2, second sentence. Such explanation/justification must be included in the City's SWMP document.

28. Part 3.5.5 *Street, Road, Highway, and Parking Lot Sweeping,* specifically ***Part 3.5.5.3,*** as quoted below. Please remove public outreach here (or move to Part 3.1) as this would be included if it is an issue of concern under the public education section of this permit (Part 3.1). In addition, the Fact Sheet should describe and clarify what is meant by "outreach efforts to address areas that are infeasible to sweep."

An overall description of their street sweeping activities to minimize pollutant discharges into the MS4 and receiving water; including the types of sweepers used, number of swept curb and/or lane miles; general schedule or dates of sweeping by location and frequency category; volume or weight of materials removed; and any public outreach efforts or other means to address areas that are infeasible to sweep.

Response: It is EPA Region 10 policy not to revise the FS based on public comment. Because this is unique to the sweeping requirement outlined in Part 3.5.5, no change has been made to the Permit. The City is free to identify this topic as part of their Education and Outreach efforts required by Permit Part 3.1. To provide additional illustration regarding what EPA means by "*public outreach efforts or other means to address areas that are infeasible to sweep*," EPA provides the following example: In MS4 drainage areas identified by the City where it is infeasible for the City's equipment to regularly sweep but the area drains to impaired receiving water segments, it may be reasonable for the City to focus educational materials to private property residential or commercial audiences to discourage the disposal of seasonal leaf litter or other debris into the City's rights of way.

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

29. (City) Part 4.2 *Monitoring/Assessment Activities:* The Draft Permit is unclear regarding monitoring/assessment requirements. We interpret this section to mean that we could conduct an assessment by using existing data to quantify pollutant loadings and we would not necessarily be required to collect additional data. Later sections specify QA procedures and methods. We are

assuming those sections would only apply IF we decided to collect samples to assist with the quantification of pollutant loadings for the impairment pollutants. Please clarify 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. The collection of new MS4 discharge data is not required, however, EPA encourages the City to work with other regulated MS4 entities in the Lower Boise River watershed to find compatible or complementary monitoring/assessment and pollutant reduction activities that will meet the pollutant reduction goals of the applicable TMDLs. As stated in FS Section 2.5 at page 31:

EPA clarifies that the City is free to choose new activities, or to continue existing actions, designed to measure, quantify, and reduce the discharge of the impairment pollutants from the MS4. These actions/activities must be linked and coordinated to the water quality goals and available water quality management plan(s); in addition, the City must continue to measure the relative success or failure of such actions over time……. The Permit allows the City to work collaboratively with other entities and provides the City with flexibility to define what/how they will continue reducing impairment pollutants consistent with the available Lower Boise River water quality assessments and watershed advisory group directives.

30. **Table 4.3 *Receiving Water Impairments:*** Regarding Waterbody Assessment Units ID17050114SW002_04 - *Indian Creek - Sugar Ave. to Boise River* and ID17050114SW006_02 - *Mason Creek*, it is unclear what the phrase "cause unknown, nutrients suspected" is intending to convey. The cause of what is unknown? What are nutrients suspected of causing?

    Response: IDEQ's 2016 Integrated Report uses this phrase. As stated in IDEQ's 2016 Integrated Report, the cause of the impairment in each Waterbody Assessment Unit is unknown; however, nutrients are suspected as the cause of the impairment. IDEQ's 2016 Integrated Report is available here:[1] https://deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report/. See also the IDEQ's final CWA Section 401 Certification in Appendix A of this document. No change has been made to the Permit.

Monitoring, Recordkeeping, and Reporting Requirements (Permit Part 6)

31. **Part 6.2.5.2 *Wet Weather Monitoring- Sample Type*:** Add the word "methods" so the sentence reads as follows: *The sample collection **methods** must be identified in the Monitoring/Assessment Plan required by Part 4 (Special Conditions for Discharges to Impaired Waters).*

    Response: EPA has not revised the text as suggested. Sample collection methods must be described by the Permittee in the Monitoring/Assessment Plan required by Part 4.3. The suggested edit does not add or change the intent of this subpart, and no change has been made to the Permit.

[1] EPA notes that Idaho's most recently approved water quality report is the 2018/2020 Integrated Report. The report was submitted to EPA for review on October 1, 2020 and approved by EPA on October 30, 2020 (i.e., after the close of the public comment period for the Nampa MS4 Permit, and after EPA's receipt of IDEQ's final CWA Section 401 certification as provide in Appendix A). See: IDEQ's 2018/2020 Integrated Report, pages 82 and 341-342, available online at https://deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report/. The listed impairment citing "cause unknown, nutrients suspected" for Waterbody Assessment Units ID17050114SW002_04 - *Indian Creek - Sugar Ave. to Boise River* and ID17050114SW006_02 - *Mason Creek* remain unchanged from the 2016 Integrated Report.

