



## Fact Sheet

NPDES Permit Numbers:

IDS028061 City of Lewiston and Lewis-Clark State College MS4s  
IDS028258 Idaho Transportation Department-District #2

Public Comment Period Start Date: May 24, 2021  
Public Comment Period Expiration Date: June 23, 2021  
Technical Contact: Misha Vakoc  
(206) 553-6650 or (800) 424-4372  
[vakoc.misha@epa.gov](mailto:vakoc.misha@epa.gov)

**U.S. Environmental Protection Agency (EPA) Proposes to Modify  
the National Pollutant Discharge Elimination System (NPDES) Permits  
for Stormwater Discharges Issued to:**

**City of Lewiston and Lewis-Clark State College  
and  
Idaho Transportation Department-District #2**

EPA Region 10 proposes to modify two (2) NPDES permits that were issued on September 15, 2020. The permits authorize discharges from the municipal separate storm sewer systems (MS4s) owned and/or operated by the entities listed above located in Lewiston, Idaho. EPA proposes to modify Permit Part 4 in each permit to require additional pollutant reduction activities as a result of the Endangered Species Action Section 7 consultation with the National Marine Fisheries Service (NMFS). These modifications address the reasonable and prudent measures identified by NMFS in its Biological Opinion dated May 5, 2021.

EPA will accept public comment only on the modified provisions described in this document.

This Fact Sheet includes:

- Information on public comment, public hearing, and appeal procedures, and
- A description and rationale for the proposed modifications.

### **State CWA Section 401 Certification**

On January 15 and January 27, 2020, the Idaho Department of Environmental Quality (IDEQ) certified Permits #IDS028061, and IDS028258, respectively, pursuant to CWA Section 401; a copy of each final certification is included in the Administrative Record for this action.

EPA discussed the pending modifications with IDEQ on March 23, 2021. On April 30, 2021, and May 17, 2021, EPA requested that IDEQ certify the proposed permit modifications. Questions or comments regarding the IDEQ certifications for these MS4 Permits should be directed to:

**Joint NPDES Fact Sheet for the Modification of Two MS4 Permits in Lewiston, ID  
May 2020**

Idaho Department of Environmental Quality  
ATTN: Sujata Connell, Surface Water Quality Manager  
1118 "F" Street  
Lewiston, ID 83501  
(208) 799-4370

**Public Comment and Opportunity for Public Hearing**

Because of the COVID-19 virus, access to the Region 10 EPA building is limited. Therefore, EPA requests that all comments on the proposed permit modifications or requests for a public hearing be submitted via email to Misha Vakoc ([vakoc.misha@epa.gov](mailto:vakoc.misha@epa.gov)). If you are unable to submit comments via email, please call 206-553-6650.

Persons wishing to comment on, or request a Public Hearing for, the proposed permit modification must do so in writing by the expiration date of the Public Comment period. A request for Public Hearing must state the specific NPDES permit, the nature of the issues to be raised as well as the requester's name, address and telephone number. All comments and requests for Public Hearings must be in writing and should be submitted to EPA as described in the Public Comments Section of the attached Public Notice.

After the comment period ends, and all comments have been considered, EPA's Regional Director for the Water Division will make a final decision regarding permit reissuance. If EPA receives no comments, the conditions in the proposed permit will become final, and the permit will become effective upon issuance. If comments are submitted, EPA will prepare an individual response to comments document and, if necessary, will make changes to the Permit. After making any necessary changes, EPA will issue the Permit with its response to comments document, unless issuance of a new draft Permit is warranted pursuant to 40 CFR § 122.14. The Permit modification will become effective no earlier than thirty (30) days after the issuance date, unless the Permit is appealed to the Environmental Appeals Board pursuant to 40 CFR § 124.19.

**Documents Available for Review**

The draft modified Permits, fact sheet and other information are available on the EPA Region 10 website at: <https://www.epa.gov/npdes-permits/stormwater-discharges-municipal-sources-idaho-and-washington> OR <https://www.epa.gov/npdes-permits/idaho-npdes-permits>.

Because of COVID-19 response, there is no public access to the Region 10 EPA buildings at this time. Therefore, EPA cannot make hard copies available for viewing at our offices.

For technical questions regarding the Permits listed above or this Fact Sheet, contact Misha Vakoc at the phone number or E-mail listed above. Services for persons with disabilities are available by contacting Audrey Washington at (206) 553-0523.

