Response to Comments on

National Pollutant Discharge Elimination System (NPDES) Permit

For Discharges from the

Ada County Highway District Municipal Separate Storm Sewer System (MS4)

NPDES Permit No. IDS028185

December 2020

U.S. Environmental Protection Agency, Region 10

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Introduction

On September 25, 2020, the U.S. Environmental Protection Agency Region 10 (EPA) proposed to reissue the National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer system (MS4) owned and/or operated by the Ada County Highway District (ACHD) in Ada County, Idaho. The permit document #IDS028185 will be referred to in this document as "the Permit." The public comment period ended on November 9, 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 the comment letter received from ACHD, as well as information considered by EPA during the permit development process.

State Certification under Clean Water Act §401

On October 28, 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, consistency, and/or grammatical correction, and as identified in comments received. The Permit effective date has been changed to February 1, 2021, and associated program implementation dates and due dates throughout the Permit have been adjusted as a result. Other editorial changes made in response to comments and IDEQ certification are identified in Table 1 below:

Table 1. Edits to Final Permit

Edits Based on Public Comments Received:	
Part 3.4.2.2	See Response #4
Part 4.3	See Response #6
Edits Based on IDEQ Input:	
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 Ada County Highway District Municipal Separate Storm Sewer System; NPDES Permit #IDS028185,* dated October 28, 2020. See Appendix A of this document.

Response to Comments

ACHD submitted the following comments in a letter dated November 6, 2020.

General Topics

1. ACHD appreciates the positive working relationship, on-going communication, and stakeholder involvement that EPA has extended over the past several years developing the draft permits.

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

2. ACHD appreciates EPA's acknowledgement of ACHD's jurisdictional limitations stated in Fact Sheet 2.3:

"*EPA recognizes that highway districts . . . do not have formal ordinance authority under Idaho state law. In such cases, EPA expects the Permittee to control pollutants into and from the MS4 by using all relevant regulatory mechanisms available pursuant to applicable Idaho state law . . . EPA acknowledges that ACHD['s] . . . jurisdictional authority extends only within the boundaries of its right of ways, and that the principle regulatory mechanisms for ensuring compliance with the Permits' stormwater control measures are through policies, standard operating procedures, construction contracts, and/or right of way permits."*

It seems there are many locations throughout the draft permit that should be expressly qualified with the phrase "*to the extent allowable under Idaho state law*" (or language like it). While this phrase shows up in several areas, it is missing from others where it could (and likely should) exist. Rather than try to insert the phrase throughout the draft permit, ACHD recommends a preamble be added to Sections 2.5 (*Permittee Responsibilities*), 3.2 (*Illicit Discharge Detection and Elimination*) and 3.3 (*Construction Site Stormwater Runoff Control*) describing and recognizing the limitations of ACHD's ROW-based jurisdiction and general lack of police power enforcement.

Response: EPA declines to add references addressing the jurisdictional limitations of Highway Districts in the Permit as suggested; no change has been made to the Permit.

EPA uses the phrase, "to the extent allowable…under Idaho state law" throughout the ACHD Permit, and continues to require ACHD to implement their stormwater management program (SWMP) responsibilities in the same manner as the administratively extended ACHD permit.[1] Consistent with other MS4 permits for Highway Districts in Idaho, the Permit does not contain requirements for ACHD to impose pollutant controls in areas outside of the ACHD rights of way or require enforcement of any such controls that are outside the ACHD jurisdictional authority.[2]

EPA recognizes that Highway Districts in Idaho do not have ordinance power, and that their jurisdictional control is limited to the road rights of way, pursuant to Idaho Code Section 40, Chapter 6 and Idaho Code Section 50, Chapter 13-1330. EPA also notes that the powers and duties of Highway Districts include …."*the exclusive general supervisory authority over all public highways, public streets and public rights-of-way under their jurisdiction, with full power to establish design standards, establish use standards, pass resolutions and establish regulations in accordance with the provisions of title 49, Idaho Code, and control access to said public highways, public streets and public rights-of-way*." Idaho Code Section 40-1310(8). At: https://legislature.idaho.gov/statutesrules/idstat/Title40/T40CH13/SECT40-1310/

[1] See, for example: *NPDES Permit for Ada County Highway District MS4, NPDES Permit no. IDS028185 Response to Comments on Proposed Permit, August 2009,* Responses #28, 30, 85, and 88.