32. **Part 6.2.5.4 *Wet Weather Monitoring - Frequency:*** Please insert the words "*unless prevented by weather conditions*" as indicated below. It is possible the City might not have an event that is sufficient to qualify for sampling during these two months.

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

Response: EPA agrees to revise the text as suggested. In general, sample frequency details must be described by the Permittee in the Monitoring/Assessment Plan required by Part 4.3.

33. **Permit Parts 6.2.6 *Quality Assurance Requirements*** and **6.2.7 *Analytical Methods*** The City also assumes that Parts 6.2.6, and 6.2.7 of the permit, which specify quality assurance (QA) procedures and analytical methods, is only included for cases in which the City may elect to collect and analyze water quality samples as part of the proposed monitoring/assessment plan. The City agrees with this approach as sufficient data have been collected to address the requirement listed in this part of the permit to "quantify pollutant loadings for the impairment pollutants".

    Finally, to provide clarity, please state at the beginning of Parts 6.2.6 and 6.2.7 that these sections apply IF the Permittee monitors wet weather discharges from MS4 outfalls. This caveat is included in Part 6.2.5. Without this statement, the permit language may be misinterpreted that collection and analysis of samples is specifically required.

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. The quality assurance provisions are not limited to water quality or wet weather discharge monitoring; any type of objective assessment of pollutant loading or activity effectiveness must ensure that appropriate data/information is collected in an accurate manner. The Permittee must develop a Quality Assurance Project Plan (QAPP) for any monitoring or quantitative assessment activities conducted in compliance with this Permit. See also Response #34.

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

34. **Part 6.2.6 *Quality Assurance Requirements*:** Add the following phrase to the first sentence of this part**. "***If the Permittee monitors wet weather discharges from MS4 outfalls ..."*

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. Quality Assurance Project Plans can and should be developed and implemented to determine BMP effectiveness or other types of assessment activities. 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

35. **Part 6.2.7 *Analytical Methods* including Table 6.2.7 *Minimum Levels***: Add the following underlined phrase to the first sentence in this Part: "…*If the Permittee monitors wet weather discharges from MS4 outfalls*, …" Please make it clear that these [parameters] are listed IF these parameters are analyzed. This could be misleading and indicate that sampling and analysis for this list of parameters is required.

    Response: If the Permittee conducts sampling and analysis for the listed parameters, the requirements in Permit Part 6.2.7 apply. The City is not required to conduct wet weather monitoring, however wet weather monitoring remains an option for the type of monitoring/assessment work that the City must conduct. If the City were to elects to continue wet weather monitoring, Permit Part 6.2.7 applies. No change has been made to the Permit.

36. **Part 6.2.7, Table 6.2.7:** Revise the minimum levels for parameters [as] listed in underlined text below, based on what is achieved by Nampa's analytical lab.

    Table 6.2.7: Minimum Levels

Pollutant & CAS No. (if available)	Minimum Level in µg/L, unless otherwise specified
Total Ammonia (as N)	~~50~~ **140**
Dissolved oxygen	~~0.2 mg/L~~ **0.32**
Total Hardness	~~200~~ as $CaCO_3$ **1590**
Nitrate + Nitrite Nitrogen (as N)	~~100~~ **159**
Oil and Grease (HEM) (Hexane Extractable Material)	~~5,000~~ **31,800**
Phosphorus, Total (as P)	~~10~~ **64**
Temperature	~~0.2º C~~ **0.64 degrees C**

    Response: The City offers insufficient rationale to justify the changes to the minimum levels. Permit Part 6.2.7.3 allows the Permittee to submit a written request for different MLs; the City may submit its request, with associated rationale, as part of the Monitoring/Assessment Plan developed in compliance with Permit Part 4, or as a component of an Alternative Control Measure request pursuant to Permit Part 2.6. No change has been made to the Permit.

37. Part 6.3.1 *Retention of Records*, second paragraph, as quoted below, delete the word "etc." and please be specific about what is required. The word "etc." is not appropriate for permit language.