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## **Acronyms**

BE	Biological Evaluation
BiOp	Biological Opinion
CFR	Code of Federal Regulations
CWA	Clean Water Act
CZARA	Coastal Zone Act Reauthorization Amendments
EFH	Essential Fish Habitat
ESA	Endangered Species Act
ESU	Evolutionary Significant Unit
EPA	United States Environmental Protection Agency, Region 10
IDEQ	Idaho Department of Environmental Quality
ITD2	Idaho Transportation Department-District #2
LCSC	Lewis-Clark State College
MEP	Maximum Extent Practicable
MS4	Municipal Separate Storm Sewer System
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NLAA	Not Likely to Adversely Affect
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
US	United States
USC	United States Code
USFWS	U.S. Fish and Wildlife Service

## 1 Facility Information

The City of Lewiston and Lewis-Clark State College (Lewiston/LCSC) and the Idaho Transportation Department-District #2 (ITD2) each own and/or operate regulated small municipal separate storm sewer systems (MS4s) located in the Lewiston Urbanized Area in Nez Perce County, Idaho.

EPA issued two MS4 Permits on September 15, 2020: (1) Lewiston/LCSC MS4 permit (IDS028061) and (2) ITD2 MS4 permit (IDS028258). Both Permits became effective on November 1, 2020 and will expire on September 30, 2025. The Permits authorize the Lewiston/LCSC and ITD2's interconnected MS4 discharges to waters of the United States that include Lower Granite Dam Pool and other associated waterbodies. Each permit defines stormwater management control measures to reduce pollutants to the maximum extent practicable (MEP), protect water quality, and comply with other provisions of the Clean Water Act (CWA).

A general map of the Lewiston MS4 Permit Area is provided in Appendix 3. Descriptions of the Lewiston/LCSC and ITD2 MS4s and other background information can be found in EPA's Fact Sheets supporting each permit, dated December 19, 2018, and February 5, 2019, respectively; these documents are in the Administrative Record for these modifications.

## 2 Background

Section 7 of the Endangered Species Act [16 U.S.C. 1531 et al.] (ESA) requires Federal agencies to consult with the National Oceanic and Atmospheric Administration – National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. USFWS and NMFS will be collectively referred to as “the Services.”

On August 11, 2020, EPA requested to initiate ESA consultation with the Services and submitted a biological evaluation (BE) analyzing the potential consequences of EPA's action to ESA-listed species and critical habitat. The BE concludes that issuance of the Lewiston MS4 Permits are *not likely to adversely affect* (NLAA) the ESA-listed species or critical habitat identified in Table 1, below.

**Table 1.**

<b>Effect Determinations for Species under U.S. Fish and Wildlife Service Jurisdiction</b>	
Bull trout ( <i>Salvelinus confluentus</i> ) Columbia River Distinct Population Segment Bull trout Critical Habitat	Not likely to adversely affect (NLAA)
Spalding's catchfly ( <i>Silene spaldingii</i> ) - West-central Idaho population	No Effect
<b>Effect Determinations for Species under National Marine Fisheries Service Jurisdiction</b>	
Chinook salmon ( <i>Oncorhynchus tshawytscha</i> ) - Snake River Spring/Summer and Snake River Fall Evolutionary Significant Units (ESUs) Chinook salmon Critical Habitat	NLAA
Sockeye salmon ( <i>Oncorhynchus nerka</i> ) - Snake River ESU Sockeye salmon Critical Habitat	NLAA
Steelhead ( <i>Oncorhynchus mykiss</i> ) - Snake River ESU Steelhead Critical Habitat	NLAA

**Joint NPDES Fact Sheet for the Modification of Two MS4 Permits in Lewiston, ID  
May 2020**

See: *Biological Evaluation For Endangered Species Act Section 7 Consultation On National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permits Located in the Lewiston, Idaho Urbanized Area: City of Lewiston & Lewis-Clark State College (NPDES Permit No. IDS028061) and Idaho Transportation Department-District #2 (NPDES Permit No. IDS028258)*, August 2020.

The determination of whether listed species are likely to be adversely affected must be based on clear and substantial information using the best scientific and commercial data available. For this BE, EPA evaluated the potential consequences to ESA-listed species as a result of exposure to MS4 discharges, specifically considering:

- (1) The estimated exposure point concentration and loading of pollutants present in the discharge;
- (2) The duration of exposure as a function of the size of the discharge plumes relative to the salmonid swimming speed;
- (3) The direct toxicity of the stormwater discharge to the ESA-listed species; and
- (4) The indirect effects through toxicity to prey species.

