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

Final – February 2020

U.S. Environmental Protection Agency, Region 10

# Table of Contents

# Introduction

On October 25, 2019, the U.S. Environmental Protection Agency Region 10 (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer systems (MS4s) owned and/or operated by City of Idaho Falls (City) and the Idaho Transportation Department-District #6 (ITD6) in the Idaho Falls Urbanized Area within Bonneville County, Idaho. The 45-day public comment period closed on December 10, 2019.

This document provides responses to comments received on the proposed Permit. The City and ITD6 are collectively referred to as "Permittees," and Permit document #IDS028070 is "the Permit." The document describing the basis for the Permit's terms and conditions is the Fact Sheet or FS.

- *Comments are broadly organized by topic*. In general, the EPA summarizes each comment, and where appropriate for clarity the EPA has grouped similar comments into one statement. In some cases, the EPA includes the comment verbatim. The Administrative Record contains all comment letters, and other information considered during the Permit development process.
- *Where indicated, the EPA made changes to the final Permit.* See Summary Table below. It is the EPA Region 10 policy not to revise the FS based on public comment; instead, upon Permit issuance this Response to Comments document provides any needed clarification or corrections.

# State Certification under Clean Water Act §401

The EPA requested IDEQ certify the Permit pursuant to Clean Water Act (CWA) Section 401, 33 U.S.C. § 1341. On November 20, 2019, IDEQ posted a draft certification to the IDEQ's website for a 30-day public comment period. IDEQ received comments from the Permittees; however, IDEQ states that no notable revisions were made to the final certification. On January 3, 2020, IDEQ sent the EPA the final Section 401 certification, including conditions that must be included in the Permit pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). See Appendix B. In the final Permit, the EPA has indicated Permit terms identified as conditions of the IDEQ's certification.

# Edits to the Final Permit

The EPA has made minor editorial changes throughout the Permit text for clarity, grammatical correction, and/or as noted by individual commenters. Major editorial changes have been made to the Permit as outlined below:

| | |
|---|---|
| Appendix B-2<br>Annual Report Format | See Response to Comment 3 |
| Part 2.5.9<br>Part 3.2.7.1<br>Part 6.1.2 | Edits Based on Conditions in IDEQ's CWA Section 401 Certification;<br>see Appendix A |
| Part 3.4.2.2 | Edit Based on Relevant Public Comment Received on Other Proposed MS4 Permits in Idaho, to add additional consideration for alternative Post-Construction onsite retention requirement as follows: "*…site/engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff….*" |

# Response to Comments

The Permittees submitted the following comments to the EPA in a letter dated December 6, 2019.

## Prioritization by Permittees

1. The Permittees support the EPA's effort to allow the Permittees to develop and define our own prioritization system for inspections, enforcement and maintenance, based on local knowledge and conditions. This permit area discharges to an unimpaired water body and the program should be structured accordingly. This will enable us to use time and resources most efficiently and effectively.

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

## Annual Reporting

2. The Permittees request that the EPA's Annual Report form reflect multiple permittees and/or signatories to allow for a joint submittal by ITD and the City.

   **Response:** The EPA agrees, and has revised the optional Annual Report form in Permit Appendix B-2 to allow one Annual Report to be submitted by both Permittees, provided that both Permittees certify the Annual Report pursuant to Permit Part 8.5.

## Water Quality Sampling & Testing

3. This permit area discharges to an unimpaired water body and as such isn't subject to water quality sampling and testing. In the event the water body becomes impaired, the Permittees will incorporate a water sampling and testing plan per the permit.

   **Response**: The EPA agrees that the Permittees are not required to conduct instream water quality sampling and analysis. To clarify, the EPA does not require Permittees to conduct MS4 discharge monitoring/assessment for impairment pollutants in the Permit because the MS4s do not discharge to water quality impaired waters; in other Idaho MS4 Permits issued by the EPA, the MS4 discharge monitoring/assessment requirements are based on the facility's discharge into impaired waterbodies. However, the EPA notes that the IDEQ final CWA Section 401 certification contains a condition that the Permittees consider the feasibility of monitoring in future permits. As such, pursuant to CWA Section 401(d), the EPA has revised Permit Part 6.1 to include a requirement that the City and ITD6 submit a feasibility report for the development and implementation of a stormwater monitoring plan for potential use in future permits. See Permit Part 6.1.2, and IDEQ's Final Certification in Appendix A of this document.