Response: EPA has revised the text as suggested; this paragraph now reads as follows:

….Information and records includes, but is not limited to, records of all data or information used to develop and implement the SWMP control measures and/or used to complete the application for this Permit; such material may include inspection and maintenance records; all monitoring, calibration, and monitoring equipment maintenance records; ***and*** *all original strip chart recordings for any continuous monitoring instrumentation; copies of reports required by this Permit.~~; etc.~~*

38. Part 6.4.2 *Annual Report,* including Table 6.4.2 containing Annual Report Deadlines: in addition to several editorial errors noted below, the draft Permit includes a two-month time frame for annual reporting (October 1 through December 1). This is a reduction from the timeframe allotted in the City's previous permit and is not achievable. Please change the annual reporting date to the previous reporting date of January 15. We have reviewed other regional permits and have found four months is allotted for annual report preparation in neighboring states and communities. More than two months is needed for us to turn around annual reports. Please change this to January 15th consistent with our previous permit.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Based on public comment, EPA has revised the Permit effective date and associated implementation and reporting dates throughout the Permit; See Response #3. For all Phase II MS4 permits issued by EPA since 2019, EPA has included a fillable Annual Report format as Permit Appendix B-2 to streamline the Annual Reporting process, and therefore has set the submittal deadline 61 days after the end of the Annual Reporting Period specified in Table 6.4.2. The commenter has not provided a basis to change the annual reporting date; therefore, the permit has not been changed. EPA believes that 61 days provides sufficient time to report on SWMP implementation status using the streamlined format provided in Appendix B-2.

39. Part 6.4.3 *Monitoring/Assessment Report,* specifically *Subpart 6.4.3.4*: It is unnecessary and inappropriate to list names of the individuals that performed the analyses. Please change this clause to request the name of the analytical laboratory that performed the analyses**.**

Response: EPA has not revised the text as suggested; no change has been made to the Permit. This provision was updated from the administratively extended Nampa MS4 permit as issued in 2009 and now reflects EPA Region 10's current NPDES Permit template and is identical to text in the EPA-issued NPDES Permit #ID0022063 for the Nampa WWTP. The name of the laboratory, including an indication of staff performing the analysis, is required.

40. Part 6.4.4 *Pollutant Reduction Activity Report*: This is a repetitive requirement - actions in the SWMP are being implemented to reduce pollutants and the annual reports will already summarize these actions. Commenter suggests deleting the two sentences as indicated below.

~~The Permittee must submit a Pollutant Reduction Activity Report summarizing actions conducted during the Permit term to reduce pollutant loadings from the Permittee's MS4. The Pollutant Reduction Activity Report must be submitted as an attachment to the Permit Renewal Application required by Part 8.2 no later than April 3, 2025.~~ The final Pollutant Reduction Activity Report must summarize the actions identified in Part 4 and must quantify any load reductions accomplished to date.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Part 6.4.4 addresses the requirement for a specific document that explicitly provides a progress status for the actions taken by the Permittee to impairment pollutants in receiving waters identified in Permit Part 4.

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

41. Part 7 *Compliance Responsibilities*: This Part includes a significant number of references that are relevant to wastewater treatment plant (WWTP) permits and not to stormwater permits. It includes discussions of upsets, bypasses and pretreatment, which are not appropriate in an MS4 permit. Please revise this part of the permit so that it is relevant to a MS4 NPDES permit.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. NPDES regulations at 40 §§ CFR 122.41 through 122.43 require the provisions reflected in Permit Parts 7 and 8 to be included in each NPDES permit. Specifically, 40 CFR § 122.41 states:

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

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

(c)(2):

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

In first-term 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. The NPDES permit writer does not have discretion to omit the mandatory permit provisions identified in 40 CFR §§122.41 through 122.43. As explained in the Fact Sheet, "if a particular provision in Permit Parts 7 or 8 does not apply to the Permittees MS4 discharges or facilities, the Permittees do not need to comply with that provision." See FS at page 34-35.

42. Part 7.6 *Toxic Pollutants* as quoted below. Discharges under this permit are subject to MEP standards not effluent standards. Please delete this reference.

The Permittee must comply with ~~effluent standards~~ or prohibitions established under section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

Response: See Response #41. EPA has not revised the text as suggested; no change has been made to the Permit. See also Responses # 53 and 56.

43. Part 7.7 *Planned Changes*. These requirements are written as if this is a wastewater treatment plant NPDES permit. Please reword to make it relevant to an MS4 permit. None of the pollutants in this permit are subject to effluent limitations. Delete this sentence: ~~This notification applies to pollutants that are not subject to effluent limitations in the permit.~~

Response: See Response #41. EPA has not revised the text as suggested; no change has been made to the Permit. See also Responses # 53 and 56.