[2] EPA has recently issued two other MS4 permits for Highway Districts in Idaho, that include the same clarifications and permit text as in the ACHD MS4 Permit, namely: NPDES Permits #IDS028207 (Lakes, Post Falls, and East Side Highway Districts, aka the North Idaho Highway District MS4s) and #IDS028134 (Canyon Highway District).

EPA again clarifies that it does not expect ACHD or other MS4 Permittees to seek or obtain legal powers they do not already possess, as stated in the preamble to the NPDES Phase II stormwater regulation:

> *…[T]he operators of some small MS4s might not have the authority under State law to implement one or more of the measures using, for example, an ordinance or other regulatory mechanism. To address these situations,* ***each minimum measure in § 122.34(b) that would require the small MS4 operator to develop an ordinance or other regulatory mechanism states that the operator is only required to implement that requirement to ''the extent allowable under State, Tribal or local law.''*** *See § 122.34(b)(3)(ii) (illicit discharge elimination), § 122.34(b)(4)(ii) (construction runoff control) and § 122.34(b)(5)(ii) (post- construction storm water management). This regulatory language does not mean that an operator of a small MS4 with ordinance making authority can simply fail to pass an ordinance necessary for a § 122.34(b) program. The reference to ''the extent allowable under * * * local law'' refers to the local laws of other political subdivisions to which the MS4 operator is subject. Rather,* ***a small MS4 operator that seeks to implement a program under section § 122.34(b) may omit a requirement to develop an ordinance or other regulatory mechanism only to the extent its municipal charter, State constitution or other legal authority prevents the operator from exercising the necessary authority.*** *Where the operator cannot obtain the authority to implement any activity that is only required to ''the extent allowable under State, Tribal or local law,'' the operator may satisfy today's rule by administering the remaining § 122.34(b) requirements. [**Emphasis Added**]*

See: Preamble to the NPDES Phase II Stormwater Rule, at 64 FR 68766 [December 6, 1999].

Stormwater Management Program Control Measures (Permit Part 3)

3. Regarding Part 3.2.8 (*Illicit Discharge Detection and Elimination Training for Staff*): This section states, "*The Permittee must ensure that all persons responsible for investigating, identifying, and eliminating illicit discharges and illicit connections into the MS4 are appropriately trained to conduct such activities. At a minimum, the Permittee's construction inspectors, maintenance field staff, and code compliance officers must be sufficiently trained to conduct dry weather screening activities and to respond to reports of illicit discharges and spills into the MS4*."

EPA's Fact Sheet at page 24 states: "*Permit Part 3.2 requires the Permittee to train appropriate staff to respond to spills, complaints, and illicit discharges/connections to the MS4. Permittee staff can be the "eyes and ears" of the stormwater program if they are trained to identify illicit discharges and spills or evidence of illegal dumping.*"

ACHD agrees with the importance of staff being the "eyes and ears" of the stormwater program and therefore trains the above-mentioned staff to identify and report illicit discharges, spills, and illegal dumping. ACHD suggests replacing "conduct dry weather screening activities and respond to" with "*identify and report*". Alternatively, the language could be modified to be consistent with the Fact sheet requiring training to identify illicit discharges and spills or evidence of illegal dumping. Specialized training is required for dry weather screening and responding to illicit discharges or spills, and therefore is not appropriate for all field staff.

Response: EPA agrees specialized training is not appropriate for all field staff, but EPA has not revised the Permit as suggested. ACHD retains discretion to train "all persons responsible for investigating and identifying" illicit discharges on separate topics than training "all persons

responsible… for eliminating illicit discharges." Field staff such as inspectors, maintenance field staff, and code compliance officers may be trained in the appropriate ACHD procedures that will ultimately result in the elimination of identified illicit discharges. No change has been made to the Permit.

4. Regarding Part 3.4.2.2 (*Alternatives for Local Compliance*): ACHD requests the addition of "*site/engineering based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff*" be added to the list of conditions that may be technically infeasible to retain the required runoff volume at and individual site. This comment is consistent with revisions EPA made in response to comments from the City of Moscow in Permit #IDS028398.

Response: EPA agrees, and has revised the Permit as suggested.

5. Regarding Part 3.4.5.2 (*Enforce Requirements*), this section should include the qualification clause "*to the extent allowable under Idaho state law.*"

Response: EPA declines to add the language as suggested. Part 3.4.5.2 states that ACHD must implement an enforcement response policy "*similar to that required by Part 3.3.6…"*; the text in Part 3.3.6 contains appropriate reference to the Permittee's available powers under Idaho state law. No change has been made to the Permit.