## Permit Amendment

4. Permittees recommend consideration of a protocol for amending the permit within the permit term if necessary.

   **Response**: The EPA/relevant permitting authority has the ability to modify permits during the permit term pursuant to 40 CFR §§122.62 and Part 124. Reference to what and how the EPA and IDEQ (as the respective Permitting Authorities) will review submitted information, and determine whether modification to the Permit is needed, is set forth in the Permit. See Permit Parts 2.6.2 (*Contents of ACM Request*) and 2.6.3 (*Recognition of Alternative Control Measures*); Parts 5.3 (*Review and Approval of Adaptive Management Report*) and 5.6 (*Permit Revision*); and Part 8.13 (*Reopener Clause*). An overview of the process for amending the Permit to address Alternative Control Measure

(ACM) requests is discussed in the FS at page 15. No change has been made to the Permit as a result of this comment.

## Permit Part 2.5 – Maintain Legal Authority

5. Regarding Permit Parts 2.5.4.1 and .2, we believe that this section is currently satisfied by City Code 8-1-8, shown here. Please clarify if this is not the case. *"8-1-8: UNPOLLUTED WATER DISCHARGED TO STORM DRAIN: All storm water shall be discharged to such sewers as are expressly designated or approved by the City as combined sewers or storm drains, or to a natural outlet approved by the City. Industrial cooling water or unpolluted process water may be discharged upon approval of the City to a storm drain, combined sewer or natural outlet. (Ord. 2223, 1-9-97)"*

   **Response:** The EPA agrees that the ordinance as cited appears to convey that the City possesses the legal authority to prohibit stormwater and certain types of non-stormwater discharge into its MS4. However, it is unclear whether the phrase "industrial cooling water and unpolluted process water" adequately addresses the specific non-stormwater discharges that must be prohibited per Permit Part 3.2.3 (as incorporated by reference within Part 2.5.4). As such, the City and ITD 6 will need to determine whether the specific non-stormwater discharges listed in Part 3.2.3 are covered in the ordinance cited by the permittees. No change has been made to the permit as a result of this comment.

6. Regarding Permit Part 2.5.4.3 – Ordinance, we believe that this section is currently satisfied by City Code 8-14. See this reference, and please clarify if this is not the case: https://www.idahofallsidaho.gov/DocumentCenter/View/123/Chapter-14---Construction-Site-Erosion-Control-PDF?bidId= .

   **Response:** In the FS at page 22 the EPA stated that the existing construction site runoff control programs conducted by the City of Idaho Falls and ITD6 appears to be fully consistent with the Permit requirements. No change has been made to the Permit as a result of this comment.

## Permit Part 3.1.5 – Outreach & Education - Assessment

7. Regarding assessment of the Permittees' outreach and education activities, this requirement puts an extra burden on ITD and City to develop a social marketing program which includes surveys, focus groups and other tools that are used to measure audiences' understanding but may not be beneficial. Recommended language: 3*.1.5 Assessment: The Permittees shall evaluate the outreach effort in the context of tracking water wasting orders and public complaints. Adjustments will be made in the outreach effort to target or address issues as they may come up in the monitoring program.*

   **Response:** The EPA declines to revise the language as recommended, and no change has been made to the Permit as a result of this comment. The EPA states in its rationale for this provision at FS page 17 that " *…A vital, yet challenging, component of successful education programs is the assessment of whether the Permittees' efforts are achieving the goals of increasing public awareness and behavior change to improve water quality…..the EPA recognizes and encourages the long-term nature of such assessment activities, and notes that there may be opportunities for Permittees to work together within the State, or with other organizations, on specific MS4 topics if they choose to do so.*"

   Such assessment does not necessarily need to be part of a broader social marketing campaign. The intent of this provision is to ensure that the Permittees build-in a means of measuring success or failure regarding their selected education activities. Such measurement/assessment may be scaled to

the activity and need not be as extensive as envisioned by the commenter. The EPA encourages the Permittees to consult their partners in other areas of Idaho to find common goals and activities.

## Permit Part 3.2.3 - Ordinance and/or other regulatory mechanisms

8. Regarding Permit Part 3.2.3.3, the items listed there are not in our current City ordinance and will need to be added. Ordinance revisions are subject to review and approval by City legal counsel and may be revised/edited as necessary.