44. **Part 7.9 *Twenty-Four Hour Notice of Noncompliance Reporting.*** Delete the last two bullets as illustrated below. This language relates to WWTPs. There are no effluent limits in this permit and there should not be as this permit is subject to a maximum extent practicable standards. The next bullet relates to upsets at WWTPs. There are WWTP references throughout this section. Please fix this section so that it is relevant to an MS4 permit.

    - A~~*ny unanticipated bypass that results in or contributes to an exceedance of any effluent limitation in this Permit. See Part 7.106.10 (Bypass of Treatment Facilities);*~~
    - ~~*Any upset that results in or contributes to an exceedance of any effluent limitation in this Permit. See Part 6.11 (Upset Conditions).*~~

    Response: See Response #41. EPA has not revised the text as suggested; no change has been made to the Permit. See also Responses # 53 and 56.

45. **Parts 7.10 *Bypass of Treatment Facilities*** and **7.11 *Upset Conditions***, and associated definitions in Permit Part 9 for terms "bypass" and "upset" should be deleted; as previously noted, these are not applicable to MS4.

    Response: See Response #41. EPA has not revised the text as suggested; no change has been made to the Permit.

General Requirements-Standard NPDES Permit Conditions (Permit Part 8)

46. **Part 8.3 *Duty to Provide Information*:** This provision reads as quoted below. How can the permittee be assured this timeframe will be reasonable? Please change text to say "…within a reasonable and feasible time specified in the request…."

    The Permittee must furnish to EPA and IDEQ, within the time specified in the request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit, or to determine compliance with this Permit.

    Response: EPA has not revised the text in response to this comment; no change has been made to the Permit. This provision is a standard permit condition derived from NPDES regulation at 40 CFR § 122.41(h) and is not a new provision. Comparable language to Permit Part 8.3 is included in all MS4 permits issued by EPA Region 10, including the administratively extended Nampa MS4 permit as issued in 2009.

47. **Parts 8.4 *Other Information*** and **8.5 *Signatory Requirements*:** This is the first time "NOI" has been mentioned. It is not clear what "NOI" is referring to.

    Response: This is an error; EPA has deleted the acronym NOI and associated phrasing in both Parts 8.4 and 8.5. "NOI" is the acronym for Notice of Intent, which is not a relevant term for the Nampa MS4 Permit.

48. **Part 8.5 *Signatory Requirements*:** This section is very comprehensive. Please make it more clear that permit applications, permit annual reports and permit renewal applications should be signed and certified. Otherwise this could be misinterpreted to mean that ALL documents will require this including maps, etc.

    Response: EPA has not revised the text in response to this comment; no change has been made to the Permit. Part 8.5 is a standard NPDES permit condition derived from federal regulation at 40 CFR §§ 122.22(a) and 122.41(k), and comparable language was included the administratively extended Nampa MS4 permit as issued in 2009. Part 8.5 is sufficiently clear that only applications, reports and information required to be submitted to the NPDES permitting

authority must be signed and certified. Individual documents created as a result of the Permit do not need to be similarly signed/certified. The statement in Part 8.5.4 is clear that a single declaration is needed for documents submitted at a single occurrence: …. *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system…."* Emphasis added.

49. Part 8.5.2 *Duly Authorized Representative*: This section is written as if it was for a WWTP permit and refers to a plant manager and says someone has responsibility for the "company." Doesn't fit the context of this permit.

Response: See Response #48. EPA has not revised the text in response to this comment; no change has been made to the Permit.

50. Part 8.13 *Re-opener Clause*: In the text quoted below, how could future monitoring results with unknown results justify a permit change? Shouldn't the word "future" be deleted?

This Permit is subject to modification, revocation and reissuance, or termination at the request of any interested person (including the Permittee) or upon EPA initiative. However, permits may only be modified, revoked or reissued, or terminated for the reasons specified in 40 CFR §§122.62 or 122.64, and 40 CFR §124.5. This includes new information which was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance, including but not limited to future monitoring results. All requests for Permit modification must be addressed to EPA in writing and shall contain facts or reasons supporting the request.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. "Future monitoring" is identified as a non-exclusive example of new information that could lead to a decision by the NPDES permitting authority to reopen the permit for modification during the permit term. See also Permit Part 8.1 (*Permit Actions*) and federal regulation discussing appropriate causes of permit modification at 40 CFR § 122.62 (a)(1).

Definitions (Permit Part 9)

51. Definition of *Best Management Practice*, or BMP: This [definition] is not highly relevant to the MS4 and seems to be copied from a Wastewater Treatment Plant (WWTP) permit. This is not a very stormwater specific definition of BMP. Looks like it applies to wastewater. What is "leads"?

