Response to Comments on

National Pollutant Discharge Elimination System (NPDES) Permit

For Discharges from the

Idaho Transportation Department District 3

Municipal Separate Storm Sewer System (MS4)

NPDES Permit No. IDS028177

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 Idaho Transportation Department District 3 (ITD3) in Ada and Canyon Counties in Idaho. The permit document #IDS028177 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 ITD3, 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. Major editorial changes have been made to the following Permit Parts in response to comments and IDEQ certification, as identified in Table 1 below:

Table 1. Edits to Final Permit

Edits Based on Public Comments Received:	
None.	
Edits Based on Relevant Public Comments Received on Other Proposed MS4 Permits in Idaho:	
Permit Part 3.4.2.2	Added the following phrase to the listed considerations for alternatives to the onsite retention requirement, consistent with other MS4 permits in Idaho: "…*site/engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff….*"
Edits Based on IDEQ Input:	
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 Idaho Transportation Department District 3 Municipal Separate Storm Sewer System; NPDES Permit #IDS028223* dated October 28, 2020. See Appendix A of this document.

Response to Comments

ITD3 submitted the following comments to EPA in a letter dated November 12, 2020.

General Topics

1. Financial resources for the state [transportation department] are very constrained. It is critical funds are used efficiently and with clear benefit to the resource. EPA's proposed draft NPDES MS4 Permit

has schedule and fiscal impacts to our business operations. We appreciate the opportunity to comment.

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

2. Regarding alternatives for local control, ITD3 supports EPA's provision, [Permit Part 2.6 and] throughout the permit document, that the Permittee may request an alternative control measure for a particular permit requirement.

Response: Comment noted. Provided that the procedures outlined in Permit Part 2.6 are followed, ITD3 may request one or more alternative control measures (ACM) to implement the Stormwater Management Program (SWMP) required by the Permit. No change has been made to the Permit.

3. Regarding prioritization, ITD3 supports EPA's effort throughout the document to allow the Permittee to develop and define our own prioritization system for inspections, enforcement and maintenance, based on local knowledge and conditions. We believe that this will enable us to use our time and resources most efficiently and effectively toward [Best Management Practice [BMP] implementation and improving water quality.

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

4. Regarding limited legal authority, ITD3 appreciates EPA's efforts to acknowledge the limited legal authority of ITD3, and providing for language that enables alternative compliance pathways such as developing an Escalating Response Plan that is "appropriate to its jurisdiction" (Permit Part 3.3.6), or using "available regulatory mechanisms" (Permit Part 2.5.4).

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

Limitations and Conditions (Permit Part 2)

5. Regarding Permit Part 2.1 (*Compliance with Water Quality Standards*), ITD3 supports the first paragraph of this section, which states "*If the Permittee comply with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an excursion above the applicable Idaho Water Quality Standards."* Regarding the second paragraph, ITD3 agrees that its responsibility is not to determine individual causation of excursions, but to participate in monitoring and implementing BMPs designed to protect the receiving water quality.

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

6. Regarding Permit Part 2.1 (*Compliance with Water Quality Standards*), ITD3 appreciates EPA's commitment and intentions to construct the Permit in a manner that preserves the "Maximum Extent Practicable" (MEP) standard under the Clean Water Act. However, ITD3 believes the final Permit requires an affirmative statement regarding how the MEP standard will be achieved, and strongly urges the EPA to insert the following paragraph into Section 2.1, "Compliance with Water Quality Standards" after the 2nd paragraph:

> *"To ensure that the Permittee's activities achieve timely compliance with applicable water quality standards, the Permittees shall implement the Storm Water Management Program, monitoring, reporting and other requirements of this permit in accordance with the time frames established in the permit. This timely implementation of the requirements of this permit shall constitute the authorized schedule of compliance."*

Response: The commenter offers no justification for including the additional language in the Permit text. It is unnecessary to add the sentence suggested by the commenter because the

Permit already contains the required deadlines and substantive conditions to ensure that the MEP standard is met. No change has been made to the Permit.

7. Regarding Permit Part 2.4.5.1 (*Categories of Allowable Non-Stormwater Discharges*), ITD3 requests that irrigation water from agricultural sources that is commingled with urban stormwater be included in this section.

Response: EPA disagrees it is necessary to edit the Permit as requested; no change has been made to the Permit. Permit Part 2.5.5.1.10 cites irrigation water as a category of allowable non-stormwater discharge. EPA notes that such non-stormwater flows are conditionally allowed to discharge through the MS4 provided it is not a source of pollution to waters of the United States as defined in Permit Part 2.4.5.2.