   **Response:** Comment noted. See Response to comment 5. The Permit provides a compliance deadline of April 3, 2025, for Permittees to make any necessary revisions to their ordinance or regulatory mechanism. No change has been made to the Permit as a result of this comment.

## Permit Part 3.2.9 – Illicit Discharge Training

9. We often have [staff] transfers to different departments. Training will be provided within the first 6 months of the position being assumed.

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

## Permit Part 3.2.5.1 – Outfall Identification and Screening Protocols

10. In Part 3.2.5.1, Permittees must use reconnaissance activities, information recorded through the complaint reporting program, and (if available) existing watershed assessment or Total Maximum Daily Load analyses, to prioritize and target outfalls for screening throughout their Permit Area, and develop a written plan outlining how chemical and microbiological field screening analysis will be conducted on dry weather flows identified during the reconnaissance and screening efforts. The provision mentions field screening methodologies and associated trigger thresholds used by the Permittees for determining follow-up action(s).

    Permittees request removing the requirement of mandatory chemical and microbiological screening analysis, and instead use visual screening analysis for outfall monitoring of any dry weather flows if visual pollutants are present (odor, color, turbidity, floatables, paint, suds, etc) and if visual indicators warrant additional screening methodologies (chemical or microbiological), they can be pursued.

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

## Permit Part 3.2.5.3 – Monitoring of Illicit Discharges

11. Where dry weather flows from the MS4 are identified, Permittees must identify the source….and take appropriate action to eliminate such flows to the extent allowable pursuant to authority granted the Permittee under Idaho law. Permittees must conduct grab sampling of dry weather flows 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 Permittees in accordance with existing protocols and the*

*ordinance/regulatory mechanism established by the Permittees*." The Permittees request removal of mandatory sampling of dry weather flows via grab samples, and instead use visual screening analysis for illicit discharge monitoring if visual pollutants are present (odor, color, turbidity, floatables, paint, suds, etc) and if visual indicators warrant additional screening methodologies (chemical or microbiological), they can be pursued.

**Response:** See Response to Comment 10. No change has been made to the Permit as result of this comment.

## Permit Part 7 – Compliance Responsibilities-Standard NPDES Permit Conditions

12. Permit Part 7 includes language copied from wastewater permits that is not suitable or relevant to stormwater. Permittees urge the EPA to simplify Part 7 so that only the language directly applicable to stormwater permits be included in the final permit. The FS at Section 2.8 states that there are provisions in Part 7 that do not apply to MS4s. If the provisions do not apply to the discharge permit, they should be removed. There is precedence for not including these provisions in MS4 permits. These sections are not included in the Montana Phase 2 General permit, precisely because they do not apply to stormwater permits. The EPA's (2008) TMDLs to Stormwater Permits Handbook clearly states the differences between stormwater and wastewater and the need for unique and distinct permit language.

    **Response**: The EPA declines to make the revisions as requested. 40 CFR §§ 122.41 through 122.43 require the provisions reflected in Permit Parts 7 and 8 to be included in each NPDES permit. Specifically, 40 CFR §122.41 states:

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

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

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

    In prior Phase II MS4 permits previously issued in Idaho, the EPA erred by not including all mandatory provisions as required by 40 CFR 122.41 through 122.43. The EPA notes that nothing in the 2008 Handbook referenced in the comment(s) above offer the NPDES permit writer opportunity to omit the mandatory permit provisions identified in 40 CFR §§122.41 through 122.43. As explained in the FS, "*if a particular provision in Permit Parts 7 or 8 does not apply to the Permittee's MS4 discharges or facilities, the Permittee does not need to comply with that provision*." See FS at pages 32-33. No changes were made to the permit as a result of this comment.

13. The permit language can be simplified to address stormwater responsibilities, by removing Permit Parts 7.6 *(Toxic Pollutants),* 7.7 *(Planned Changes),* and 7.11 (*Upset Conditions*).

    **Response:** See Response to Comment 12. The EPA declines to revise the Permit as requested. The EPA clarifies that Part 7.6 (*Toxic Pollutants)* does not apply to MS4s as originally envisioned by the regulation, because the EPA has not promulgated any effluent guidelines applicable to MS4 discharges under CWA Section 307(a). However, the EPA notes that as a condition of its certification under CWA Section 401, IDEQ requires the Permittees to immediately report to IDEQ and the EPA all

spills of hazardous material, deleterious material, and petroleum products which may impact ground and surface waters of the state. See Permit Part 3.2.7.1.