In addition, EPA considered the beneficial effect of issuing the permits and the estimated reduction in pollutant loading as a result of implementing required stormwater management control measures. For example: the elimination of non-stormwater discharges through the MS4; mandating site design practices designed to retain onsite specific runoff volumes from impervious surfaces at new and redevelopment sites constructed after the permit effective date; requiring runoff treatment where runoff volumes cannot be retained onsite due to technical infeasibility or site constraints; and directing appropriate operation and maintenance of the existing MS4 infrastructure to prevent water quality impacts to the aquatic environment.

Pursuant to ESA Section 7(d), EPA issued both Lewiston MS4 Permits prior to completing ESA consultation. See: EPA Memorandum, *Endangered Species Act Section 7(d) Determination with Respect to Issuance of Two Municipal Separate Storm Sewer System Permits in Lewiston, ID*, dated August 19, 2020, and signed September 15, 2020. ESA Section 7(d) provides that, after initiation of consultation, a Federal agency is prohibited from making irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives that would not violate Section 7(a)(2) of the ESA. 50 CFR § 402.09. EPA determined that permit issuance prior to the conclusion of consultation was appropriate because:

- (1) The Lewiston MS4 Permits will result in increased protection of the aquatic environment and, thus, the listed species that are dependent on that environment and
- (2) EPA's issuance of the Lewiston MS4 Permits does not make irreversible or irretrievable commitment of resources for purposes of Section 7(d) of the ESA because the Permits expressly reserve the right of the Agency to modify the Permits based on the outcomes from completing ESA Section 7 consultation.

On September 24, 2020, USFWS concurred with EPA's determination that issuance of the Lewiston MS4 Permits is not likely to adversely affect bull trout and bull trout critical habitat.

NMFS notified EPA on September 24, 2020, that it did not concur with the NLAA determination for Snake River spring/summer Chinook salmon, Snake River fall Chinook, Snake River sockeye, Snake River Basin steelhead, and their designated critical habitats. NMFS found EPA's documentation in the BE to be sufficient to initiate formal consultation and stated it would

prepare a biological opinion (BiOp) by December 24, 2020. NMFS requested and received two extensions. EPA and NMFS agreed upon a deadline of April 24, 2021 to submit the BiOp to EPA. EPA received the BiOp on May 5, 2021. See: *Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for National Pollution Discharge Elimination System Municipal Stormwater Permits (IDS028061 and IDS028258), Lewiston, Idaho; NMFS No: WCRO-2020-02609.*

### **3 Cause for Modification**

Pursuant to 40 CFR § 122.62(a)(2) and Permit Part 8.13, EPA is proposing to modify both Permits as a result of new information received from NMFS during the ESA consultation process.

The BiOp concludes that the issuance of the Lewiston MS4 Permits, is “*reasonably certain to result in the take of ESA-listed species.*” As a result, NMFS has specified nondiscretionary measures (reasonable and prudent measures or RPMs) to minimize the amount or extent of incidental take. Incidental take refers to takings that result from, but are not the purpose of, “carrying out an otherwise lawful activity conducted by the Federal agency or applicant.” 50 CFR 402.2.

EPA is proposing to modify each Permit to address the RPMs and resulting terms and conditions outlined in the BiOp. Specifically, the Permit modification requires the following:

1. Sediment Management Plan: The Permittees must remove accumulated sediment in all catch basins, inlets, outfalls, and other MS4 features leading to the Lewiston Levee Ponds, Snake River, Lower Granite Dam Pool, Lindsay Creek, and Tammany Creek. The Permittees must document in the Annual Report the sediment removal progress made and include a weight/volume estimate of removed materials.
2. Riparian Zone Management and Outfall Disconnection. The Permittees must undertake and complete at least one project designed to reduce the flow of untreated urban stormwater discharging through the MS4 system through the use of vegetated swales, stormwater treatment wetlands and/or other appropriate techniques. The Permittees must submit the list of prioritized riparian protection areas, and a status report on the implementation of the outfall disconnection project, as part of the Permit Renewal Application required by Part 8.2. Documentation of the completed outfall disconnection project must be included in the 5th Year Annual Report.

In its BiOp, NMFS identified pollutants of concern that are commonly bound to sediment particles. EPA acknowledges that these and other pollutants attached to sediment particles can likely be conveyed in discharges from the MS4; thus, requiring the Permittees to comprehensively remove sediment from the MS4 over time is a reasonable pollutant reduction approach that is proposed to be incorporated into each Permit.