Response: The definition for BMP in the Permit is appropriately derived from federal NPDES regulation at 40 CFR § 122.2 and 40 CFR § 122.44(k) as cited; the definition is also used in the previous Nampa MS4 permit issued in August 2009. EPA has corrected spelling and punctuation errors in the text as drafted. The erroneous word noted by commenter should be *leaks,* such that the final definition reads as follows:

Best Management Practice, or BMP, means schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. See 40 CFR §§ 122.2 and 122.44(k). For the purposes of this Permit, BMP broadly refers to any type of structural or non-structural practice or activity undertaken by the Permittee in the course of implementing its SWMP.

52. Definition of *Discharge of a Pollutant* reads as quoted below. Why is this reference to privately owned treatment works included in the definition for a stormwater permit? Please remove.

*Discharge of a pollutant means any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger" [40 CFR §122.2]***.***

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The definition of 'discharge of a pollutant" is quoted from the federal NPDES regulations at 40 CFR § 122.2 and is appropriately included in NPDES permits, including stormwater discharge permits.

53. Definition of *Effluent Limitation* reads as quoted below; please remove. This permit is subject to the MEP standard. Effluent standards do not apply. While this definition tries to clarify that the terms of the permit are a type of effluent limit, it is confusing. The definition is not necessary to include. Also the definition should say *…rates **or** concentrations*.

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," [40 CFR §122.2]. The terms and conditions of this Permit are a type of effluent limitations and refers to actions designed to reduce pollutant discharges. See also 40 CFR §122.34 and 81 FR 89337 (Dec. 9, 2016).

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The first sentence of the Permit definition is quoted directly from the federal NPDES regulations at 40 CFR § 122.2 and is appropriate to include in NPDES permits. EPA included the second sentence in order to clarify, by reference, that the Permit contains effluent limitations as discussed in the NPDES regulations. Specifically, in the preamble to the *National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule*, EPA responds to the question of effluent limitations in small MS4 permits as follows:

> *In the final rule, EPA has decided to substitute the term ''terms and conditions'' for ''effluent limitations'' because stakeholders asserted the term effluent limitations connotes end-of pipe numeric limits even though EPA is not insisting that these types of limitations be used. In sum, EPA intends that terms and conditions are a type of effluent limitations and that they are interchangeable and both mean permit requirements. As defined in the Clean Water Act, ''effluent limitation'' means ''any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.'' See CWA section 502(11). The Clean Water Act also authorizes inclusion of permit conditions. See CWA section 402(a)(1) and (2). Both ''effluent limitations or other limitations'' under section 301 of the Act and ''any permit or condition thereof'' are an enforceable ''effluent standard or limitation'' under the citizen suit provision, section 505(f) of the Clean Water Act, and the general enforcement provisions, section 309 of the Act. EPA uses these terms interchangeably when referring to actions designed*

to reduce pollutant discharges. For the purposes of this final rule, changing the small MS4 regulations to refer instead to ''terms and conditions'' is intended to be read as consistent with the meaning of ''effluent limitations'' in the regulations and CWA.

- From: *National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rul*e at 81 FR 89337 (12/09/2016).

54. Definition of *Illicit Discharge* reads as quoted below; [it is] **i**mportant to add that an exception includes allowable non-stormwater discharges as listed in 2.4 of this Permit:

"*Illicit Discharge means any discharge to a municipal storm sewer that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges from firefighting activities. See 40 CFR 122.26(b)(2)."*

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The definition of illicit discharge is quoted from the federal NPDES stormwater regulations at 40 CFR § 122.26(b)(2). The allowable non-stormwater discharges cited in Permit 2.4 are conditionally authorized from the MS4, therefore they are not considered "illicit" unless the Permittee fails to comply with other applicable Permit conditions.

55. Definition of *Method Detection Limit* should be removed as it was not used in this Permit.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The definition of MDL is necessary to inform the definition of "minimum level", a term that is used in Permit Part 6.2.7 *(Analytical Methods)*. See also Responses #34 and 35.

56. Definition of *Maximum Extent Practicable:* This term should have been used somewhere in the Permit but was not. Please include this standard in the Permit as listed in the first paragraph of Section 2.1 of the FS.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. FS Section 2.1 explains how the Nampa MS4 Permit's terms and conditions (otherwise known as its narrative *effluent limitations,* as explained in Response #52) are identified by EPA and IDEQ as necessary 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. EPA does not include the phrase MEP in the Permit because 'reducing the discharge of pollutants from the MS4 to the MEP' is only one of three elements that the NPDES permit authority must attain through the MS4 Permit's terms and conditions in order to comply with the NPDES stormwater regulations at 40 CFR 122.34(a) – (e). These regulations state the NPDES permit authority must express the permit requirements in ''clear, specific, and measurable'' terms. Permit requirements that include caveat language, such as ''if feasible,'' 'to the MEP,'' ''as necessary'' or ''as appropriate'' are inherently unclear or non-specific unless defined. (81 FR 89335) To this end, EPA defines words in the Final Permit such as "appropriate" and "appropriate action" to eliminate uncertainty as to the actions the Permittee is expected to take; and EPA chooses not to include the phrase MEP in the Permit.