Regarding Part 7.7 (*Planned Changes*), the EPA previously clarified for other Idaho MS4 permits in the Treasure Valley that this provision does not require approval from the EPA or IDEQ for planned changes to the MS4. Annexations of existing MS4s by one operator from another operator are not considered "physical changes or additions to the permitted facility" as envisioned by this regulation. If the operator has any questions as to whether something needs to be reported as a planned change, the operator should contact the EPA for clarification. See: *EPA Response to Comment on the Ada County Highway District MS4 Permit No. IDS-028185*, August 2009, page 30 at https://www.epa.gov/sites/production/files/2017-10/documents/r10-npdes-ada-county-ms4-ids028185-rtc-2009.pdf.

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

    **Response:** See Response to Comment 12. No change has been made to the permit as a result of this comment.

15. Regarding Permit Part 7.10 (*Bypass of Treatment Facilities*), Permittees propose alternative language for Part 7.10 that could be interpreted in light of a stormwater treatment system could be replaced with text that applies to an MS4 and clarifies the actions required by the Permittee. The following text, adapted from the Eastern Washington Phase 2 general MS4 permit, is directly applicable to stormwater and would be more suitable for this permit. Permittees recommend the EPA replace the language in the Permit, as 7.10.3:

    > *The Permittee is prohibited from intentionally bypassing stormwater from all or any portion of a stormwater treatment BMP as long as the design capacity of the BMP is not exceeded unless the following conditions are met. Bypass is:*
    >
    > *(1) unavoidable to prevent the loss of, personal injury, or severe property damage or*
    >
    > *(2) necessary to perform construction or maintenance-related activities essential to meet the requirements of the Clean Water Act (CWA); and there are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated stormwater, or maintenance during normal dry periods.*"

    **Response:** The EPA appreciates the interpretation of this provision relative to MS4 discharges and agrees that this provision can be interpreted in light of overall maintenance and operation of the MS4. However, the EPA cannot revise the text of a standard permit condition. See Response to Comment 12.

    The EPA believes the first sentence of Part 7.10.1 addresses most if not all situations likely to be encountered by a Permittee during the appropriate operation and maintenance of a MS4: "*The Permittees may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation*."

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

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

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
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January 3, 2020

Ms. Susan Poulsom, Acting Manager
NPDES Permits Section
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

**RE: FINAL §401 Water Quality Certification for the City of Idaho Falls and Idaho Transportation Department – District 6, Municipal Separate Storm Sewer Systems (MS4), NPDES Permit # IDS028070**

Ms. Poulsom:

The Idaho Department of Environmental Quality (DEQ) has reviewed the U.S. EPA's NPDES Permit IDS028070, and has subsequently issued a final 401 certification. On November 20, 2019, a draft certification was posted to DEQ's website for a 30-day public comment period. DEQ received comments from the permittees. No notable revisions have been made to the final enclosed 401 certification.

Please find the enclosed final certification. Questions or comments regarding this document may be directed to Troy Saffle at (208) 528-2650 or via email: troy.saffle@deq.idaho.gov.

Sincerely,

Erik Neher, Regional Administrator
Idaho Falls Regional Office

Enclosure

cc: Misha Vakoc, U.S. EPA Region 10

**Idaho Department of Environmental Quality**

# Final §401 Water Quality Certification

January 3, 2020

**NPDES Permit Number(s):** City of Idaho Falls and Idaho Transportation Department District #6 Municipal Separate Storm Sewer Systems Permit, #IDS028070

**Receiving Water Body:** Snake River

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

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

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

## Antidegradation Review

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

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

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

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

## *Pollutants of Concern*

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

## *Receiving Water Body Level of Protection*

The IFUA discharges to two assessment units within the Idaho Falls Subbasin including the Snake River, assessment units (AU) 17040201SK001_04 and ID17040201SK001_05 (Snake River – Dry Bed Creek to river mile 791). These AUs have designated cold water aquatic life, salmonid spawning, primary contact recreation and domestic water supply beneficial uses. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

These AUs are included in Category 3 (Unassessed Waters) of DEQ's 2016 Integrated Report. Therefore, 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). The SK001_05 AU was assessed using DEQ's river protocols and found to be fully supporting aquatic life, salmonid spawning and contact recreation; therefore, DEQ will afford Tier II protection (IDAPA 58.01.02.052.05.b) for both water bodies.