8. Regarding Permit Part 2.6 (*Alternative Control Measures*), ITD3 supports EPA Region 10's proposal to use the "Two-Step Approach" to address the Phase II Remand Rule requirements. ITD3 appreciates the opportunity to submit Alternative Control Measure Requests two years after the permit effective date.

Response: Comment noted. No change has been made to the Permit. EPA notes that terminology regarding the "Two Step Approach" is specific to NPDES general permits for MS4 discharges; see 40 CFR §122.28(d). For the individual NPDES Permit for the ITD3 MS4 discharges, federal regulations at 40 CFR §§ 122.62 and 122.63 provide authority to the NPDES Permitting Authority to consider modifying individual NPDES permits based on new information submitted after the permit issuance. As written, the Permit affords ITD3 with the flexibility to submit new information in support of ACM requests, Monitoring/Assessment plans, and/or Pollutant Reduction Activities. If the NPDES Permitting Authority determines that it will grant such a request, it may do so through a permit modification. See 40 CFR §§122.62 and 122.63.

9. Regarding a new section to reference water quality trading, ITD3 requests EPA add a new Permit Part 2.7 to recognize opportunity for water quality trading. Although opportunities for water quality trading have not been identified, ITD3 may desire to participate in water quality trading activities, and requests that terms identifying this as a possibility, as long as EPA's trading guidance is followed, be included to allow for trading within the EPA guidelines. Recommended text for a new Part 2.7:

> *"Any water quality trading used to meet the conditions of this permit shall be in compliance with EPA's Water Quality Trading Policy (dated January 13, 2003), any applicable EPA trading guidance, and the 2016 IDEQ Water Quality Pollutant Trading Guidance. If such provisions allow trading with pollution sources, water quality trading provisions may be included in a manner consistent with proposed Alternative Control Measures."*

Response: While EPA supports water quality trading, EPA declines to revise the Permit as suggested at this time. See EPA memo, dated February 2019, entitled "*Updating the Environmental Protection Agency's (EPA) Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality*," at https://www.epa.gov/sites/production/files/2019-02/documents/trading-policy-memo- 2019.pdf. See also EPA's request for comment on policy proposals regarding Water Quality Trading under the NPDES Program, at https://www.epa.gov/npdes/nonpoint-source-baselines- water-quality-trading. Under EPA and IDEQ Idaho Water Quality Trading Guidance documents, trading provisions must be incorporated into a NPDES permit prior to engaging in any trading activity to meet the NPDES permit's terms and conditions. However, before conditions can be included in a NPDES permit, there must be an existing trading plan or watershed trading framework that details how trades will be conducted.

Although a trading plan for the Lower Boise River watershed was developed by IDEQ in September 2000,[1] it does not expressly discuss how that framework addresses trades involving NPDES regulated municipal stormwater discharges. Therefore, while the Permit does not allow for pollutant trading as written, ITD3 and other NPDES regulated entities are free to submit an appropriate trading plan that is consistent with the Lower Boise River watershed trading framework to IDEQ, and the Permit can then be modified by the Permitting Authority to incorporate such provisions.

10. Regarding a new section to reference Integrated Planning, ITD3 requests EPA add a new Permit Part 2.8 to recognize opportunity for integrated planning. EPA recognizes integrated planning as a way that municipalities can realize efficiencies in improving receiving water quality by sequencing investments so that the highest priority projects come first. This approach can also lead to more sustainable and comprehensive solutions, such as green infrastructure, that improve water quality and provide multiple benefits that enhance community vitality. ITD3 requests that terms identifying this as a possibility, along with EPA's guidance document referenced, be included to recognize integrated planning within the guidelines set forth by EPA. Recommended text for a new Part 2.8:

> *"Any integrated stormwater planning activities used to meet the conditions of this permit shall be in compliance with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework (dated June 5, 2012) and any applicable EPA Integrated Planning guidance. If an integrated planning approach were to be implemented, it may be undertaken if information related to the integrated plan is submitted and approved by EPA and IDEQ."*

Response: EPA supports the Integrated Planning process but declines to include the specific provision as requested at this time. No change has been made to the Permit. EPA's 2012 Integrated Planning Framework[2] states:

> "*The framework identifies the operating principles and essential elements of an integrated plan. The integrated planning approach is voluntary. The responsibility to develop an integrated plan rests with the municipality that chooses to pursue this approach…[and] … the integrated plan that it develops can provide information to inform the permit and enforcement processes and can support the development of conditions and requirements in permits and enforcement orders. The integrated plan should identify the municipality's relative priorities for projects and include a description of how the proposed priorities reflect the relative importance of adverse impacts on human health and water quality and the municipality's financial capability. The integrated plan will be the starting point for development of appropriate implementation actions, which may include requirements and schedules in enforceable documents…… Integrated plans should be consistent with, and designed to meet the objectives of, existing TMDLs."* [Emphasis added]