In summary, the Permit's terms and conditions are determined necessary by EPA and IDEQ 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. The City's compliance with the Permit will result in the continued reduction of pollutants discharged from the MS4 to the MEP, improved water quality protection, and compliance with appropriate CWA requirements.

57. **Definition of *Municipality*** as quoted below seems focused on waste instead of stormwater:

    "Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA."

    Response: This definition is quoted from the federal NPDES regulation at 40 CFR § 122.2, which itself is derived from the statutory definition found in the Clean Water Act. See 33 U.S.C § 1362(4). No change has been made to the Permit.

58. **Definition of *National Pollutant Discharge Elimination System (NPDES)*** reads as quoted below; why are pre-treatment permits specifically called out here?

    "National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA [40 CFR §122.2]."

    Response: This definition is quoted from the federal NPDES regulation at 40 CFR § 122.2 and defines the entirety of the NPDES program. No change has been made to the Permit.

59. **Definition of *Pollutant*** reads as quoted below; the Permit should be revised so that it is more tailored to typical stormwater pollutants of concern:

    Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials [except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)], heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water [40 CFR §122.2].

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. This definition is quoted from the federal NPDES regulation at 40 CFR § 122.2, which itself is derived from the statutory definition found in the Clean Water Act. See 33 U.S.C § 1362(6).

60. **Definition of *Stormwater Control Measure*** as quoted below, specifically the underlined portion of the sentence: Would this be covered under a general industrial permit for a WWTP site? This is not relevant to this permit.

    Stormwater control measures may include, but are not limited to, treatment requirements; operating procedures; practices to control plant site runoff, spillage, leaks, sludge, or waste disposal; or drainage from raw material storage. See best management practices (BMPs).

    Response: EPA has not revised the text as suggested; no change has been made to the Permit. The Permit's definition of *stormwater control measure* is derived from definition found in the National Research Council's 2008 report entitled *Urban Stormwater Management in the United States* (available on EPA's website at https://www.epa.gov/sites/production/files/2015-11/documents/nrc_stormwaterreport.pdf. This NRC definition is compatible with the NPDES stormwater regulations at 40 CFR § 122.34, and the underlined portion in question is itself quoted from the NPDES regulatory definition for BMP. See also Response #51.

61. **Definition of *Total Maximum Daily Load, or TMDL*** as quoted below: Delete the words "effluent limitations" and substitute "loading allocations" as indicated below. "Loading allocations" is more

appropriate here. MS4 NPDES permits are subject to the MEP standard and do not include effluent limitations.

..,TMDL means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for non-point sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between ~~effluent limitations~~ ***loading allocations*** *and water quality [IDAPA 58.012.02.010.100].*

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The Permit's definition of TMDL is quoted from the Idaho Water Quality Standards at https://adminrules.idaho.gov/rules/current/58/580102.pdf ; however, EPA notes that the proper citation for the definition is IDAPA 58.012.02.010.**99** and has corrected the Final Permit text. See also Responses # 53 and 56.

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

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1445 North Orchard Street • Boise, ID 83706 • (208) 373-0550
www.deq.idaho.gov

Brad Little, Governor
Jess Byrne, Director

October 7, 2020

Susan Poulsom
NPDES Permits Section Manager
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Subject: Reference No. IDS028126 – City of Nampa Municipal Separate Storm Sewer System

Dear Ms. Poulsom:

The Department of Environmental Quality (DEQ) has considered water quality certification for the City of Nampa's MS4 Permit. DEQ is issuing the attached Final 401 Water Quality Certification subject to the terms and conditions contained therein.

If you have any questions or further information to present please contact Kati Carberry at (208) 373-0434, or via email at kati.carberry@deq.idaho.gov.