## *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 IFUA permit and this certification will reasonably assure that the permittee reduces pollutants to the maximum extent practicable.

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

Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation of provisions to maintain and protect uses (IDAPA 58.01.02.055.04). The MS4 NPDES permit contains clear, specific, and measurable provisions for the continued implementation of specific controls, management practices, control techniques, and system design and engineering methods to achieve the effluent limitation requirements in the permit. The permittee is discharging to an unassessed waterbody and will be required to protect water quality and reduce pollutants to the maximum extent practicable. Upon the effective date of the permit, the permittee must perform a compliance evaluation on the current stormwater practices employed by the IFUA and address any inconsistencies with the Stormwater Management Program (SWMP) control measures outlined in Part 3 of the permit. The SWMP control measure components must be fully implemented no later than the specified compliance dates. Conducting an up-to-date compliance evaluation on the IFUA's compliance with these conditions of the permit provides DEQ reasonable assurance that the permittee will protect and maintain beneficial uses to the maximum extent practicable.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection and compliance on the Snake River include:

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

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

In sum, the limitations and associated requirements contained in the IFUA MS4 NPDES permit are set at levels that reasonably assure reduction in the discharge of pollutants and support of beneficial uses to the maximum extent practicable. Therefore, DEQ has reasonable assurance the permit will protect and maintain existing and designated beneficial uses in the Snake River in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

## *High-Quality Waters (Tier II Protection)*

The Snake River is considered high quality for cold water aquatic life, salmonid spawning and primary contact recreation. As such, the water quality relevant to these uses must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to cold water aquatic life, salmonid spawning and primary contact recreation uses of the Snake River (IDAPA 58.01.02.052.06). Pollutants relevant to aquatic life and recreational uses include the following: nutrients (nitrogen and phosphorus), sediment, heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) and organic chemicals (pesticides and industrial chemicals).

For a new permit or license, the effect on water quality is determined by reviewing the difference between the existing receiving water quality and the water quality that would result from the activity or discharge as proposed in the new permit or license (IDAPA 58.01.02.052.06.a). NPDES permits for regulated small municipal separate storm sewer systems (MS4s) must include terms and conditions to reduce the discharge of pollutants to the statutory standard of "maximum extent practicable." The proposed MS4 permit relies on practices to identify and reduce discharge of pollutants to the maximum extent practicable (Permit Part 2 and 3). Further, the permittees' implementation of these practices must be documented in annual reports to EPA and DEQ and is subject to review and on-site inspections. To ensure discharged stormwater will not degrade receiving waters, the permittees are required to manage the effectiveness of these stormwater management practices, monitor discharge and receiving water quality and, if necessary, adapt its management practices. The Idaho Falls Urbanized Area 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, including illicit discharge detection and elimination; use, monitoring, and refinement of BMPs; and additional knowledge through training opportunities.

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

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

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, and maintained by the permittee to protect and maintain the beneficial uses of waters of the United States and to reduce the discharge of pollutants to the maximum extent practicable.

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

### *Compliance Evaluation and Monitoring Plan*

By the end of year three of the this permit (after permit issuance), the permitees must submit a feasibility report to DEQ for the development and implementation of a stormwater monitoring plan for potential use in future permits. At a minimum the report will include:

1. Identification of any priority outfalls which either discharge a relatively high volume of storm water or discharge often compared to other permitted outfalls;
2. Evaluation of the feasibility of sample collection from the identified sites; and
3. Preliminary monitoring to identify the pollutants of concern unique to the IFUA.

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

All spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the Idaho Falls Region DEQ office during normal working hours at 208-528-2650 or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

## Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities including significant changes to the permit, any modifications of the permit to reflect new or modified TMDLs, load allocations, amended NOI, site-specific criteria, variances, or other new information shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

## Right to Appeal Final Certification

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

Questions or comments regarding the actions taken in this certification should be directed to Troy Saffle, Idaho Falls Regional Office, 208-528-2650 or troy.saffle@idaho.deq.gov.

Erick Neher
Regional Administrator
Idaho Falls Regional Office