The initial step in this process is to develop a plan that can then be used to inform the terms of a NPDES permit. Since ITD3 has not yet engaged in the initial step, it is premature to add language in the Permit. However, Permit terms and conditions resulting from an Integrated Plan can be requested pursuant to Permit Part 5 and/or Part 8.13 as written. At that point, IDEQ (the NPDES

[1] See: *Lower Boise River Effluent Trading Demonstration Project: Summary of Participant Recommendations for a Trading Framework* (September 2000), and other documents available at: https://www.deq.idaho.gov/water-quality/surface-water/pollutant-trading/

[2] See EPA website: https://www.epa.gov/npdes/integrated-planning-municipal-stormwater-and-wastewater

Permitting Authority after June 30, 2021) could modify the Permit to include such terms and conditions.

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

11. Regarding Permit Part 3.1.3 (*Stormwater Education Activities*), the Permit requires the Permittee to "*distribute and/or offer at least eight (8) educational messages or activities over the permit term to the selected audience(s).*" ITD3 suggests a reduction of eight messages or activities to four (4).

Response: The commenter provides no reason or rationale to support such a revision, therefore EPA has not revised the text as suggested. No change has been made to the Permit.

Illicit Discharge Detection and Elimination (Permit Part 3.2)

12. Regarding Permit Part 3.2.5.1 (*Outfall Identification and Screening Protocols*), this section requires that the Permittee "*must use reconnaissance activities, information recorded through the complaint reporting program, and (if available) existing watershed assessment or Total Maximum Daily Load (TMDL) analyses, to prioritize and target outfalls for screening throughout their Permit Area defined in Part 1.1.The Permittee must develop a written plan that outlines how chemical and microbiological field screening analysis will be conducted on the dry weather flows identified during the reconnaissance and screening efforts, including field screening methodologies and associated trigger thresholds used by the Permittee for determining follow-up action(s)*. "

ITD3 requests 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: EPA has not revised the text as suggested. No change has been made to the Permit. 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 potential presence of nutrients and metals in stormwater cannot be identified through visual observation. As such, the Permit requires the Permittee to actively seek to identify potential pollutants in and sources of dry weather flows. The Permit requires the Permittee 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 Lower Boise River watershed.

13. Regarding Permit Part 3.2.5.3 (*Monitoring of Illicit Discharges*), this section states: *Where dry weather flows from the MS4 are identified by the Permittees, the Permittees must identify the source of such flows, and take appropriate action to eliminate such flows to the extent allowable pursuant to authority granted the Permittee under Idaho 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*.

ITD3 requests 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 #12. EPA has not revised the text as suggested. No change has been made to the Permit.

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

14. The text in Permit Part 7 includes language copied from wastewater permits that is not suitable or relevant to stormwater. The Permittee urges EPA simplify Part 7 so that only the language directly applicable to stormwater permits be included in the final permit. In the Fact Sheet (FS) supporting the ITD3 MS4 Permit, 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 Montana Phase 2 General permit, precisely because they do not apply to stormwater permits. 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: NPDES regulations at 40 CFR §§ 122.41 through 122.43 require the provisions reflected in Permit Parts 7 and 8 to be included in each NPDES permit. Specifically, 40 CFR §122.41 states:

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

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

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

In prior Phase II MS4 permits previously issued in Idaho, EPA erred by not including all mandatory provisions as required by 40 CFR §§122.41 through 122.43. As explained in the FS, "*…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. EPA also 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.

15. Regarding Permit Parts 7.6 (*Toxic Pollutants*), 7.7 (*Planned Changes*), and 7.11 (*Upset Conditions*) – Based on the rationale above, ITD3 suggests the permit language can be simplified to address stormwater responsibilities, by removing Parts 7.6, 7.7, and 7.11 from the Permit.

Response: See Response #14. EPA has not revised the text as suggested; no change has been made to the Permit. EPA clarifies that Part 7.6 (Toxic Pollutants) does not apply to MS4s as originally envisioned by the regulation, because EPA has not promulgated any effluent guidelines applicable to MS4 discharges under CWA Section 307(a). However, EPA notes that as a condition of its certification under CWA Section 401, IDEQ requires the Permittee to immediately report to IDEQ and 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), in 2009 EPA previously clarified for other Idaho MS4 permits in the Treasure Valley that this provision does not require approval from 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 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 .