Sincerely,

Aaron Scheff
Regional Administrator
Boise Regional Office

KLC:am

Enclosure (1)

ec: Misha Vakoc, EPA-Seattle
Jason Pappani, DEQ-State Office
Lori Flook, DEQ-State Office
EDMS#: 2020AKF103

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

October 7, 2020

NPDES Permit Number(s): IDS028126 City of Nampa MS4 Permit

Receiving Water Bodies: Indian Creek, Mason Creek, Boise River

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

Based upon 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 exclude 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 Nampa's MS4 has the potential to discharge the following pollutants of concern: sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum and hydrocarbons, microbial pollution (*Escherichia coli* and fecal coliform) and organic chemicals (pesticides and industrial chemicals).

Receiving Water Body Level of Protection

The City of Nampa's MS4 discharges to Indian Creek, Mason Creek, and the Boise River within the Lower Boise River Subbasin. The presumed or designated beneficial uses for each assessment unit (AU) receiving the discharge are listed in Table 1. The designated uses for these waterbodies are identified in the WQS (IPAPA 58.01.02.140.12). DEQ presumes undesignated waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses; therefore, undesignated waters are protected for these uses (IDAPA 58.01.02.101.01.a) 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).

In addition to the waterbodies listed above, ITD - District #3 discharges to several conveyances including 12th Avenue Drain, 9.8 Lateral, Aaron Drain, Edwards Lateral, Elijah Drain, Grimes Drain, Herron Lateral, Joseph Drain, North Nampa Lateral, North Robinson Lateral, Orr Drain, Peters Lateral, Phyllis Canal, Purdam Gulch Lateral, Purdam Gulch Spur, South Nampa Lateral, Thourogood Lateral, West Lateral, and others that are not within the AU database maintained by DEQ, nor are they part of the National Hydrography Dataset. These conveyances are not specifically designated in Idaho's water quality standards and, if they are waters of the United States, are considered man-made waterways (IDAPA 58.01.02.010.58). DEQ protects such waterways for the use for which they were developed, namely agricultural water supply (IDAPA 58.01.02.101.02). As such, DEQ will provide Tier I protection only for these conveyances.

For each affected AU, Table 1 lists impairments and the antidegradation tier assigned to it according to DEQ's 2016 Integrated Report. DEQ assigns a Tier I or a Tier II for aquatic life use and recreational use individually.

If a receiving water body's AU is fully supporting an assessed use (IDAPA 58.01.02.052.05.a) DEQ will provide Tier II protection in addition to Tier I for that use. If a receiving water body's AU is not fully supporting its assessed use (IDAPA 58.01.02.051.01) DEQ will provide Tier I protection for that use.

If a beneficial use (aquatic life use or recreational use) is unassessed, DEQ must provide an appropriate level of protection on a case-by-case basis using information available at this time (IDAPA 58.01.02.052.05.b).

Table 1. Receiving Water Bodies

HUC	Receiving Waters (Name)	Waterbody Unit	Designated or Presumed Uses	Assessment Unit	Beneficial Use Impairments	Aquatic Life Use	Recreational Use
17050114	Indian Creek	SW-2, Indian Creek- Sugar Ave. (T03N, R02W, Sec. 15) to mouth	COLD SCR	1750114SW002_04	COLD: Cause Unknown-Nutrients Suspected, Temperature, Sedimentation/Siltation SCR: *Escherichia Coli*	Tier I	Tier I
	Indian Creek	SW-3a, Split between New York Canal and historic creek bed to Sugar Ave. (T03N, R02W, Sec. 15)	COLD SCR	17050114SW003a_04	SS and Cold: Temperature Cold: Cause Unknown-Nutrients Suspected	Tier I	Tier II
	Mason Creek	SW-6, Mason Creek - New York Canal to mouth	COLD (Presumed) SCR	17050114SW006_02	COLD: Cause Unknown-Nutrients Suspected, Chloropyrifos, Malathion, Temperature, Sedimentation/Siltation SCR: *Escherichia Coli*	Tier I	Tier I
	Boise River	SW-5, Boise River- river mile 50 (T04N, R02W, Sec. 32) to Indian Creek	SS COLD PCR	17050114SW005_06b	SS and COLD: Temperature COLD: TP, Sedimentation/Siltation, PCR: Fecal Coliform	Tier I	Tier I
	Boise River	SW-1, Boise River- Indian Creek to mouth	COLD PCR	17050114SW001_06	Cold: Low Flow Alterations, physical substrate/Habitat Alterations, Temperature, TP, Sedimentation/Siltation PCR: Fecal Coliform	Tier I	Tier I

SS=salmonid spawning; COLD=cold water aquatic life; PCR=primary contact recreation; SCR = secondary contact recreation

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 Nampa's permit and 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 (IDAPA 58.01.02.055.05).