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

6. Regarding Part 4.3 (*Pollutant Reduction Activities*), which reads as follows: *The Permittee must define and implement at least two (2) activities designed to reduce impairment pollutants identified in Table 4.3 below from the MS4 discharges into Tenmile Creek, Fivemile Creek, Eightmile Creek, Ninemile Creek, and the Boise River.* Suggest replacing "and the Boise River" with "*or the* Boise River". Alternatively, insert "*in at least one of the waterways*" to clarify that the requirement does not extend to all the waterways identified in Table 4.3.

Response: After discussion with IDEQ, EPA agrees to revise the text of the Part 4.3 to read as follows: *The Permittee must define and implement at least two (2) activities designed to reduce impairment pollutants identified in Table 4.3 below from the MS4 discharges into Tenmile Creek, Fivemile Creek, Eightmile Creek, Ninemile Creek,* ***and/or*** *the Boise River*.

Monitoring, Recordkeeping and Reporting (Permit Part 6)

7. Regarding Part 6.4.2 (*Annual Report*), 6.4.3 (*Monitoring/Assessment Report*) 6.4.4 (*Pollutant Reduction Activity Report*): ACHD requests an Annual Report deadline of *January 15th*, [replacing December 1 of each year as drafted], consistent with ACHD's administratively extended permit.

ACHD states that timing as proposed in the draft Permit is problematic, and asks if EPA expects the "narrative status report" required by the Annual Report to include data analysis and interpretation or not? If analytical monitoring is conducted through the end of the reporting year (September 30), results from the laboratories are often not received until 30 days after sample submittal (October 30). Although the new annual report format condenses many sections, Section IV. Special Conditions for Discharges to Impaired requires a narrative status report of the Annual Report. Thirty days for data analysis, review and final report is rushed.

Response: As previously noted, EPA adjusted the effective date to February 1, 2021, and the associated date for submitting Annual Reports is now April 4, beginning in Calendar Year 2022. ACHD's request for a January 15 due date is therefore moot. No change has been made to the

Permit. EPA clarifies that the narrative status report in each Annual Report is meant to include updates or information about implementation progress or delays, and ACHD does not need to include data analysis or final summary information if such is unavailable.

8. **Regarding Part 6.4.3 (Monitoring /Assessment Report) and 6.4.4 (Pollutant Reduction Activity Report)** These sections each require the Permittee to submit final reports summarizing any/all monitoring/assessment and pollutant reduction activities conducted during the permit term with the Permit Renewal Application no later than April 3, 2025.

   If EPA's intent is to include Year 5 stormwater analytical data in both the Monitoring/Assessment Report and Pollutant Reduction Activity Report, then ACHD requests a due date of July 15, 2025 for the documents required in 6.4.3 and 6.4.4. Based on analytical results turnaround time and Boise area's wet seasons, the July 15, 2025 due date would allow incorporation of Fall 2024 and Spring 2025 stormwater data. Of note, Part 6.2.5.4 requires at least one sample each calendar year must be collected in the September – October period. Stormwater data collected during this period in Year 5 would not be available for inclusion by Year 5 Annual Report due date of September 30, 2025**.**

   Response: Based on the Permit effective date of February 1, 2021, and the associated date for submitting a permit renewal application has been revised to August 4, 2025. ACHD's request for a July 15 due date is therefore moot. No change has been made to the Permit.

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

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
Jess Byrne, Director

October 28, 2020

By e-mail: Poulsom.Susan@epa.gov

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

Subject: Reference No. IDS028185 – Ada County Highway District (ACHD) Municipal Separate Storm Sewer System (MS4) Final 401 Water Quality Certification

Dear Ms. Poulsom:

The Department of Environmental Quality (DEQ) has considered water quality certification for ACHD'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 e-mail at kati.carberry@deq.idaho.gov.

Sincerely

for Aaron Scheff
Regional Administrator
Boise Regional Office

KLC:am

Enclosure (1)

ec: Misha Vakoc, EPA, Seattle
Jason Pappani, DEQ State Office
EDMS#: 2020AKF108

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

October 28, 2020

NPDES Permit Number(s): IDS028185 Ada County Highway District (ACHD) MS4

Receiving Water Bodies: Dry Creek, Fivemile Creek, Eightmile Creek, Ninemile Creek, Tenmile Creek, and the 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 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

ACHD discharges the following pollutants of concern: sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum and hydrocarbons, microbial pollution (*Escherichia coli*), and organic chemicals (pesticides and industrial chemicals).