16. Regarding Permit Part 7.9 (*Twenty-Four Hour Notice of Noncompliance Reporting*), ITD3 proposes removing the last two bullets in section 7.9 in order for this section to be applicable to stormwater noncompliance reporting.

Response: See Response #14. No change has been made to the Permit.

17. Regarding Permit Part 7.10 (*Bypass of Treatment Facilities*), ITD3 proposes 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. ITD3 recommends EPA use the following as a replacement for the language in the proposed Permit, as 7.10.3):

> *The Permittees are prohibited from intentionally bypassing stormwater from all or any portion of a stormwater treatment BMP as long as the design capacity of the BMP is not exceeded unless the following conditions are met.*
>
> *Bypass is:*
>
> *(1) unavoidable to prevent the loss of, personal injury, or severe property damage or (2) necessary to perform construction or maintenance-related activities essential to meet the requirements of the 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: As EPA has responded to similar comments on recently issued Idaho MS4 permits,[3] EPA appreciates the interpretation and agrees that this provision can be interpreted in light of the overall maintenance and operation of the MS4. However, EPA cannot revise the text of a standard permit condition as suggested. See Response #14. No change has been made to the Permit. 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."*

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

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

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 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. IDS028177 – Idaho Transportation Department (ITD) District #3 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 ITD's District #3 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#: 2020AKF107

Idaho Department of Environmental Quality
Final §401 Water Quality Certification

October 28, 2020

NPDES Permit Number(s): IDS028177 Idaho Transportation Department (ITD) District #3 MS4 Permit

Receiving Water Bodies: Indian Creek, Mason 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

The ITD –District #3 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 ITD –District #3 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 Notus Canal, Riverside Canal, Wilson Drain, Elijah Drain, Phyllis Canal 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 protection 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, 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
	Mason Creek	SW-6, 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, 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

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 ITD #3 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 ITD – District #3 permit are set at levels that are consistent with these wasteload allocations.

Table 2. EPA-Approved TMDLs

AU	Name	Beneficial Use Impairments	Approved TMDL
1750114SW002_04	Indian Creek-Sugar Avenue to Boise River	COLD: TP, 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*

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 ITD - District #3 to implement pollutant reduction activities and quantitative monitoring and assessment for discharges into waterbodies listed in Table 1;
- Requirements for ITD - District #3 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 ITD - District #3 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).

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 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.

relevant to recreational uses include the following: microbial pollution, nutrients, metals, chlorides, petroleum hydrocarbons, and organic chemicals.

For a reissued permit or license, the effect on water quality is determined by looking at the difference in water quality that would result from the activity or discharge as authorized in the current permit and the water quality that would result from the activity or discharge as proposed in the reissued permit or license (IDAPA 58.01.02.052.06.a). NPDES permits for regulated small MS4s must include terms and conditions to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements under the Clean Water Act. "Maximum extent practicable" is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. To achieve these goals, the current and proposed MS4 permits implement minimum control measures and rely on iterative practices to identify and reduce discharge of pollutants. Permittees' implementation of these practices must be documented in annual reports to EPA and DEQ review (Permit Part 6.4.2), and is subject to on-site inspections (Permit Part 8.7). EPA also determined that additional pollutant reduction activities were required for the Idaho Transportation Department - District #1.

The permit reissues the Idaho Transportation Department - District #1 MS4 permit. Due to the nature of MS4 permits, implementing their requirements results in a continual discovery of pollutant sources, use and refinement of BMPs, feedback from BMP implementation and maintenance, additional knowledge through training opportunities, and investigating and resolving complaints. This level of scrutiny and effort combined with requirements to address pollution sources typically leads to improved water quality the longer the permit is in effect. It also generally results in minimal to no adverse change in water quality significant to recreational and aquatic life uses.

This permit contains monitoring and assessment expectations for the Idaho Transportation Department - District #1 MS4 (Permit Part 4.2). A multitude of case studies illustrate that the use of best management practices (which include stormwater management program elements, permit prohibitions, and other permit conditions) have a measurable positive effect on water quality or a biological metric.[1] In addition, the Idaho Transportation Department-District #1 is required to conduct at least two pollutant reduction activities (Permit Part 4.3) targeting pollutants causing impairments in Fernan Creek and Coeur d'Alene Lake. EPA oversight through review of annual reports and periodic inspections should ensure correct BMP design, construction, and maintenance. At a minimum, water quality conditions should be maintained from current conditions. Therefore, DEQ has reasonable assurance that insignificant or no degradation will result from the discharge of pollutants from the Idaho Transportation Department - District #1 MS4 permit.

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

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

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.

Lance Holloway

for Aaron Scheff
Regional Administrator
Boise Regional Office