NMFS specified that the Permits must limit new outfalls from new development through the implementation of onsite stormwater retention and/or treatment and maximize the use of green infrastructure to manage/reduce sediment loading runoff. EPA has determined that requirements at Permit Part 3.4 (in each Permit), as written, adequately address these terms and conditions. Therefore, EPA is not proposing additional Permit modifications to address these issues.

## **4 Modified Permit Provisions**

### **4.1 Cover Page**

Cover page of each permit has been revised to include an effective date for modified permit provisions at least 30 days after the modified Permit's issuance date.

### **4.2 Permit Part 4 Special Conditions for Discharges to Impaired Waters**

The Lewiston/LCSC MS4 Permit contains provisions in Permit Part 4 to address the Permittees' discharges to waters identified as impaired in the IDEQ's 2014 Integrated Section 303(d)/Section 305(b) Report (2014 Integrated Report) contains the list of impaired water bodies in Idaho required by CWA Section 303(d).<sup>1</sup>

The ITD2 MS4 Permit does not contain comparable provisions because as explained in the original Fact Sheet on page 9, ITD2 does not operate an MS4 that discharges to waters identified as impaired by IDEQ.

EPA proposes to modify Permit Part 4 in each permit to include specific provisions that address the terms and conditions identified in the NMFS BiOp by:

1. Requiring the Permittees to remove sediment from their MS4 infrastructure throughout the Permit Area in a systematic and responsible manner;
2. Requiring the Permittees to plan and implement Riparian Zone Management and Outfall Disconnection activities within the Permit Area; and
3. Requiring the Permittees to report on their interim progress toward implementing sediment removal activities and outfall disconnection activities.

### **4.3 Reports to be Submitted with Permit Renewal Application**

EPA proposes to modify Permit Part 8.2 in each Permit to clarify the expected interim reports to be submitted with the Permit Renewal Applications regarding the implementation status of the sediment removal and quantity assessment, and other specified actions.

### **4.4 Other Editorial Changes**

EPA proposes minor editorial changes to the Table of Contents, and Part 6.4.4 to acknowledge the final reporting requirements.

## **5 Other Legal Requirements**

### **5.1 Environmental Justice**

As part of the permit development process, EPA Region 10 conducted a screening analysis to determine whether this permit action could affect overburdened communities. "Overburdened" communities can include minority, low-income, tribal, and indigenous populations or communities that potentially experience disproportionate environmental harms and risks. EPA uses a nationally consistent geospatial tool that contains demographic and environmental data for the United States at the Census block group level. This tool is used to identify permits for which enhanced outreach may be warranted.

Based on this screening, the Lewiston Urbanized Area is identified as an area where

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<sup>1</sup> The IDEQ's 2014 Integrated Report is available online at: <https://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx>.



potentially overburdened communities reside. To ensure that individuals in this area are able to participate meaningfully in the NPDES permit process, EPA will continue to work to ensure that interested stakeholders in this area, and throughout the state, are informed and able to provide their input on appropriate local stormwater management activities.

EPA encourages MS4 Permittees to review (and to consider adopting, where appropriate) *Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways To Engage Neighboring Communities* as described in the EPA document available at <https://www.federalregister.gov/articles/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process#p-104>.

For more information, see <https://www.epa.gov/environmentaljustice> and Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

## **5.2 National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of federal undertakings on historic properties listed on, or eligible for listing on, the National Register of Historic Places. The term federal “undertaking” in NHPA regulations to include a project, activity, or program of a federal agency that can result on changes in the character or use of historic properties, if any historic properties are located in the area of potential effects for that project, activity or program. See 36 CFR § 802(o) and 36 CFR §802(e). Federal undertakings include EPA’s issuance of a NPDES permit.

EPA determined that the reduction of pollutants in runoff through compliance with a MS4 discharge permit will not result in the disturbance of any site listed or eligible for listing in the National Historic Register. Therefore, EPA believes that the actions associated with the Permits are also in compliance with the terms and conditions of the National Historic Preservation Act.

Pursuant to Permit Part 8.10, Permittees are reminded that they must comply with applicable state, Tribal and local laws, including those concerning protection of historic properties.