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 EPA-approved TMDLs listed in Table 2 establish wasteload allocations for sediment, bacteria (*Escherichia coli)*, fecal coliform, and phosphorus. These wasteload allocations are designed to ensure the impaired waterbodies will achieve the water quality necessary to support their existing and designated aquatic life and contact recreation beneficial uses and comply with the applicable numeric and narrative criteria. The effluent limitations and associated requirements contained in the City of Nampa's MS4 permit are set at levels that are consistent with these wasteload allocations.

Table 2. EPA-Approved TMDLs

AU	AU Name	Beneficial Use Impairments	Approved TMDL
1750114SW002_04	Indian Creek-Sugar Avenue to Boise River	COLD: Cause Unknown-Nutrients Suspected, Temperature, Sedimentation/Siltation SCR: *Escherichia Coli*	*Lower Boise River TMDL-2015 Sediment and Bacteria Addendum*
17050114SW006_02	Mason Creek-entire watershed	COLD: TP, Chloropyrifos, Malathion, Temperature, Sedimentation/Siltation SCR: *Escherichia Coli*	*Lower Boise River TMDL-2015 Sediment and Bacteria Addendum*
17050114SW005_06b	Boise River-Middleton to Indian Creek	SS and COLD: Temperature COLD: TP, Sedimentation/Siltation, PCR: Fecal Coliform	*Lower Boise River TMDL Subbasin Assessment for Fecal Coliform and Sediment (1999)* *Lower Boise River TMDL-2015 Total Phosphorus Addendum*
17050114SW001_06	Boise River-Indian Creek to Mouth	Cold: Low Flow Alterations, physical substrate/Habitat Alterations, Temperature, TP, Sedimentation/Siltation PCR: Fecal Coliform	*Lower Boise River TMDL Subbasin Assessment for Fecal Coliform and Sediment (1999)* *Lower Boise River TMDL-2015 Total Phosphorus Addendum*

SS=salmonid spawning; COLD=cold water aquatic life; PCR=primary contact recreation

Permit parts 2, 3, and 4 provide specific terms and conditions aimed at providing a Tier I level of protection and consistency with the wasteload allocations for the Lower Boise River watershed TMDLs, including :

- 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 estimate BMP removal of pollutants of concern in all impaired AUs;
- Requirements for the City of Nampa to implement pollutant reduction activities and quantitative monitoring and assessment for discharges into waterbodies listed in Table 1;
- Requirements for the City of Nampa to monitor and assess temperature in discharges; and
- The stipulation that if either EPA or DEQ determine that a 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 Nampa's permit will reduce the discharge of pollutants to the maximum extent practicable and are consistent with the wasteload allocations established in the TMDLs listed in Table 2. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Tier I waterbodies listed in Table 1 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)

As shown in Table 1, Indian Creek-New York Canal to Sugar Avenue is considered high quality for recreation. As such, the water quality relevant to secondary contact recreational use in this waterbody must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to secondary contact recreational uses of Indian Creek-New York Canal to Sugar Avenue (IDAPA 58.01.02.052.05). *E.coli* is the relevant pollutant of concern for recreational uses in this waterbody.

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 MS4s must include terms and conditions to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements under the Clean Water Act. "Maximum extent practicable" is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. The proposed

MS4 permit relies on practices to identify and reduce discharge of pollutants to the maximum extent practicable (Permit parts 2 & 3). 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 Nampa 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 the receiving waterbodies and the downstream receiving waters in the lower Boise Watershed 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 is expected to improve water quality the longer the permit is in effect and result in insignificant or no adverse change in existing water quality significant to recreational uses in Indian Creek. Therefore, DEQ has reasonable assurance that at a minimum, no degradation will result from the discharge of pollutants from the City of Nampa's MS4.

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

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

Best Management Practices

Best management practices must be designed, implemented, inspected, 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/).

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

Pollutant Reduction Activities in Impaired Waterbodies

Pursuant to IDAPA 58.01.02.055.05, in carrying out the requirements of Part 4.3 of the permit, the permittee must define and implement at least two activities that are designed to reduce impairment pollutants from the MS4 to Indian Creek, Mason Creek, and the Boise River.

Temperature Monitoring

To ensure the permitted discharges will comply with temperature criteria for the protection of aquatic life (IDAPA 58.01.02.250.02.b, .f), the permittee must monitor temperature in stormwater discharges from the MS4 to Indian Creek, Mason Creek, and the Boise River to quantify stormwater impacts to these waterbodies.

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 Boise Regional Office at 208-373-0550 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 Kati Carberry, Boise Regional Office at (208) 373-0434 or via email at kati.carberry@deq.idaho.gov.

Aaron Scheff
Regional Administrator
Boise Regional Office