Receiving Water Body Level of Protection

The ACHD discharges to Dry Creek, Fivemile, Eightmile, Ninemile, Tenmile, 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, ACHD discharges to several conveyances including Eagle Drain; Thurman Mill Canal; North Slough; and several other laterals, drains, and canals that are not within the AU database maintained by DEQ, nor are they part of the National Hydrography Dataset. These conveyances are not 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	Dry Creek	SW-13, Dry Creek – source to mouth	COLD (Presumed) SCR (Presumed)	17050114SW013_04	Not Assessed	Tier II	Tier II
	Dry Creek			17050114SW013_03	Fully Supporting	Tier II	Tier II
	Tenmile Creek	SW-8, Tenmile Creek – Blacks Creek Reservoir Dam to Miller Canal	COLD SCR	17050114SW008_03	COLD: Cause Unknown, Nutrients Suspected, Chlorpyrifos, Sedimentation/Siltation SCR: *Escherichia Coli*	Tier I	Tier I
	Fivemile Creek, Eightmile Creek, Ninemile Creek	SW-10, Fivemile Creek – Source to Miller Canal	COLD SCR	17050114AW010_02	COLD: Low Flow Alterations SCR: *Escherichia Coli*	Tier I	Tier I
	Fivemile Creek			17050114SW010_03	COLD: Cause Unknown, Nutrients Suspected, Chlorpyrifos, 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_06	SS and COLD: Temperature COLD: Low Flow Alterations, Physical Substrate Habitat Alterations, and 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 ACHD'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, 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 ACHD permit are set at levels that are consistent with these wasteload allocations.

Table 2. EPA-Approved TMDLs

Assessment Unit	Waterbody Name	Beneficial Use Impairments	Approved TMDL
17050114SW008_03	Tenmile Creek-3rd order below Blacks Creek Reservoir	COLD: Cause Unknown, Nutrients Suspected, Chlorpyrifos, Sedimentation/Siltation SCR: *Escherichia Coli*	*Lower Boise River TMDL-2015 Sediment and Bacteria Addendum*
17050114SW010_02	Fivemile, Eightmile, and Ninemile Creeks-1st and 2nd order	COLD: Low Flow Alterations SCR: *Escherichia Coli*	*Lower Boise River TMDL-2015 Sediment and Bacteria Addendum*
17050114SW010_03	Fivemile Creek-3rd order	COLD: Cause Unknown, Nutrients Suspected, Chlorpyrifos, Sedimentation/Siltation SCR: *Escherichia Coli*	*Lower Boise River TMDL-2015 Sediment and Bacteria Addendum*
17050114SW005_06	Boise River-Veterans Memorial Parkway to Star Bridge	SS and COLD: Temperature COLD: Low Flow Alterations, Physical Substrate Habitat Alterations, and Sedimentation/Siltation PCR: Fecal Coliform	*Lower Boise River TMDL Subbasin Assessment for Fecal Coliform and Sediment (1999)*

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 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 determine BMP removal of pollutants of concern in all impaired AUs;
- Requirements for ACHD to implement pollutant reduction activities and quantitative monitoring and assessment for discharges into waterbodies listed in Table 1;
- Requirements for ACHD 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 ACHD'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, Dry Creek is considered high quality for recreation and aquatic life beneficial uses. As such, the water quality relevant to recreation and aquatic life uses in these waterbodies 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 recreation and aquatic life uses of Dry Creek (IDAPA 58.01.02.052.05). Sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum and hydrocarbons, microbial pollution (*Escherichia coli*), and organic chemicals (pesticides and industrial chemicals) are the relevant pollutants of concern for recreational and aquatic life uses in this waterbodies.

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. ACHD 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 and aquatic life uses. Therefore, DEQ has reasonable assurance that at a minimum, no degradation will result from the discharge of pollutants from ACHD'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, monitored, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the United States and to improve water quality at least to the maximum extent practicable.

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

Pollutant Reduction Activities in 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 Fivemile Creek, Eightmile Creek, Ninemile Creek, Tenmile 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

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

stormwater discharges from the MS4 to the Boise River to quantify stormwater impacts to this waterbody.

Reporting of Discharges Containing Hazardous Materials or Deleterious Material

Pursuant to IDAPA 58.01.02.850, all spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the 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 e-mail at kati.carberry@deq.idaho.gov.

for Aaron Scheff
Regional Administrator
Boise Regional Office