## **5.3 National Environmental Policy Act and Other Federal Requirements**

Regulations at 40 CFR §122.49, list federal laws that may apply to the issuance of permits i.e., ESA, NHPA, the Coastal Zone Act Reauthorization Amendments (CZARA), NEPA, and Executive Orders, among others. The NEPA compliance program requires analysis of potential impacts, options to avoid or minimize impacts; and development and analysis of measures to mitigate adverse impacts.

EPA has not promulgated effluent limitation guidelines or new source performance standards specific to MS4 discharges. MS4 permits are not subject the NEPA.

Idaho is not located in the U.S. coastal zone, so CZARA does not apply to issuance of the Permit. In addition, the Permit will not authorize the construction of a water resources facility or the impoundment of any waterbody. No regulated small MS4s are located in designated Wild and Scenic River areas. Therefore, EPA determines that the Fish and Wildlife Coordination Act, 16 USC § 661 et seq., and Wild and Scenic Rivers Act, 16 USC § 470 et seq., do not apply to the modification of the Permit.

#### **5.4 Permit Dates**

The Lewiston MS4 Permits were issued on September 15, 2020 and became effective on November 1, 2020. Each permit's expiration date is September 30, 2025. EPA is not proposing to revise these dates. See Section 4.1.

#### **5.5 State Certification of the Draft Permit**

Section 401 of the CWA requires EPA to seek State certification before issuing a final permit. As a result of the certification, the State may require more stringent permit conditions or additional monitoring requirements to ensure that the permit complies with water quality standards, or treatment standards established pursuant to any State law or regulation.

As previously noted, IDEQ certified the Lewiston MS4 Permits on January 15 and January 27, 2020, respectively. A copy of each final certification is included in the Administrative Record for this action. EPA discussed the pending modifications with IDEQ on March 23, 2021. On April 30, 2021, and May 17, 2021, EPA requested that IDEQ certify the proposed permit modifications. Questions or comments regarding the IDEQ certifications for the Lewiston MS4 Permits modifications should be directed to:

Idaho Department of Environmental Quality  
ATTN: Sujata Connell, Surface Water Quality Manager  
1118 "F" Street  
Lewiston, ID 83501  
(208) 799-4370

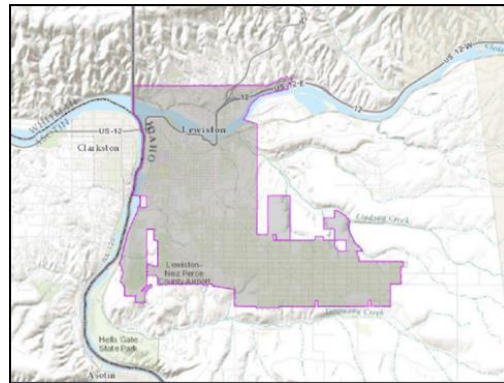
**Appendix 1 – Permit Area Maps: Lewiston Urbanized Area**

Lewiston UA	Census 2000	<a href="http://www2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua49312/">http://www2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua49312/</a>
	Census 2010	<a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua49312_lewiston_id--wa/">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua49312_lewiston_id--wa/</a>

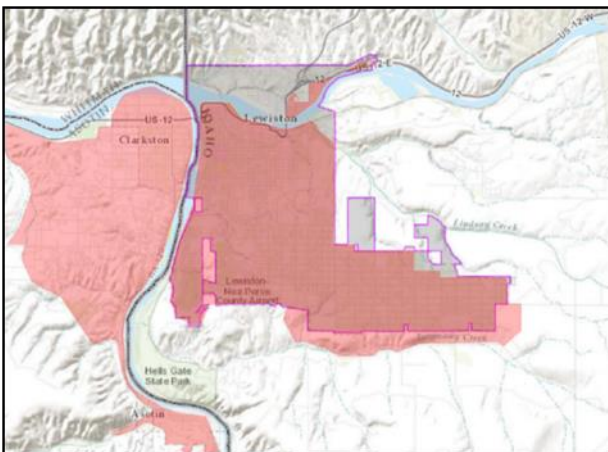
The Caldwell MS4 Permit covers all areas within the Nampa Urbanized Area served by the municipal separate storm sewer system (MS4) owned and/or operated by the City of Caldwell.



**Figure A.3.1:  
City Boundaries**



**Figure A.3.2: City and Year 2000 UA  
Boundaries for the Lewiston, ID-Clarkston,  
WA Urbanized Area**



**Figure A.3.3: Combined City, Year 2000 UA,  
and Year 2010 UA Boundaries for Lewiston,  
ID-Clarkston, WA Urbanized Area**

